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Art and Taxation in Italy

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# Art and Taxation in Italy

by Marco Greggi<sup>1</sup>

## 1. Introduction: the Relevance of Art in the Italian Legal System

Italy is allegedly one of the countries in the world with the greatest cultural heritage. For sure, it is the state with the highest number of UNESCO recognised properties<sup>2</sup>: this is thanks to a multi-millennial history of development and passion for beauty and innovation in terms of style, art and fashion.

It is no surprise, with such premises, that art has always taken a central position in the legislative system of the country, both in terms of protection and an incentivization of such a crucial activity<sup>3</sup>. The Italian Constitution, at Article 9<sup>4</sup> clearly points out that art is one of the assets to be protected and tasks the state and the other institutions with the duty to preserve it, and to stimulate further development.

This goal has been achieved through decades with a Ministerial structure aimed at this scope, and with a strict legislation regulating the cultural and artistic heritage of the Country<sup>5</sup>. Most of these measures, though, have been concentrated on places, buildings and spaces, and have been essentially dedicated to their preservation and custody. The promotion of new arts, to be intended as a stimulus to new creations and original innovation, has been scarce, erratic and lacking a coherent framework depending as it is on the financial constraints that have become tougher and tougher in recent times.

Taxation is no exception to this, as artworks in taxation have always been treated as any other tradeable asset, with only a few (but important) rules introduced to address

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<sup>2</sup> 59 properties are inscribed in Italy as of 2023. <https://whc.unesco.org/en/list/stat/>.

<sup>3</sup> Felicia Caponigri, Lorenzo Casini, and Sabino Cassese, "Securing Cultural Heritage? Understanding the Law for Our Monuments, Artworks, and Archives Today," *International Journal of Constitutional Law* 19, no. 5 (January 27, 2022): 1683–89; Lorenzo Casini, "'Italian Hours': The Globalization of Cultural Property Law," *International Journal of Constitutional Law* 9, no. 2 (April 1, 2011): 369–93.

<sup>4</sup> "The Republic promotes the development of culture and of scientific and technical research. It safeguards the natural landscape and the historical and artistic heritage of the Nation".

<sup>5</sup> Marianna Marzano and Monia Castellini, "The Reform of the Italian Ministry of Cultural Heritage: Implications for Governance of the Museum System," *The Journal of Arts Management, Law, and Society* 48, no. 3 (May 27, 2018): 206–20; Luca Zan, Sara Bonini Baraldi, and Christopher Gordon, "Cultural Heritage between Centralisation and Decentralisation," *International Journal of Cultural Policy* 13, no. 1 (February 2007): 49–70; Donata Levi, "The Administration of Historical Heritage: The Case of Italy," in *National Approaches to the Governance of Historical Heritage Over Time: A Comparative Report*, ed. Stefan Fisch (IOS Press, 2008), 103–26.

it. Artistic activity does not differ substantially from other professional (independent) ones<sup>6</sup>.

This article is aimed at providing a legal understanding of what “Art” actually is in the Italian legal system (that is, within the boundaries of the concept of *art*, if any). It will then subsequently consider the tax-related aspects of dealing with art, that is the sale of artworks or the assistance to their negotiation in the framework of business income, or “other” kind of revenue.

A special emphasis shall be attributed to VAT, and in particular to the cases in which trading in arts becomes a business, overtaking the routine activity of a collector, hence becoming subject to the application of the tax.

Eventually, some forecasts shall be given as to the forthcoming reform of the Italian tax system which is placing a specific emphasis on the tax aspect of art development and trade.

## 2. Defining Art for Tax Purposes

Despite the different positions in the matter, a common understanding exists on the fact that art has no boundaries, and is time dependent<sup>7</sup>. Some activities of the man now are considered art while they were not in the past, not to mention the fact that the rise of IA in creative tasks is raising concerns on how to attribute the ownership of the product created and whether they could be considered art or not since the author is not a human<sup>8</sup>.

