## **Deloitte.**

Fine Art – Direct and indirect taxation aspects A masterwork of complexity





## Introduction

Art can be viewed in a multitude of ways a store of wealth, a masterpiece to cherish, a family heirloom, a part of a trust or estate, or even a gift to a cultural institution.

Whatever owning an artwork means to a private individual, business or public entity, tax concerns are always relevant.

Building on the strength of Deloitte's dedicated Art & Finance initiative, our Luxembourg and global tax experts have turned their attention to creating tailor-made tax structuring solutions for art holdings. An art collection frequently represents a substantial part of a family's wealth and has become a key aspect of its financial and succession planning.

Art represents an asset that is becoming increasingly part of a family's identity, as well as an investment opportunity that offers returns and diversification. Recent developments have shown that there is a significant opportunity to integrate art into wealth management as a way of preserving and growing a family's wealth. With the popularity of art as an asset class continuing to grow, Deloitte Luxembourg has for the past several years been providing a wide range of Art & Finance services to its clients: private and corporate collectors, cultural and art institutions, foundations, banks, asset management companies, family offices, etc.

In particular, Deloitte Luxembourg, supported by the Deloitte network, draws on the expertise of a number of tax professionals to create solutions to the art taxation issues our clients face. Deloitte possess a global network that allow us to serve our clients worldwide. Thanks to our widespread network we have develop an art tax matrix that detail the different tax exposures in various countries in order to provide you with an high-level snapshot on tax issues related to art for private clients.

In addition, we can provide tailor-made tax structuring solutions for investments in artworks, which may encompass transferring a collection to a cultural institution, setting up an investment fund, etc.

#### Your challenge

- Tax guidance for entities operating as national or international companies
- Tax guidance for art dealers operating in an international environment
- Tax guidance for the management of the collections of HNWIs & UHNWIs
- · Leveraging the Luxembourg Freeport
- Tax advisory for structuring arrangements for an art collection
- Transferring a collection to a cultural institution
- · Setting up an investment fund

#### Our solution

- Tax structuring (with emphasis on the available structures developed in Luxembourg)
  - Competitive effective tax rate
  - Luxembourg holding structure
- Developing tax-related services for your clientele
  - Tax and inheritance planning
- VAT advisory for holding and trading art assets
  - Freeport development in Luxembourg

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# The art tax matrix focuses on the following

#### **Austria**



#### Net Wealth Wax

No Net Wealth tax.

#### Income tax

Income tax for individuals is calculated on a progressive scale from 0% (if the taxable income does not exceed EUR 11,000) to 50% (from EUR 60,000).

#### Corporate tax

The income tax rate for companies is 25%.

#### Capital gains tax

Capital gains made from the sale of private assets (e.g. art assets) held for more than one year are tax-exempt.

#### Gift and estate tax

There is no gift or estate tax in Austria. However, in some cases a statutory notification for gifts is necessary.

#### **Belgium**



#### **Net Wealth Tax**

No Net Wealth tax.

#### Income tax

Income tax rate for individuals ranges from:

- · 25% to
- 50% (as from EUR 34,330)

Additional surcharge may apply:
A communal surtaxe apply, based on the income tax.

#### Corporate tax

Corporate tax rate is 33.99% for companies.

Reduced graduated tax rates apply on a maximum of EUR 322,500 of taxable income if certain conditions are met.

#### Capital gains tax

Capital gains on the disposal of cultural property are not taxed if they are carried out as part of the management of private assets.

#### Gift and estate tax

Gifts are taxed at 3% for direct descendants and at 7% beyond the individual's immediate family.

For estate tax, there are complex rate scales depending on the region. Rates vary between 3% and 30% for spouses and direct descendants, and between 30% and 80% for others, excluding charities.

Inheritance tax duties can be reduced via manual donations of cultural property.

#### France\*



## Germany

#### **Net Wealth Wax**

Art assets are excluded from the NWT tax base.

