

# HEIR OF SOPHISTICATION

BERARDO LANCI AND ADEA MEIDANI OUTLINE THE KEY TAX ISSUES FOR ADVISORS RELATED TO COLLECTING ART IN ITALY AND FRANCE

**W**hether you are an heir, an investor or a collector, besides the passion of buying an artwork, there are legal and regulatory aspects that must be taken into consideration, especially regarding taxation.

Measures have been implemented in Italy and France aimed at encouraging the collection of artworks and antiquities. These rules have significantly contributed to the conservation of the artistic heritage of both countries.

## TAXATION ON SALE OF ARTWORKS

Under the Italian tax regime, favourable treatment for the sale of artworks is provided to 'collectors' who, as private individuals, are not engaged in business activities: capital gains achieved on such disposals are tax exempt and not subject to value-added tax (VAT). A collector who starts speculating will be considered to be a professional and will be liable to income tax deriving from this as a business activity. A further distinction is made between business activities carried on in an occasional way and those engaged in more continuously. In the latter case, if other specific conditions are met, the activity is also liable for VAT.

Case-by-case analysis is required to identify indicators of 'entrepreneurship' and 'continuous activity',<sup>1</sup> such as: the number of transactions, the magnitude of turnover, a lack of other sources of income, short periods between purchases and resales, and pushing sales through advertising.

France has also created a special tax regime for the disposal of artworks within the management of a collector's private wealth: a 6.5 per cent flat tax rate (including 0.5 per cent of social taxes) applies automatically to the sale price. This special tax regime is highly favourable in the case of short-term ownership of the artwork or significant capital gain.

When more favourable, it is still possible for the taxpayer to opt for income tax at the rate of 19 per cent, plus social taxes (17.2 per cent), which are, in this case, applicable to the amount of the capital gain. This option may be attractive because a deduction mechanism of 5 per cent per year of ownership leads to a complete exemption beyond 22 years of ownership. Note that this option requires the provision of a purchase invoice to establish both the holding period and the acquisition price of the transferred artwork. Any sale for which the sale price does not exceed EUR5,000 is not taxable.

France has similar rules to the Italian regime for professional art dealers, who will also be liable to income tax up to 45 per cent (a progressive scale).

## TRANSMISSION OF ARTWORKS

Italy's tax burden is one of the lowest in the EU. The rates apply at 4 per cent on the value exceeding EUR1 million per beneficiary for transfers in favour of the spouse and of direct descendants or ascendants; 6 per cent and 8 per cent rates – with different (and lower) exemption

provisions – apply to other transfers, depending on the degree of kinship between the deceased and the heir.

Money, jewellery and furniture, including artworks, are liable to inheritance tax (IHT) for an amount equal to 10 per cent of the other inherited assets. The favourable regime for IHT does not apply when the collection is preserved in places other than private homes, and tax applies on the market value of the artworks. Works of historic interest are exempt from IHT.

In France, the gratuitous transfer of an artwork is subject, like any other asset, to the progressive scale of taxation up to 45 per cent.

Nevertheless, savings can be realised on IHT owed in France due to the application of a 5 per cent lump-sum basis on the value of the estate, which applies to furniture that has an ornamental function. The *Tenoudji* case law,<sup>2</sup> concerning an artwork by Serge Poliakoff (*la Composition rouge*), confirmed the application of the 5 per cent lump sum provided that the artwork served an ornamental function.

Heirs can also pay their IHT by donating artworks to the French state and, in exchange, their tax duties will be waived. The works should, however, be of significant artistic or historical value.

## TAXATION OF THE OWNERSHIP OF ARTWORKS

In principle, a person who owns artworks in Italy would not be liable to tax. On the other hand, an individual tax resident in Italy who owns artworks located outside Italy is liable to the payment of a 0.2 per cent annual tax on the value of the assets held abroad and is required to fulfil monitoring obligations.

In France, artworks have always been exempt from wealth tax, whether held in France or abroad.

<sup>1</sup> See, *inter alia*, Regional Tax Court n. 637/4/19 (14 May 2019), Parliamentary question n. 5-01718/2019 and Supreme Court n. 21776/2011 <sup>2</sup> France's Civil Supreme Court, 17 October 1995, n° 94-10196



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