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The tax treatment of works of art in Italy: speculative purposes, cultural interest, legal certainties, and regulatory gaps

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Sommario

1. Introductory remarks; 2. Transfers of works of art with or without *cultural interest* for inheritance and gift tax purposes; 2.2. Some specific cases; 3. Other typologies; 4. The remodulation of the VAT rate on sales and imports and the alternative margin regime; 5. Concluding remarks.

Abstract

The tax implications of the transfer of works of art between private individuals are still not fully clarified in Italian law, and over time, interventions in doctrine, jurisprudence, and tax administration have been necessary to resolve uncertainties. The law implementing the tax reform established, among other things, rules regarding capital gains realized by collectors not motivated by speculative intent, as well as those more broadly applicable to works of creative genius in the field of visual arts, excluding them from taxation. Furthermore, the enabling act, in compliance with a European directive, contemplates changes to the applicable VAT rate, among other things, to imports of works of art. This aspect, along with the tax regulations, has recently been implemented. Consequently, some implications for the regime applicable to such transfers remain to be regulated to eliminate any doubts that may arise regarding these forms of wealth in relation to the contributory capacity referred to in Article 53 of the Constitution.

* *Il presente lavoro è stato sottoposto al preventivo referaggio secondo i parametri della double blind peer review*

1. Introductory remarks.

As with any activity that generates income, consumption, and wealth, works of art can serve as indicators of taxpayer capacity [1], which may be associated with tax obligations. Furthermore, the Italian legal system provides a tax relief for the *mecenati* – a 65% tax credit for individuals or non-profit organizations that make donations as a percentage of their taxable income, or for companies or sole proprietorships with business income for the restoration, protection, and preservation of works of art belonging to public heritage[2].

In any case, the context in question – characterized by numerous stakeholders, specific characteristics regarding the definition of economic values and price formation, as well as multiple cultural, aesthetic, communicative, and identity aspects in the broad sense –is of interest to taxation especially with regard to cases involving the purchase and sale of works of art by private individuals.

The tax authorities are therefore essentially interested in sales transactions and their income classifications, to identify the possible taxation of capital gains generated by such transactions, considering the taxable persons involved.

In this case, it is a matter of verifying the transfer activity carried out by the transferor of works or art collections, in order to ascertain whether: they are engaged in a business activity, carry out the transfers of ownership in question on a sporadic basis, are 'pure' collectors who value the aesthetic/emotional value of the works and do not intend to profit from any resales, or transfer them to other parties in order to obtain monetary resources in response to contingent situations.

Depending on the case, in fact, a different classification of income derived from the sale of works of art applies.

Respectively: business income (Article 55 et seq. of Presidential Decree No. 917/1966), also subject to VAT (Article 4 of Presidential Decree No. 633/72); miscellaneous income (Article 67, paragraph 2, letter i, TUIR), not subject to tax due to the lack of the requirement of habituality, but still subject tax reporting obligations[3]; absence of taxation, as well as the aforementioned obligations, as these are disposals of personal assets that do not give rise to taxable income, without prejudice to the traceability of any sums received based on the amount of the transfer and having regard to the transactions carried out.

Furthermore, works of art may be sold directly by their author; in this case, the income received must be classified, in accordance with the provisions of the TUIR, as

[1] On direct and indirect indices of contributory capacity, see for all E. DE MITA, *Capacità contributiva*, in *Digesto delle discipline commerciali*, II, 1987, at 454 ff.

[2] This refers to the *art bonus*, as per Article 1 of Decree Law No. 83 of May 31, 2014, converted into Law No. 106/2014, as amended. For detailed comments on the tax relief measure, please refer to C. BUCCICO, *Il valore fiscale dell'art bonus,* in *Innovazione e Diritto*, 6/2016, at 51 ff.

[3] That is, the declaration of income earned under *Other income*, RL14 – *Payments deriving from commercial activities not carried out on a regular basis*.

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income from self-employment (Article 53, paragraph 1), with the particularity that the artist may only receive it after selling the work, not when it is created. Therefore, the deferral of income occurs with the transfer of the service, precisely, to the transfer of goods[4]. In this case, the amounts received are subject to withholding tax if the purchaser is a withholding agent, subject to income tax and VAT.

Also, direct sales of one's own works may be entirely occasional, constituting other income for IRPEF purposes[5]. In this case, the taxpayer will issue the purchaser with a receipt for the amount received, subject to a stamp duty of € 2 and withholding tax. However, there are no limits on earnings, although if total annual earnings exceed € 5,000, subject to INPS separate management for the payment of contributions, of which 1/3 are payable by the artist. Regarding VAT, given the lack of a professional nature and the fact that this is not a business activity, the transaction will be outside the scope of taxation, as it is not taxable due to the lack of the necessary conditions[6].

Furthermore, the author of a work of art may be a partner in a corporation or a partnership.

In the latter case, the taxpayer will determine the income received from the sale of the artwork in proportion to his share of the profits, based on the tax transparency regime and in accordance with the rules governing the taxation of individuals. In the second case, the income, by virtue of the principle of attraction[7],, must be classified as business income.

Having briefly highlighted some aspects of the context under observation, will be addressed from a tax perspective, it should be noted that works of art and art collections can also be considered as alternative safe-haven assets to the usual forms of financial investment and, therefore, intended to be placed on the market to generate profits.