#### Income tax

Income tax for individuals is levied at rates of up to 45%. There are also two further contributions:

- An additional social security contribution of 15.5% (CSG and CRDS)
- A high income contribution, e.g. for a married taxpayer, 3% of the difference between EUR 500,000 and EUR 1 million, and 4% of the amount exceeding EUR 1 million

#### Corporate tax

Corporate tax rate is 33.33% for companies.

There is a mechanism allowing for the taxable deduction of purchases of works of art of living artists over five years.

#### Capital gains tax

5% tax on sales exceeding EUR 5,000 made by individuals.

Possibility to opt for the ordinary scheme of capital gains.

#### Gift and estate tax

Same taxation for gift and estate tax.

Rate according to family relationship. Tax rates range from 5% to 45% (more than EUR 1,805,677) with a deduction of EUR 100,000. 60% rate beyond the fourth degree of family relationships.

#### **Net Wealth Tax**

No Net Wealth Tax.

#### Income tax

Rates are progressive and range from 14% to 45%. A solidarity surcharge of 5.5% (resulting in a top rate of 47.5%) and church tax of 9% (8% in Bavaria and Baden-Württemberg) are levied on income tax.

#### Corporate tax

The corporate income tax rate is 15%. The municipal trade tax rate typically ranges between 14% and 17%. The effective combined tax rate is between 30% and 33%.

A solidarity surcharge of 5.5% is levied on corporate income tax.

#### Capital gains tax

Capital gains on the disposal of art assets are generally fully taxable.

Exemption: capital gains on the disposal of private art assets by individuals are only taxable if the assets were held for a period of less than one year and if the collection is not considered as trade or business.

#### Gift and estate tax

Inheritance and gift tax rates range from 7% to 50% depending on family relationship. Various exemptions are available (e.g. if specific conditions are met, a 100% tax exemption may apply).

#### **Hong-Kong**



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#### **Net Wealth Tax**

Wealth tax is not applied to works of art owned by individuals or companies.

#### Income tax

Income tax for individuals is applied at rates of up to 15%.

#### Corporate tax

The income tax rate for companies is 16.5%.

#### Capital gains tax

Capital gains on the disposal of art assets are not taxed.

#### Gift and estate tax

Neither gift tax nor inheritance tax applies to art assets.

#### Italy

#### **Net Wealth Tax**

Wealth tax is not applied to works of art owned by individuals and companies.

#### Income tax

Income tax for individuals depends on whether the individual is engaged in a commercial activity:

- For income resulting from a commercial activity, the marginal income tax rates applied range from 19% to 43%. A regional tax on commercial activity is also levied (ordinary rate 3.9%)
- No tax is levied on income that does not result from a commercial activity

#### Corporate tax

The income tax rate for companies is 27.5%, and a regional tax also applies (ordinary rate 3.9%).

#### Capital gains tax

Capital gains on the disposal of art assets are not taxed, and a regional tax also applies (ordinary rate 3.9%).

#### Gift and estate tax

Taking into account the non-taxable threshold amounts and depending on the relationship between the transferor and recipient, gift and inheritance tax rates vary between 0% and 8%.

With regard to inheritance tax only, the value of the art assets subject to tax may be limited to 10% of the entire portfolio transferred.

#### Luxembourg



#### Russia



#### **Net Wealth Tax**

No Net Wealth Tax for individuals.

Companies are subject to Net Wealth Tax of 0.5% calculated using their net assets.

#### Income tax

Income tax for individuals is calculated on a progressive scale and ranges from:

- 0% to
- 40% (from EUR 100.000 class 1 and EUR 200,000 class 2)

#### Corporate tax

Corporate tax rate is 29.22% for companies, including corporate income tax of 22.47% and a communal business tax of 6.75% in Luxembourg City.

#### Capital gains tax

No tax on capital gains if held for more than six months.

#### Gift and estate tax

Gift tax: between 1.80% and 14.40% depending on the family relationship.

