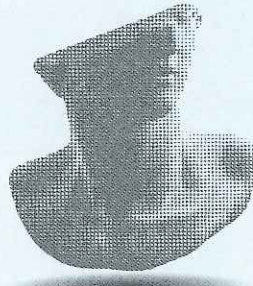


QUESTIONS OF INTERPRETATION

Paolo Ludovici outlines the key legal and tax issues related to collecting art in Italy



Despite boasting one of the largest numbers of heritage sites¹ and cultural assets in the world, Italy's art market is modest when compared with other EU Member States. Any practitioners serving clients interested in collecting art in Italy must be prepared to face a number of uncertainties.

LEGAL FRAMEWORK

The Italian legal framework is very protectionist and provides for several restrictions on the circulation of artworks. Pieces of art that are subject to a 'declaration of cultural interest' under *Legislative Decree No. 42/2004* (the Decree) are prevented from being exported outside the Italian territory (except for very limited periods of time), and the owner is required to provide a pre-emption right in case of disposal. Such a declaration, which may decrease the market value of a work considerably, is decided by the competent public authority (*Soprintendenza archeologia, belle arti e paesaggio*) and concerns works of art that:

- are of 'particularly important interest',² provided that they are not the works of a living artist and they were executed over 70 years ago; or
- have an 'exceptional interest for the integrity and completeness of the Italian national heritage',³ provided that they are not the works of a living artist and they were executed over 50 years ago.

No specific guidelines are provided by the law in order to determine when an artwork falls into one of these categories,

'Works of art that qualify as "cultural properties" are exempt from IHT'

and this has consequently led to discretionary assessments and a consistent number of disputes.

VAT

The purchase of art in Italy is subject to the standard 22 per cent value-added tax (VAT) rate, unless the seller is the artist, in which case a reduced 10 per cent VAT rate shall apply. The same reduced rate also applies to imports from a non-EU country, provided that the item qualifies as a 'work of art' for VAT and customs duties purposes.

The reduced rate is twice that applied by other EU Member States (the UK and France have set 5 per cent and 5.5 per cent rates, respectively) and this has incentivised many Italian collectors to import pieces of art through other EU countries, excluding Italian galleries, auctioneers and trade exhibitions.

The reduced rate of import VAT may lead collectors to face additional uncertainties. For example, if a collector who is a tax resident in Italy purchases a piece of art situated outside the EU from a gallery in a Member State other than Italy, it might be more convenient to import the artwork directly to Italy, rather than it remaining in the country where the gallery is established, in view of the subsequent intra-community supply.

INCOME TAX

Under Italy's current legislation, capital gains realised from the sale of artworks are not taxable in Italy unless realised within a professional or occasional business activity. In 2017, a draft law discussed by the Italian Parliament provided, by way of (alleged) interpretation of the already existing laws,⁴ that:

- the sale of works of art by private individuals would always represent an occasional commercial activity; and

- capital gains from the disposal of works of art would have always been taxable.

The proposal was highly criticised and finally rejected by parliament, but could be proposed again, and tax authorities could try to make reference to such interpretation in future assessments.

IHT

Works of art that qualify as 'cultural properties' are exempt from inheritance tax (IHT). All other artworks are subject to IHT, which applies at rates ranging from 4 to 8 per cent depending on the degree of kinship between the decedent and the heir.

The taxable value should, in principle, be presumed equal to 10 per cent of the value of the net taxable estate, provided that the relevant artworks are held at the private dwellings of the deceased, unless a public, comprehensive inventory of the estate is carried out.⁵

CONCLUSION

In Italy, the number of individuals interested in collecting works of art is increasing. However, most of the legal and tax framework has not been updated in line with prevailing European standards, and practitioners serving collectors in Italy must be aware of the various constraints and uncertainties outlined here.

¹ whc.unesco.org/en/statesparties/it ² art.10, para.3(d) the Decree ³ art.10, para.3(d-bis) the Decree ⁴ And thus with retroactive effect ⁵ Under art.769 of the *Civil Procedure Code*. This interpretation is not, however, shared by the Italian tax authorities, which could try to determine a higher value for the relevant works by referring to their market value.



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