In this case, the owner considers their potential economic value and is therefore motivated by a clearly speculative purpose, even though his activity does not correspond to that of an art dealer. This entity, in particular, monitors market trends to exploit them economically when it appears most appropriate, and a transfer transaction should, in principle, not be subject to VAT.

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[4] See R. LUPI, *La rilevanza tributaria dell'arte*, in *S&T - Valorizzazione delle collezioni d'arte e dei lasciti d'artista*, s.i., 2025, at 31.

[5] In resolutions 5/E/2001 and 204/E/2002, the Italian Revenue Agency denied that an occasional sale of works of art could contribute to determining the total income for IPEF purposes pursuant to Article 67, paragraph 1, letter i, of the TUIR. However, with regard to income earned by an occasional speculator and received from renting or granting the use of works of art, for classification in this category, reference should be made to letter h of the provision, while letter g refers to the economic exploitation of property rights related to such assets, since income derives from the economic use of intellectual property exploited jointly and for which letter g) applies.

[6] In particular, pursuant to Article 5 of Presidential Decree No. 633/1972. See Table A, Part III, No. 127-septiesdecies of the Decree, which contains a list of activities to which the reduced tax rate applies.

[7] Article 6, paragraph 3, of the Presidential Decree No. 917/1996.

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For income taxes, on the other hand, and from the point of view of tax equalization, a substitute tax corresponding to that on financial income should be introduced.
However, Article 67 of the TUIR regarding the taxation of capital gains arising from occasional commercial activities must be taken into account, even though this very reference presents a contradiction in terms. In fact, regularity is the only criterion provided for under Italian tax law for identifying commercial activities and self-employment for business purposes[8].
From what has been said, it follows that it is necessary to identify whether the purely economic value of such assets prevails over the personal/aesthetic pleasure of owning them. Therefore, where there is no speculative intent, the transfers do not have tax implications, even about miscellaneous income. On the other hand, some transfers intended for investment purposes may show the characteristics of occasional commercial activities.
In addition to the preliminary considerations outlined above, it should be noted that the VAT rate on intra-EU sales, imports, and purchases of works of art (antiques and collectibles) has recently been (further) reduced, and its subjective scope of application has been expanded, without prejudice to the optional margin scheme[9].
It should also be noted that works of art and art collections may be received as a result of "bequests" and, in most cases, the related transactions are not subject to taxation, since the recipient does not make any prearranged purchases and, therefore, these are not commercial activities, even occasional ones, but rather acts aimed at assets disposal[10].
Along with this brief reminder and the other points of interest mentioned above, which will be clarified shortly, it should be noted that the Italian tax legislator has provided for other favourable rules or complete tax exemptions for the transfer (including) of works of art with regard to inheritance and gift taxes, either because they are included in estates or because they are the subject of gratuitous transfers *inter vivos*.
In addition to this brief overview and the other key aspects mentioned above – which will be clarified shortly – it should be noted that Italian tax law provides for other favorabile provisions or total exemptions regarding the transfer (including) of works of art in the context of inheritance and gift taxes, whether such works are included in the estate or are the subject of gratuitous inter vivos transfers. All of this is subject to the condition that they are not considered to be of cultural interest and, therefore, subject to protection by the Minister of Cultural Heritage and Activities with consequent measures aimed at their conservation and regulation in accordance with the provisions of the Code of Cultural Heritage and Landscape.

[8] R. LUPI, *La rilevanza tributaria dell'arte*, cited, at 32.
[9] Introduced by Law No. 85/1985. Or further details, please refer to paragraph 4.
[10] Revenue Agency, No. 5 cited.

Considering everything that has been said so far, it should therefore be assumed that national tax regulations contain more references to works of art and that these are *up to date* and *complete*. However, not only are the references provided general in nature – that is, broadly applicable to works of art, although the expression could be interpreted as corresponding to them – but the provisions themselves, as mentioned, contain gaps[11].

To fill them in – as mentioned above – case law has (also) intervened, identifying the subjects operating in the art trade circuit and establishing their tax obligations. As for practice, which is not always clear, it too has involved interpretative activity[12].

It should be noted, however, that the enabling law for tax reform dealt with the taxation of income deriving from the sales in question and, more broadly, relating to creative intellectual works pertaining to the visual arts, incorporating supranational regulations and identifying the criteria for regulating them.

In any case, it is commendable that the reformulated VAT exemption regime applicable to imports and intra-Community sales (including) of works of art, introduced to make our system more attractive and to transpose a European directive in this area as well, has been in force since July 1, 2025[13]. In this regard, the tax rate has been reduced (from 10%) to 5% for domestic sales made directly by artists (and their heirs/legatees) and imports, including those made by retailers, unless they opt for the VAT margin scheme.

2. Transfer of works of art, whether or not of cultural interest, for the purposes of inheritance and gift tax.

To identify what constitutes cultural heritage in Italian law, reference must be made to Legislative Decree No. 42/2004, which includes works of art among such heritage. [14].

Specifically, Article 2, paragraph 2, defines them as 'Immovable and movable property which, pursuant to Articles 10 and 11, is of artistic, historical, archaeological, ethno-anthropological, archival, and bibliographic interest, and other items identified by law or on the basis of the law as evidence of civilizational value'.