Italian academics point out that the idea of art has changed through decades: in the past the phenomenon was connected with a good, a tangible item in most of the situations, while more recently art has embraced a much wider understanding, encompassing an activity, a performance and alike<sup>9</sup>. On some occasions the border between artist and art is blurring, creating original and unexpected scenarios.

On other occasions art products are limited in time and destined to be enjoyed by the very few who can have access to them<sup>10</sup>.

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<sup>6</sup> Marco Greggi, *Profili fiscali della proprietà intellettuale nelle imposte sui redditi* (Pisa: Pacini, 2010).

<sup>7</sup> R. Stecker, “Definition of Art,” in *The Oxford Handbook of Aesthetics*, ed. Jerrold Levinson (Oxford: Oxford University Press, 2005), 136–54; Stephen Davies, “Defining Art and Artworlds,” *Journal of Aesthetics and Art Criticism* 73, no. 4 (October 2015): 375–84.

<sup>8</sup> See for instance the very recent UK Supreme Court case *Thaler v Comptroller-General of Patents, Designs and Trade Marks*, [2023] UKSC 49.

<sup>9</sup> Vittorio Sgarbi, “Arte E Bellezza : Il Tesoro d’Italia,” *Nuova Antologia*, 2014, 191–96; Manrica Rotili, “Che cosa è un’opera d’arte? : l’evoluzione del readymade a un secolo dalla sua nascita,” in *Cose. - (Sensibilia ; 6)*, vol. 6 (Milan: Mimesis, 2013), 279–95.

<sup>10</sup> This would be for instance the case of the 2021 temporary artwork / performance by Christo and Jeanne-Claude who wrapped the *Arc de Triomphe* in Paris for two weeks. The installation, although provoking different reactions on the citizens of the city, was considered and authentic artwork.

In general terms the Italian legal system mirrors the French one and differs from the Common law ones. Consistently with the Berne Convention (1886)<sup>11</sup> the law protects all the *œuvres de l'esprit* which are creative and belong to music, literature, figurative arts, architecture and theater, cinematograph irrespective of the way in which they are conveyed.

Any product as a consequence can be considered a piece of art (irrespective of the value of it) as long as it is an original expression of creativity. It has been pointed out in Italy that an intrinsic connection should exist between originality and form (or shape) of the item<sup>12</sup>.

No doubt the case law of the Court of Justice of the European Union has played a role in the matter, defining the originality of the work, and arguing that the latter has to be assessed taking into account the material footprint of the artist on the product, in a way to make his personality evident to the others.

The necessity of such a fingerprint to be recognizable is the distinction between the artworks and other creative products, such as music or writings (copyrights). This is also a limit to the possible application of the copyright to visual artworks, which are not intended to last or other works which are readymade<sup>13</sup>.

### 3. Art and Direct Taxation

The trade in artworks may originate taxable income or not, according to the entity which is involved in the sale of the artifacts and on quantitative aspects of the activity (the number of transactions, the overall amount of them, etc.).

In Italy, every profitable trade operated by a Commercial company originates taxable revenue which falls into the tax base for Corporate tax purposes<sup>14</sup>. In such a scenario, an artwork is not different from any other good sold or traded: any revenue is qualified as business income and treated accordingly, thus taxed according to an accrual basis principle, and for the actual amount received in consideration for the sale<sup>15</sup>.

In case of non-business legal entities or of natural persons the scenario is much more complicated, as it is necessary to consider the nature of the person operating on the

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<sup>11</sup> Gustavo Ghidini and Laura Moscati, "Authors Moral Rights in the Berne Convention," in *Improving Intellectual Property* (Edward Elgar Publishing, 2023), 204–13.

<sup>12</sup> Alessandra Donati, "L'artista è Presente: Autorialità E Originalità Dell'opera D'arte Contemporanea," in *Studi in Onore Di Antonio Gambaro*, ed. Ugo Mattei, Ugo Candian, Albina Pozzo, Barbara Monti, Alberto Marchetti, Carlo (Giuffrè edizioni, 2017).

