BVDG KUNST SCHAFFT NEUES DENKEN

## 7 instead of 19!
## The comeback of reduced VAT in the art market is possible

In its coalition agreement, the German government (2017-2021) promised to advocate for the reintroduction of "the reduced VAT rate for commercially traded art objects". Towards the end of their term in office, a positive milestone was reached. For on 6 April 2022, the European Council published an amendment to the VAT Directive*, paving the way to allow the art trade to apply the reduced rate again. It is important to seize this opportunity to finally correct a mistake made by the EU itself. Now it is the turn of the government formed by the coalition of SPD, FDP and Green Party to correct German tax law accordingly.

Back story: In 2014, the reduced VAT in the art market was abolished at the instigation of the EU. With this abolition a well-proven principle of German cultural policy – namely to indirectly promote the entire cultural sector by means of tax reductions – no longer applied to galleries and the art trade.

As early as 2006, the EU Commission had issued the VAT directive that drove a wedge into the art world. Germany was initially passive, but was forced to act by the threat of infringement proceedings by the EU in February 2012. The regulation was implemented in the tax law, and since 2014 the full (German) VAT rate of 19% has applied to the commercial art market.

In contrast, for visual artists the 7 % reduction remained. Galleries have close personal ties to their artists; as a rule, they work with each other on a commission basis. The unequal tax treatment of artists and their marketers inevitably had consequences: Galleries gave up by the dozens; new generation and growth in the art market have been stagnating ever since. A study by the Federal Ministry of Economics on start-ups in the cultural sector has confirmed this at the beginning of the year.

De jure, the art trade was also obliged to apply the respective standard tax rate in the other member states. De facto, however, almost every country practised its own modus vivendi: Austria tacitly maintained the reduction; France created a favourable margin tax and reduced the import turnover tax to a minimum (5.5%); the galleries of the Benelux countries defined themselves as agencies and simply continued to use the tax reduction reserved for artists by EU law.

All these arrangements were not objected to by the EU Commission and the respective countries also turned a blind eye. Consequently, German galleries are not only exposed to unequal treatment towards their artists, but also to a distortion of competition within the Union.

Recently, the topic of value-added tax has given rise to some strange blossoms – unfortunately even in this newspaper. The German newspaper DIE WELT was the first to spread the misunderstanding that 20% VAT on works of art is imminent throughout the EU. For the record: the EU can neither set a uniform standard tax rate nor a "special tax rate for works of art of 20%". In this matter, the EU only decrees that there can be two reduced rates, which may not be less than 5%, and that there must be a standard rate, which must be at least 13%. Quite crucially, it defines to which goods and services the reduced VAT rates may be applied in general. Everything else is a matter for the tax legislation of the member states.

For more than ten years, the Federal Association of German Galleries and Art Dealers has been drawing attention to the different taxation practices and demanding redress from the competitive disadvantages suffered as a result. And with success – as the recently enacted amendment to the VAT Directive proves. Since this provides the decisive basis for a restoration of the situation in Germany prior to 2014.

The annex to the new directive contains a wide range of goods and services, such as medicines and ornamental plants, for which tax reductions can be introduced in future. Under item 26, the "supply of works of art, collectors' items and antiques" is explicitly mentioned!

Thus, the gate is wide open. It is now up to the member states to reintroduce the tax reduction for the art trade in their countries. In Germany, this requires the interaction of financial and cultural policy. The current German government can now prove that it is serious about "strengthening the cultural industry" and "supporting free cultural venues such as galleries" – as it is stated in its coalition agreement. And it’s urgent! The deadline for implementation is 1 January 2025.

The Federal Association of Fine Artists (Bundesverband Bildender Künstler), the German Artists‘ Association (Deutscher Künstlerbund), and the German Art Council (Deutscher Kulturrat) have also expressed their solidarity with the core concerns of the galleries. So there is no threat of any opposing force. By the way, it is important to overcome resentments against the art market, which were presumably the underlying cause of the old, fatal tax directive.

The mere reduction to economic aspects does not do fair justice to the art market. Similar to a publisher, galleries offer their artists a professional infrastructure and mediation work. With their network, expertise and investments, they make an eminent contribution to cultural development. In the art market, economic planning and cultural impact are inseparably fused – a dual nature from which artistic productivity emerges in the first place.

Art is a cultural asset – regardless of whether it is sold by creators or art dealers. Reduced VAT was even introduced for digital media, and Berlin's famous nightclub “Berghain” got it for its ticket sales. Should digital mass media and club visits be "more culture" than original works of art?

The federal government's most recent report on the cultural industry puts retail sales of works of art in 2021 at 767 million euros. That is a manageable market and the expected loss of revenue in the state budget would not be too painful if the reduction were to be reintroduced. Especially since it is to be expected that a new economic dynamic will unfold – not least to the liking of the tax authorities.

According to the latest UBS Art Market Report, the USA, Great Britain and China lead the world market with 45%, 18% and 17% respectively. The EU states, on the other hand, are ranked far behind in the single-digit minimum range. The comeback of the tax reduction in the Community would be a necessary as at the same time optimal measure to strengthen the art market's competitiveness against the international auction houses and the leading third countries.

The Minister of State for Culture Claudia Roth is in task to take the necessary initiative together with the Federal Minister of Finance Christian Lindner.

Birgit Maria Sturm and Silvia Zörner

**Council Directive (EU) 2022/542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as regards rates of value added tax.*

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