The Decree stipulates that each of these assets is subject to a 'restriction' which, pursuant to Article 13, implies a prior declaration of 'cultural interest'[15] which – in

[11] See F.V. ALBERTINI, *Observations on the tax aspects of the sale of artworks, by examining a recent jjudge of legitimacy ruling, (notes to Corte di Cassazione, Section V, January 16, 2024, No. 160*), in *Rivista telematica di Diritto tributario*, 2024, at 11.

[12] Agenzia delle Entrate, No. 303 of September 20, 2020.

[13] Directive 2022/542/EU. The definition of works of art is provided in Annex IX, Part A, Directive 112/2006/EU on the Common System of Value Added Tax.

[14] Following the repeal of Article 166 of Legislative Decree No. 490/1990 – 'Consolidated text of legislative provisions on cultural and environmental heritage, pursuant to Article 1 of Law No. 352/1997', as well as previously Law No. 1089/1939 and Presidential Decree No. 1409/1963.

[15] Based on the provisions of paragraph 3 of Article 10.

relation to the subject under investigation – must be made before the date of opening of a succession *mortis causa* (or at the time of a deed of donation).

This is because listed cultural assets form part of the estate, even though they are excluded from the taxable estate, while the assets subject to succession included in the list[16] referred to in Articles 10 and 11 cited above form part of it[17].

Having briefly clarified this aspect, Law No. 512/1982[18], as amended, concerning the 'Tax regime for assets of significant cultural interest', established that heirs and donees of works of art may claim certain tax exemptions and deductions and in particular in regard to the payment of inheritance and gift tax, as well as other sums due as tax[19], by transferring them to the State[20].

To do so, taxpayers interested in this option, which can be exercised at the time of tax collection, must submit specific documentation containing the proposal to the competent office of the Revenue Agency[21].

Therefore, once exercised and accepted, the usual methods of fulfilling tax obligations are not carried out, i.e., the taxpayer does not make any payments to the tax authority.

Ultimately, the passive subject of the tax relationship extinguishes their debt to the active subject not by paying sums of money, but by transferring ownership of one or more works of art to them.

This method of extinguishing the tax legal relationship can be traced back to the payment in kind referred to in the Article 1197 of Civil Code, which is optional precisely because the tax obligation is pecuniary and is settled with assets other than money, taking the form, first, of a proposal by the taxpayer, and then in a procedure to verify the actual tax interest of the State in the transaction, which, if it exists, will

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[16] According to Article 13 of the Decree.

[17] Converselt, tax relief is available for real estate, where Article 25 stipulates that, even if not subject to cultural heritage restrictions prior to the opening of the succession, the tax is reduced for those devolved to the heir or legatee by an amount proportionally corresponding to half of their value. It remains understood that, regardless of whether the restriction is imposed, mortgage and cadastral taxes apply in the ordinary manner.

[18] See E. GRANELLI, *il pagamento delle imposte dirette e indirette mediante cessione dei beni culturali,* in G. FALSITTA (ed.), *Il regime tributario e amministrativo dei beni culturali. Atti del convegno svoltosi a Saint Vincent,* Milan, 1986, at 111 ff.

[19] The payment of taxes through the transfer of cultural assets, initially intended only for income tax and inheritance tax, is now permitted for all state tax revenues, including VAT.

[20] See Articles 6 and 7 of the aforementioned law, which introduced Articles 28-bis into Presidential Decree No. 602/1973 and 42-bis into Presidential Decree No. 637/1972, transposed into Article 39 of Legislative Decree No. 346/1990, referred to in the text. For the payment of direct taxes, the proposal must be accompanied by the same documentation indicated in Article 6 and must be submitted only to the Ministry of Cultural Heritage and Activities, now corresponding to the Ministry of Culture.

[21] The proposal must specify the cultural characteristics of the artistic asset and contain all the information necessary for the financial administration to assess the interest and appropriateness of its purchase by the State. For an initial reflection on the administrative activity following the transfer proposal, see T. ALIBRANDI, P. FERRI, and N. PASOLI DALL'ONDA, *Il nuovo regime tributario dei beni culturali. Commento alla l. 2 agosto 1982, n. 512*, Milan, 1983, at 191 ff.

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however be reduced because it waives tax revenues, in whole or in part, by not collecting those due, in addition to assuming the costs of managing the works of art, once acquired, in order to preserve them.

It is worth noting that the aforementioned reservation does not conflict with Article 53 of the Constitution, given that prompt and diligent collection aimed at the regular functioning of services essential to the life of the community, the protection of which guarantees the conduct of financial life, ensuring the prompt availability of the economic means necessary to perform tasks of public interest, may be sacrificed by other constitutionally relevant interests, balancing fiscal and non-fiscal objectives.

It follows that, through the alternative offered to taxpayers to settle tax obligations, the objective is to achieve, in this case, the public interest of protecting and promoting Italy's cultural heritage, as referred to in Article 9 of the Constitution, to be balanced, however, with the interest of private individuals in fulfilling their tax debts through property rights[22].

Essentially, transfers of works of art, including collections, as well as antiques, when included in inheritances or donated, are permitted for the full or partial payment of income tax with related interest and penalties[23], but this option cannot be extended to withholding agents.

Furthermore, the tax authorities have recognized the extension of this option for taxpayers about VAT liabilities, if these are liquid and payable and that the procedures and limits outlined by the Italian legislator are complied with to ensure the correct valuation of the works of art and the balance due[24].