<sup>13</sup> Chloe Francis, "The Protection of Contemporary Art under UK Copyright Law," *Art Antiquity & L.* 23 (2018): 289; Alison Kearney, "Beyond the Readymade: Found Objects in Contemporary South African Art Alison Kearney," ed. Anitra Nettleton (PhD, University of the Witwatersrand, 2016); Martin Wilson, *Art Law and the Business of Art* (Edward Elgar Publishing, 2022).

<sup>14</sup> Article 81, Income Tax Act (Presidential Decree n. 917 passed on 22 December 1986).

<sup>15</sup> Article 83, Income Tax Act.

artworks market. With a certain margin of appreciation, Italy gives relevance<sup>16</sup> to three distinct figures: (1) the collector; (2) the occasional reseller and (3) the Art merchant. Although they aren't formally disciplined and ruled by the law, a common understanding exists in their definition.

The Art merchant is the person who professionally and routinely operates in the art market either as an intermediary (a proxy) in purchases and sales, or directly trading in such goods, thus purchasing and subsequently selling them in his personal capacity.

The occasional vendor is a person who is similar to the full fledged art merchant (he is a professional trader in this respect), but whose activity is not part of his routine, limited as it is to occasional events or situations.

The third, and the most fascinating figure, is the art collector. He is a person who routinely purchases artworks for his personal pleasure, but that might occasionally sell one (or more) piece if good commercial conditions are met.

The Italian Income Tax Act n. 917 dated 22 October 1986<sup>17</sup>, in its current version, regulates these situations.

In the first case (the Art merchant) the revenue obtained would fall into business income (Article 55) in a way which is identical to the one ruled for companies. There are no differences (nor special provisions) in the Italian system to address business income, if the revenue is obtained via the sale of artworks.

Income is taxable as soon as the sale is concluded (that is, in the fiscal year in which the transaction occurs) and for the amount the parties agreed on.

In the second case (the Occasional trader) no business income arises, as a continuous activity is needed to that purpose.

Yet the Italian Income tax system has a residual clause, a sort of "*Catch all*" provision targeting revenue made via the occasional sales of goods outside of the business activity: this is article 67, § 1 letter (i) of the Income Tax Act.

The provision rules "*Other income*"<sup>18</sup> produced by an individual, providing for its taxation net of the costs that are specifically pertinent to the goods sold (such in this case) or the services provided. In the situation in which the trader purchases the artwork to sell it, the taxable base would be the increase in value of it: the capital gain<sup>19</sup>.

Eventually, in those situations in which the trade is operated by a collector (this would be the third case out of those mentioned above) no taxable revenue would emerge, and the entire transaction would be entirely tax free both for income and for VAT tax purposes.

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<sup>16</sup> In the case law the difference has been drawn recently by Supreme Court (*Corte di Cassazione*) case n. 6874, 8 March 2023.

<sup>17</sup> Citations of articles from this point onwards are intended to this text unless otherwise specified.

<sup>18</sup> That is, income not falling into any other provision of the Income Tax Act.

<sup>19</sup> In the Italian tax system there's no specific tax on Capital gains, which are routinely treated as items of income for tax purposes.

From a practical point of view, it is crucial to distinguish the different figures that are involved in artworks trading and sale, as the law does not provide a clear guidance in the matter.

The silence of the legislator has been filled by the Case law, which has addressed the issue several times in the recent past, identifying a number of hallmarks that are routinely used to decide borderline situations<sup>20</sup>.

In this respect, an individual has been deemed to operate as a merchant (thus being taxable for personal income tax purposes) when it is evident that the purchase of an artwork has been executed just to sell it immediately afterwards (the timing between the two transaction has been considered important by the Italian judiciary to decide in the matter)<sup>21</sup>.

In other cases the number of transactions (purchases and sales) has been deemed relevant to this purpose either<sup>22</sup>, even if in other circumstances the judiciary pointed out<sup>23</sup> that a single business transaction may transform an individual into a commercial subject (a trader or an entrepreneur) if it is quantitatively relevant, or if it has been preceded by a series of preliminary operations (negotiations, meeting with business counterparts and alike).