No inheritance tax for direct descendants up to disposable portion.

#### **Net Wealth Tax**

Wealth tax is not applied to works of art owned by individuals or companies as there is no wealth tax in Russia.

#### Income tax

Income tax rates for individuals are different for residents and non-residents:

- Tax residents are subject to a rate of 13% on most categories of their worldwide income
- Non-residents are taxed at 30% on income generated in Russia only

#### Corporate tax

The income tax rate for companies is 20%. Costs for purchase of art assets are unlikely to be deducted for income tax purposes unless there is a proven business need. Company property tax is not applied except for galleries, museums or similar.

#### Capital gains tax

The disposal of art assets is a taxable event for individuals (from an income tax standpoint). A property tax deduction equal to purchase costs is available for Russian tax residents. For tax non-residents the whole amount of the Russian source sale proceeds will be subject to a 30% tax. If the asset has been owned by a Russian tax resident for three years or more at the time of sale, no personal income tax applies.

#### Gift and estate tax

In Russia there is no gift or estate tax. Personal income tax is levied on a recipient in the case of giving immovable property, vehicles, stocks and shares/units to persons other than close family members.

There is no inheritance tax in Russia. Personal income tax is payable from remuneration received by the heir (successor) of an author (e.g. of works of science, literature or art). Art assets received from an individual as inheritance are not subject to Russian personal income tax.

#### **Singapore**



#### **Net Wealth Tax**

Wealth tax is not applied to works of art owned by individuals or companies.

#### Income tax

Income tax for individuals (2014) ranges from 0% to 20%.

Note that certain eligible art donations (gifts to approved museums, donation of a sculpture for public display) can qualify for a 250% tax deduction. Such schemes apply to both corporate and individual donors.

#### Corporate tax

Corporate tax rate of 17%. 75% of the first SGD 10,000 of taxable income, and 50% of the next SGD 290,000 of taxable income, is exempt. New start-up companies may also be exempt from tax on the first SGD 100,000 of taxable income, and on 50% of the next SGD 200,000 of taxable income, for the first three years of assessment.

Corporate companies are also entitled to a 30% Corporate Income Tax Rebate (capped at SGD 30,000 p.a.).

#### Capital gains tax

At both the personal and corporate levels, Singapore does not tax capital gains, unless the gains are 'trading' in nature.

#### Gift and estate tax

Neither gift tax nor inheritance tax is applied to art assets.

#### **Switzerland**



#### **Net Wealth Tax**

Progressive tax scale ranging from 0.3% to 1% for individuals and from 0.05% to 1% for companies.

Works of art qualifying as household goods are exempt from Wealth Tax for individuals.

#### Income tax

Federal rate ranging from 0 to 11.5%. Additional cantonal and municipal rates. Cumulative marginal income tax rate of up to 40%.

#### Corporate tax

Corporate income tax rate ranging from 13% to 23%.

#### Capital gains tax

In general no tax on capital gains related to the disposal of private assets (individual).

This exemption does not apply should the art trading activity be qualified as a gainful activity in a self-employed capacity.

#### Gift and estate tax

Gift and estate taxation vary by canton and family relationship. Rates range from 0 to 50%.

#### **United Kingdom**



#### **United States**



#### **Net Wealth Tax**

No Net Wealth Tax.

#### Income tax

Income tax for individuals is calculated on a progressive scale and ranges from:

- 20% to
- 45% (as from GBP 150,000)

#### Corporate tax

Corporate tax rate of between 20% and 21% for companies.

#### Capital gains tax

The capital gains tax rate for individuals is 18% or 28%. (Gains are treated as the top slice of an individual's combined gains and income.

Gains exceeding the income tax basic rate band (currently GBP 31,865) are taxed at 28%. There is an annual exemption, currently GBP 11,000.

#### Gift and estate tax

No gift tax. However capital gains tax and/or inheritance tax (IHT) may apply on gifts made during lifetime or on death.