The taxpayer's proposal must include a detailed description of the "assets" offered and an indication of their "values", be accompanied by appropriate documentation, signed by all heirs and legatees under penalty of nullity, and be submitted to the Ministry of Culture and the competent Registry Office within sixty days from the date on which the notice of liquidation is served on that person[25].

In any case, the debtor's proposal does not suspend the payment of taxes due[26] and, once the art objects have been transferred, the debtor may request a refund for any

[22] Nevertheless, as noted by italian doctrine, fiscal interest, while constituting a public interest, in light of Article 53 of the Constitution, cannot be considered to have the same intensity as that attributable to the tax obligation. So L. ANTONINI, *Dovere tributario, interesse fiscale e diritti costituzionali*, Milan, 1996, at 244.

[23] In this regard, Article 28-bis, paragraph 1, of Presidential Decree No. 602 of September 29, 1973. In its initial formulation, the procedure also applied to the (repealed) local income tax and the (abolished) taxes indicated in Article 20 of Legislative Decree No. 46 of Frbruary 26, 1999 then extended the application of the rule to all State tax revenues, including taxes not already listed.

[24] Revenue Agency, No. 43/E/2002. It should be noted that Legislative Decree No. 139 of September 18, 2024 extended the self-assessment taxation to inheritance and registration taxes. See, in particular, Articles 33, 37, and 57. For more details see G. SALANITRO, *Riforma fiscale e autoliquidazione delle imposte indirette sui trasferimenti: una prima lettura della nuova disciplina*, in *Rivista telematica di diritto tributario*, October 26, 2024.

[25] Thus, paragraph 2. With regard to the deadline, this is indicated in Article 37, and its interruption is automatic upon submission of the proposal.

[26] See paragraph 5.

taxes already paid in the period between the date of submission of the proposal and the date of delivery or registration of such assets[27].

Finally, if the value of the transferred works of art is less than the amount owed in taxes and related charges, the taxpayer will have to pay the difference. If it is higher, he will not be entitled to any refund[28]

Turning to the tax regime governing assets of significant cultural interest, an initial provision was included in Law No. 512/1982[29], although it remained unenforced for a long time.

In particular, attention should be paid to Article 6 of that law, which was subsequently incorporated into Article 39 of Legislative Decree No. 36 of 1990; as noted above, this provision allows heirs (including those of works of art) to settle the inheritance tax by transferring such works to the State, provided they are of *undoubted artistic value*. In this regard, the taxpayer must submit a proposal to the relevant local authorities, namely the Superintendence for Archaeological, Artistic, and Landscape Heritage, and to the Revenue Agency.

Following a thorough evaluation, the Superintendence then forwards the proposal to the Directorate-General for Contemporary Creativity of the Ministry of Culture. If accepted, the taxpayer determines the taxable amount by using the fair market value of the work of art at the time the estate was opened, that is, by considering its average market value at the time of the decedent's death[30].

Regarding the application of tax rates, the standard rates (ranging from 4% to 8%) apply, with an exemption of up to 1 million euros for the transfer of works of art to a spouse or direct descendants.

Furthermore, Article 7 of the same law, as amended in 1997 by Article 14, paragraph 1, of Law No. 127, governs the payment of direct taxes through the transfer of cultural property to the State, pursuant to the inclusion of Article 28-bis in Presidential Decree No. 602/1973.

Taxpayers may therefore settle their income tax (IRPEF) obligations, including any interest and penalties; pursuant to Article 6, this provision applies to transfers of works of art created by living artists or works created less than 50 years ago.

From the provisions briefly discussed above—which apply to those who receive works of art as a result of donations, pursuant to the reference contained in Article 56, paragraph 1, of Legislative Decree No. 346/1990, as amended by Legislative

[27] See paragraph 6. Taxpayers may also invoke Article 2-bis for amounts entered in the tax roll or contained in enforceable assessment notices and to settle tax debts determined by tax assessment notices with acceptance.

[28] See paragraph 8.

[29] On this subject see M.C. FREGNI, *La tassazione del patrimonio culturale: le imposte dirette*, in A. ANSELMO, G. LEMME, and M. MIDIRI (eds.), *Il patrimonio culturale. Tutela, innovazione digitale, transizione ecologica*, Milan, 2025, at 192 ff.

[30] That is, the price that would be obtained in a transaction in which the parties are not subject to any particular constraints. See Article 19 of Legislative Decree No. 346 cited.

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Decree No. 139/2024, it is evident that the Italian legislature has long provided alternatives for the partial or full settlement of tax debts, while preserving the value of works of art received and to be transferred to the State. In fact, as noted, these taxes are calculated based on the assets' reliable and current value[31], although uncertainties may arise regarding, for example, the actual condition of the assets in question.

2.2. Some specific cases.

Assets to be included in the estate's assets include cash, jewellery, and personal property up to an amount equal to ten percent of the total taxable net value of the decedent's estate, even if they were not reported or were reported at a lower value[32].

Thus, under Italian law, there is a legal presumption on the part of the tax authorities[33] that the taxpayer can rebut only by preparing a detailed inventory, to be submitted in Section EG ('Attached Documents') of the inheritance tax return[34].

It is therefore assumed that such assets are, for the most part, included in the deceased's estate and can be concealed by the heirs without difficulty.

Consequently, it is the 'virtual' estate – determined in advance on an abstract basis – that is subject to taxation rather than the effective estate[35], to facilitate the valuation of inherited assets and avoid detailed and complex appraisals of assets whose value is not always easy to determine.

At the same time, this prevents taxpayers from failing to report such assets to avoid paying the tax, or from declaring them at a value lower than their actual value to reduce the tax liability[36].

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[31] Pursuant to Article 34 of the *Testo unico delle disposizioni concernenti l'imposta sulle successioni e donazioni*, the value of assets declared by the taxpayer may be subject to adjustment by the Registry Office, which will settle any additional tax due.

[32] See Article 9, paragraph 2, of the Consolidated Law on Inheritance and Gift Tax. Meanwhile, paragraph 1 of the same provision defines the estate as comprising all assets and rights that form part of the succession, excluding those not subject to tax pursuant to Articles 2, 3, 12, and 13. The essential meaning of paragraph 2 of the aforementioned Article 9 was clarified by the Constitutional Court, Jult 12, 1967, in which it held that this presumption did not violate the principle of contributory capacity enshrined in Article 53 of the Constitution. This is because it is based 'on common experience and adheres to principles of logic so fundamental as to justify the legal certainty of the existence of the assets.' Furthermore, 'given the nature of these assets - which are easily concealed, evade any tax audit, and are difficult to value - the legislator felt it necessary to ensure that tax claims are precise, that tax collection is expedited, and that any attempt at evasion is rendered futile.'

[33] See Department of Finance, No. 212/1995.

[34] As part of the recent tax reform, the inheritance tax return form has been revised to reflect, in particular, the self-assessment of the tax by those liable for payment, rather than the assessment by the Revenue Agency.

[35] See F. GAFURRI, *Le presunzioni nella disciplina dell'imposta sulle successioni e donazioni*, in A.E. GRANELLI (ed.), *Le presunzioni in materia tributaria. Atti del convegno nazionale di Rimini del 22-23 febbraio 1985*, Rimini, 1987, at 120 ff. The Author sharply criticized the provision containing the presumption in question in light of the constitutional principle of the ability to pay. For further discussion, see R. BRACCINI, *La presunzione di danaro, gioielli e mobilia e la successione del non residente nello Stato*, at 165 ff., and S. SAMMARTINO, *Relazione di sintesi*, at 262 ff.

[36] To determine how to calculate the relevant percentage in the absence of an inventory, the Tax Section of the Court of Cassation, in its decision No. 4751 of February 25, 2008, ruled that only undeclared movable property

Ultimately, even for *furnishings* – which include works of art used to decorate homes, including cultural assets not subject to preservation order[37] – the presumption applies as a fixed percentage, resulting in an automatic increase in the total net taxable value of the estate's assets.

3. *Other typologies*.

Sellers of works of art, art collections, and antiques may derive income from transactions related to the conduct of a commercial activity – even if not carried out on a regular[38], systematic, or professional manner – or from an entrepreneurial activity that, conversely, requires the regular exercise of a professional activity, even if not exclusively, while not being organized as a business[39] and also subject to VAT[40]. Furthermore, such transfers may be entirely exempt from taxation if they are part of the transferor's personal assets[41].

To provide a further example in addition to those already mentioned, consider the case of a collector who does not act as an intermediary in the trade of works of art (within the meaning of Article 2152, paragraph 2, of the Civil Code)[42] and who transfers them to others in order to alter the composition of his or her collection[43] according to personal taste[44].

In any case, there remain areas of uncertainty regarding the tax treatment of such sales when they are conducted between private individuals, and this has led to

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should be taken into account. However, the preparation of the inventory does not relieve the obligation to declare the presence in the estate of 'cash, jewelry, and personal property' with a value exceeding 10 percent of the net taxable value of the inheritance. It may, in fact, happen that (even after an inventory has been drawn up), the estate consists primarily of 'cash, jewelry, and personal property' with a value exceeding 10 percent of the net taxable value of the estate; in such a case, the taxpayer will not be able to deduct that excess value from the inheritance tax liability.

[37] Article 9(3), Legislative Decree No. 346 cited.

[38] For further reading on this topic, see E. ARTUSO and I. BISINELLA, *Cessione di opere artistiche e il trittico "collezionista", "speculatore occasionale" e "mercante d'arte" ai fini delle imposte dirette*, in *Rivista di diritto tributario*, October 7, 2023; S. GIANONCELLI, *Tra opere d'arte e reddito imponibile: il collezionista, lo speculatore occasionale e il mercante d'arte*, in *Diritto e pratica tributaria*, 1/2024, at 239.

[39] Article 55(1) of the Consolidated Income Tax Law, pursuant to the reference in Article 2195 of the Civil Code.

[40] Article 2(1), Presidential Decree No. 633 of October 26, 1972.

[41] D. STEVANATO, *La vendita frazionata di una collezione d'arte configura un'attività commerciale occasionale*, in *Dialoghi tributari*, 1/2004, at 65 ff.