Gift to a trust during an individual's lifetime is subject to IHT at 20%. A 40% rate applies to transfers on death. Certain exemptions and reliefs may be available.

#### **Net Wealth Tax**

No Net Wealth Tax.

#### Income tax

Individuals are subject to marginal income tax rates ranging from 0% to 39.6%.

Additional Medicare Hospital Insurance Tax of 0.9% on wages of an employee or self-employment income received during the year in excess of USD 200,000 (USD 250,000 if married and filing a joint tax return). Additional 3.8% tax on net investment income in excess of USD 250,000 for a married taxpayer (USD 125,000 for a married taxpayer filing separately and USD 200,000 for a single taxpayer). Investment income includes capital gains except to the extent derived in the ordinary course of a trade or business.

US State taxes should also be considered. These rates apply to citizens or residents of the US, and treaties may apply.

#### Corporate tax

The minimum income tax rate for companies is 35%. US State taxes should also be considered.

#### Capital gains tax

Works of art held for one year or less are subject to personal marginal income tax rates of up to 39.6%. Works of art held for more than one year are taxed at a maximum rate of 28%.

There is an additional 3.8% tax on net investment income in excess of USD 250,000 for a married taxpayer (USD 125,000 for married taxpayer filing separately and USD 200,000 for single taxpayer). Investment income includes capital gains except to the extent derived in the ordinary course of a trade or business.

These rates apply to citizens or residents of the US, and treaties may apply.

#### Gift and estate tax

Individuals have an annual and lifetime gift exclusion. The 2014 annual exclusion is USD 14,000 and the 2014 inflation-adjusted exemption amount is USD 5.34 million. The top gift and estate tax rate is set at 40%. These rates apply to citizens or residents of the US, and treaties may apply.

US State taxes should also be considered.

# A global network dedicated to your unique needs

#### **Deloitte tax services**

We can offer the art world a unique range of tax services, in conjunction with our international network:

- Art investment strategies for different type of investors
- Tax optimisation for art investments
- · A tax-efficient repatriation strategy
- · Effective inheritance planning
- · VAT analysis and optimisation
- · International tax planning
- · Advice on residency
- Tax compliance

### Focus on Luxembourg Art & Finance initiative and recent developments

Further to the Luxembourg tax snapshot shown previously, Luxembourg can offer you:

- Access to an extensive double tax treaty network and EU directives
- The choice of a large range of investment vehicles that will easily meet investor and client needs
- The opportunity to benefit from various tax exemption and tax optimisation strategies

Moreover, Luxembourg creates an attractive environment for art-related activities and market players thanks to its:

- Strategic position at the heart of Europe
- · Political, economic, social and tax stability
- · Proactive and business-friendly environment
- Freeport

### Freeport in Luxembourg: new connection and business opportunities

The Freeport will allow Luxembourg to strengthen its position as a major player for the wealth management and art investment fund industry.

The law of 28 July 2011, in line with the provisions set out in VAT Directive 2006/112/EC, introduces a VAT suspension system in Luxembourg for specific transactions, and in particular a VAT exemption for: 'Intra-Community deliveries and purchases of goods intended to be placed in a free zone or free warehouse'.

Although the VAT suspension system enables professionals to conduct transactions without VAT pre-financing issues or any other VAT compliance obligations (such as VAT registration in Luxembourg), all these transactions will be conducted under the responsibility of approved operators in order to prevent any risk of fraud. In turn, these approved operators will have a number of obligations to an appropriate authority, which would be the Luxembourg Customs and Excise Department.

This tax regime is essentially 'suspensive', meaning that the various exemptions are only valid for the time during which the goods are stored in the Freeport covered by the system. VAT will subsequently become payable when they leave these locations.

By building the Freeport, the Grand Duchy aims to attract new businesses and improve Luxembourg's image as a storage and warehousing site for high value-added goods.



<sup>&</sup>quot;Making money is art and working is art and good business is the best art." Andy Warhol

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