[42] In this regard, see Supreme Court, Order No. 1603 of January 16, 2024, which notes, however, that brokerage activities in the circulation of goods under the Civil Code do not correspond to the provisions of tax law. In fact, while Article 2082 of the Civil Code defines an 'entrepreneur' as a person who carries out an economic activity organized in a professional manner, Article 55 of the Consolidated Income Tax Law does not require such organization; rather, it requires the professional and habitual performance of the activities listed in Article 2195 of the Civil Code, even if carried out on a non-exclusive basis. In accordance with, among others, the decisions of the Court of Cassation, Section V, No. 36502 of December 13, 2022, and No. 36992 of December 16, 2022, as well as Section VI, No. 8982 of June 6, 2017.

[43] Italian Revenue Agency, No. 5/E/2001.

[44] See M.C. FREGNI, *Cessione di opere d'arte e trattamento fiscale ai fini delle imposte sui redditi*, in *Tax News*, April 11, 2025.

several litigations[45], stemming from a provision of the that, in its previous version, taxed income derived from speculative transactions. Specifically, the third paragraph of Section 76(1) of Presidential Decree No. 597/1973, which established and regulated the taxation of personal income, provided that capital gains arising from the sale of works of art (or antiques) within two years of purchase were to be presumed to be speculative.

To resolve this issue, the first draft of the '2018 Budget Law' proposed to address this specific case by classifying it as income derived from commercial activities not carried out on a regular basis[46],, in order to definitively establish the tax treatment of sales made outside the scope of a commercial activity, while continuing to apply a time-based criterion[47].

Presidential Decree No. 917/1986 subsequently replaced the regulations governing capital gains as miscellaneous income[48], which led to the emergence of disputes aimed at determining whether such gains were subject to taxation and which income categories should be applied for tax purposes. Consequently, both doctrine[49] and case law have established criteria for distinguishing between different types of art sellers, categorizing them as art dealers, collectors, and occasional speculators.

More specifically, the former have been defined as those who professionally deal in the brokerage of works of art, purchasing them for resale; as such, they operate for profit, speculating on the increase in their economic value over time and deriving a profit from it. The income derived from these transactions is therefore taxable as business income[50], with implications for accounting, tax reporting, and tax assessment purposes, in addition to being subject to VAT.

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[45] See, among any others, Judgment No. 6874 of March 8, 2023, issued by the Tax Division of the Court of Cassation, which provided specific guidance on transactions considered relevant for tax purposes, thereby reaffirming and consolidating principles established in previous decisions.

[46] The provision, which was removed before the parliamentary process for the approval of the final version of the law, was also included in the draft law converting the decree linked to the budget (AS 2942), which was likewise not approved. These were rules of authentic interpretation under which the transfer of works of art through sale or as a result of compensation due to loss or damage were to be classified as occasional commercial activities. Consequently, the resulting capital gains were included in the collector's income as miscellaneous income pursuant to Article 67, paragraph 1, letter i), of the TUI. See F. FORNONI, *Il trasferimento di opere d'arte (cessione, donazione e successione): profili comparati*, available at www.fondazione-uckmar.*it*, October 24, 2018.

[47] See F.V. ALBERINI, *Osservazioni in tema di profili tributari della compravendita di opere d'arte, a margine di una recente pronuncia di legittimità (commento a/notes to Corte di Cassazione, sez. V, ord. 16 gennaio 2024, n. 1603*), in *Rivista telematica di diritto tributario*, September 10, 2024, at 11.

[48] See E.M. BAGAROTTO, *Regime tributario della cessione di opere d'arte,* in *Rassegna tributaria,* No. 2/2019, at 305 ff.; M. LEO, *La necessità di regole più chiare per la tassazione de mondo dell'arte*, in «Corriere tributario», No. 10/2021, at 832 ff.

[49] See V. VERDUCCI, *Collezionismo e attività d'impresa*, in *Rivista di diritto tributario*, II, 2003, at 297 ff.

[50] Court of Cassation, Section V, No. 6874 of March 8, 2023.

As for collectors, if they purchase works of art simply to enjoy them and thus to expand their collections for aesthetic and contemplative purposes rather than to resell them, no taxable income arises[51].

Finally, those who occasionally purchase works of art with the intention of reselling them for a profit should be classified as occasional speculators. Consequently, the income they derive from such activities must be classified as "other income" pursuant to Article 67(1)(i) of the TUIR, as it constitutes income derived from a commercial activity not carried out on a regular basis.

Ultimately, for tax purposes, the way each transfer is carried out must be considered. Therefore, if the sale of works of art takes place on a continuous and regular basis, the person carrying out the sale derives business income from it, even if the activity in question is not exclusive and does not meet the requirement of organization the presence of which is not essential to constitute a commercial activity for tax purposes[52], as previously indicated, contrary to the provisions of Article 2082 of the Civil Code[53]. Conversely, if the transfer of works of art does not take place in the course of a commercial activity, the resulting proceeds do not fall under the provisions of Article 67 of the TUIR, as they cannot be classified under the categories set forth in Article 6 of the TUIR, and are therefore not subject to taxation.

Nevertheless, it is not always easy to distinguish between the various sellers.

How can you tell the difference between an art collector and an art dealer immediately?

The distinguishing factor, in fact, is purely factual[54], although, from a subjective standpoint, the collector's primary goal is usually not to make a profit but rather to acquire works of art, whereas the art dealer conducts his business with an undeniable intent to profit.

Whether or not the transfers in question are commercial in nature must therefore be determined on a case-by-case basis, taking into account the specific circumstances of each transfer; it is not sufficient to focus solely on the presence or absence of speculative intent, but rather to verify whether the transfer took place within the context of a commercial activity, even if occasional, which, in any case – again on a factual level – does not seem to differ greatly from determining the presence of speculative intent[55].

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[51] See A. BRIGNOLI and M. FAGGIOLI, *Le opere d'arte: quadro generale sull'eventuale tassazione delle plusvalenze*, in *Bollettino tributario*, 2018, at 1240.

[52] For this requirement see Article 55(2)TUIR.

[53] Article 55 of the TUIR, in defining business income, requires that the economic activity be carried out on a "regular professional basis", just as Article 4 of Presidential Decree No. 633 does for VAT purposes.

[54] E. ARTUSO and I. BISINELLA, *Cessione di opere artistiche e il trittico "collezionista", "speculatore occasionale" e "mercante d'arte" ai fini delle imposte dirette. Commento a Cass., ord. 8 marzo 2023, n. 687*, in *Rivista telematica di diritto tributario*, October 7, 2023, p. 2.

[55] G. FALSITTA, *Manuale di diritto tributario. Parte speciale*, Padua, 2016, at 53 ff.

In essence, the tax authorities must verify the presence of indicators typical of commercial activity in relation to the sales transactions in question, namely whether they are ongoing nature[56], whether multiple transactions have been carried out over the course of a year, and whether the transfers are economically significant; therefore, it is necessary to take into account the seller's turnover and the parties with whom they conduct business[57], as well as the possible existence of other sources of income sufficient to justify substantial deposits into the bank account[58].
Additional factors from a tax perspective include the time elapsed between the acquisition of works of art and their sale[59], any intermediate actions taken to increase their value for subsequent resale[60], and the seller's proven experience in the target market[61].

4. ***The remodulation of the VAT rate on sales and imports and the alternative margin regime.***

As mentioned above, the Italian legislature has recently revised the already reduced VAT rate applicable to the sale and importation of works of art (including antiques and collections), extending it to 'anyone' who carries out such transactions [62]. In fact, the rule previously applied only if such transactions were carried out directly by the artists (or their heirs or legataries).
The new reduction in the tax rate applies, moreover, to imports of art objects (antiques and collectibles), for which the VAT rate was previously set at 10 percent, while for imports made by retailers (such as galleries, art dealers, or other industry operators), the standard rate of 22 percent applied.
Specifically in Table A of Part II-bis of the Consolidated VAT Act, which refers to 'Goods and services subject to the 5% rate,' item 1-novies has been added, which expressly lists works of art (antiques and collectibles), referred to in subparagraphs a), b), and c) of the table attached to Decree-Law No. 41 of February 23, 1995, provided that the margin scheme does not apply. At the same time, item 127-septiesdecies of Table A, Part III, was repealed, thereby eliminating the 10 percent VAT rate on imports of such goods and on such sales by the authors (or their heirs or legatees).

[56] The most commonly used criterion for determining whether or not a commercial activity exists is, as is well known, the requirement of regularity. For example, in its decision No. 56 of June 16, 2011, the Provincial Tax Commission of Florence considered the buying and selling of art objects on an online auction platform to be a business activity, since it was carried out by an individual over a long period of time and involved a substantial number of transactions.
[57] Court of Cassation, Nos. 8196, 8198, 8199, and 8200 of March 31, 2008.
[58] Court of Cassation, Nos. 7760 and 7761 of March 21, 2008.
[59] Court of Cassation, No. 21776 of October 20, 2011.
[60] Court of Cassation, n. 21776 cited.
[61] Court of Cassation, Nos. 27208 and 27211 of Decembre 20, 2006.
[62] Article 9 of the aforementioned Decree.

These regulatory measures were designed to revitalize the sector and incorporate the European principle set forth in Article 98-bis of Directive No. 112 of December 28, 2007, which has also recently been amended[63]. It follows that if a taxpayer applies the reduced VAT rate, they cannot subsequently avail themselves of the margin scheme, since that scheme applies the standard rate and is designed to prevent double taxation on the value of certain goods returned to the market.

Thus, there remain two alternatives 'tools', both aimed at the same objective: namely, preventing the VAT burden from unduly influencing the dynamics of the market in question. Nevertheless, the margin scheme is not a preferential arrangement for paying the tax, but rather a special regime; therefore, to qualify for it, the taxpayer must demonstrate the actual presence of every element – both objective and subjective –required by law[64]. Specifically, this option is permitted if the works of art are sold directly by the dealer or were imported by the dealer.

In any case, it is positive that the scope of the reduced VAT rate has been expanded, given that this measure was already in place in other European countries and reflects the common goal of reducing distortions in a market characterized by repeated transactions and the appreciation of artworks over time, factors that call into question the neutrality of the standard multi-stage VAT system and have justified the margin scheme. Furthermore, the territoriality of VAT and compliance channels for cross-border sales should be part of the 'VAT in the Digital Age' (ViDA), which would further facilitate price transparency and market integration.

The amendment would, in effect, prevent the persistence of disadvantages in the sector, while considering its defining characteristics, since the application of tax on works of art is complicated. Indeed, such works are not distributed and released for consumption through a chain of transactions in which suppliers charge VAT to their customers and then deduct it against the VAT paid to their own suppliers. As is well known, the multi-stage value-added tax system was designed to shift the VAT burden onto the final consumer and is neutral for business operators. However, in the case at hand, the goods in question are not consumed but rather tend to increase in value over time or, at the very least, to retain their value. Works of art, as a rule,

[63] In addition to the amendments introduced by Council Directive 542/2022/EU of April 5, 2022, which modified Directives 2006/112/EC and 2020/285/ EU regarding the revision of rules on tax rates by including works of art in a specific entry of the table attached to the "VAT Directive," namely among goods and services subject to a reduced tax rate. The supranational measure distinguishes, in particular, VAT from the margin scheme by specifying that if the good:a) was purchased/imported with the reduced tax rate applied, the reseller may not subsequently apply the margin scheme in the subsequent sale; b) was purchased from a private individual or under conditions that do not provide for a tax reduction, the regime remains applicable with standard VAT levied solely on the difference between the sale price and the purchase price. The choice between the two different applications therefore requires an assessment of the nature of the seller and the terms of purchase.

[64] For further reference see P. CENTORE, *Il regime del margine*, Milan, 2007. For guidance from the Italian tax authority, see Agenzia delle Entrate, No. 582/2021.

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circulate continuously, and, with few exceptions, are not actually consumed; this circulation is facilitated by their creators, who introduce them into the market for distribution, or through direct sales by collectors. However, such transactions are not subject to VAT unless they are made for speculative purposes; they are, however, subject to VAT recovery if the seller is the artist, a business operator in the sector, or a VAT-registered entity. If, on the other hand, a collector resells his or her works of art for speculative purposes, he or she will be liable for the tax; however, such activity must meet the criteria set forth in Article 4 of the aforementioned Presidential Decree No. 633 to be classified as a business activity, provided that even a single transaction is relevant if it can be characterized as a complex series of organized acts.

5. Concluding remarks.

The implementation of Article 5, paragraph 1, letter h), point 3, of Legislative Decree No. 111 of August 6, 2023, appears urgent as it provides, for income tax purposes, the introduction of rules governing capital gains realized outside of commercial activities by collectors of works of art, antiques, or collectibles, as well as, in general, creative works of the mind belonging to the visual arts. Furthermore, the law excludes from taxation all cases in which there is no speculative intent and includes the movable assets indicated when acquired through inheritance or donation.

To date, as previously mentioned, the implementing decree has not yet been issued; however, based on the specifications contained in the explanatory report, the new rules should ensure that tax audits do not focus primarily on the subjective aspect attributable to the seller of works of art, but rather consider objective criteria.

About Article 7, paragraph 1, letter e), the Government has been authorized, around VAT, to reduce the rate on imports of works of art and to extend this reduction to the sale of works of art, antiques, and collectibles; as noted, this provision has been implemented.

A significant portion of the delegation of authority therefore remains pending, even though the taxation of income in the art market requires swift clarity to avoid further subjectivity and to ensure that the principle set forth in Article 23 of the Constitution is effectively implemented[65].

To conclude these remarks, it is worth noting that the French National Assembly has approved, on first reading a draft law[66], to revise the *Impôt sur la Fortune Immobilière* applied to real estate not used by owners for professional purposes; this tax is expected to have a variable rate ranging from 0.5% to 1.5%, and will also include real estate rights. This tax, introduced by the '2018 Budget Law', replaced the *Impôt sur le*

[65] A. VIGNOLI, *Fisco ed Arte. Prassi e orientamenti giurisprudenziali*, in *Valorizzazioni delle collezioni d'arte e dei lasciti di artista*, Pisa, 2025, at 52.

[66] See '2026 Budget Bill', No. 1906

patrimoine, which, in turn, had replaced *the Impôt de Solidarité sur la Fortune*[67], which had replaced the *Impôt sur les Grandes Fortunes*[68].

The new tax, which is expected to be called the *Impôt sur la Fortune Improductive*, would have a flat rate of 1 percent applied to the portion of a taxpayer's taxable net worth exceeding 2,000,000 euros annually and a broader scope than the current tax, extending to include movable property, as well as other assets considered unproductive, including works of art. The aim is to boost national economic growth and mobilize capital.

Therefore, this would not be a progressive tax on the net worth of individuals, a form of taxation that has also been proposed at the EU level[69], but rather, at least in the proponents' view, a tool for tax justice[70].

What might the drawbacks be? Any relocation of tax residency abroad and cases of tax evasion, as well as reduced investment by collectors and dealers, and consequently a decline in the transfer of artworks between private individuals. Added to this is a decrease in government revenue due to uncollected VAT. Finally, it appears difficult to assign a precise economic value to works of art.

[67] In vigor from 1989 to 2017

[68] In vigor from 1982 to 1987.

[69] Based on the reflections of E. SAEZ, and G. ZUCMAN, *The Triumph of Injustice: How the Rich Dodge Taxes and How to Make Them Pay*, New York, 2019. See also the actions outlined in the *Final Declaration* of the G20 in Rio de Janeiro, November 18 and 19, 2024, aimed at 'addressing inequalities and promoting fairer and more progressive tax systems' and 'ensuring that individuals with very high net worth are taxed effectively'.

[70] For critical observations on forms of taxation targeting high-income earners, justified as advanced forms of redistribution aimed at achieving socially desirable goals, sse E. MARELLO, *Pulsioni oscrure; l'imposta come sanzione*, in R*ivista di diritto finanziario e scienza delle finanze*, 2021, at 296 ff.

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