In other words, the Italian legal system still abide to the Roman principle *una mercantia facit mercatorem*<sup>24</sup>.

Eventually in other scenarios, the side-activities implemented have been considered relevant. These performances might include exhibitions, promotions, advertisement about the artwork on sale, etc<sup>25</sup>.

The Italian understanding is consistent with the Court of Justice of the European Union rules, when it decided that "*Business*" is any legal entity carrying on a commercial activity, irrespective of the legal status of it and of the way in which financial means are raised<sup>26</sup>.

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<sup>20</sup> Roberto Cordeiro Guerra, "Il Fisco per L'arte. Proposte Di Misure per Agevolare E Promuovere Il Patrimonio Culturale Italiano," *Le Arti E La Dimensione Giuridica*, 2020.

<sup>21</sup> See Supreme Court case n. 21776, 20 October 2011. See also Regional Tax Court of Piemont n. 1412, 18 September 2018.

<sup>22</sup> Tax Court of Appeal Trentino alto Adige n° 72, 20 May 2013.

<sup>23</sup> Supreme Court n. 9776, 18 June 2003.

<sup>24</sup> One trade makes you an entrepreneur. This principle is taken from Baldus de Ubaldis, Super quarto et quinto Codicis, de constituta pecunia, n. 16, c. 32 r. See for the full reference Vito Piergiovanni, "Norme, Scienza E Pratica Giuridica Tra Genova E l'Occidente Medievale E Moderno," *Annali Della Facoltà Di Giurisprudenza dell'Università Di Genova* 4 (1965): 230–75.

<sup>25</sup> See Supreme Court n. 21776, 20 October 2011.

<sup>26</sup> CJEU C-41/90 *Klaus Hofner* decided on 23 April 1991, ECLI:EU:C:1991:161.

## 4. Art and VAT

The sale of artworks falls under the scope of VAT<sup>27</sup> and is charged accordingly, if the conditions ruled by EU law are met (in particular the subjective ones<sup>28</sup>).

If the trade is operated by the artist (or the good is imported) the rate in Italy is 10%: this is possible under Article 103, § 1 of the 2006/112 directive, allowing member states to apply a reduced rate for the artworks that are defined in the Annex IX, Part A (Points 1 to 7) of the aforesaid directive.

The cited provision and the Article 99<sup>29</sup> of the directive rule that the reduced rate can not be lower than 5%: Italy has chosen a 10% rate with Article 39, Decree 41/95<sup>30</sup>, that implemented the equivalent measure as it was introduced by the VI Directive, in force *ratione temporis*<sup>31</sup>.

In this respect it is also important to remember that Article 127 - *septiesdecies*, table A, part III of the Italian law (Decree 633/72) rules for the 10% rate irrespective of the nature of the importer (private art consumer, or business).

In all the other situations the chargeable rate is the ordinary one in Italy (22%), but in cases where VAT is not applicable due to the nature of the seller. If the seller is a non-business, the Italian Stamp tax (in Italian *Imposta di registro*<sup>32</sup>) might be applicable<sup>33</sup> and calculated on the value of the artwork if conditions are met.

In many situations artworks are negotiated between business and non-business individuals, who eventually resell the same goods to other businesses. The marketplace of artworks is perhaps the one in which the mix between business and non-business transactions is the most intense one, taking into account the fact that artworks are goods whose consumption might last for an indefinite period of time, and that they serve several purposes: actually they might be owned for pleasure and cultural satisfaction, but more and more often they are used as reserve of value and wealth<sup>34</sup>: they are therefore to be sold when necessity arises, or when the market fluctuations encourage this.

The sheer application of VAT rules as we know them, as a consequence, might disrupt the need for neutrality of the system<sup>35</sup>. The ordinary application of the tax would eventually lead to a duplication of it, as it could hit the very same taxable base which

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<sup>27</sup> In the Italian tax system VAT is currently introduced and regulated essentially under Decree 26 October 1972, n. 633.

<sup>28</sup> Article 9, § 1, 2006/112/EC Directive rules that “‘Taxable person’ shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity”.

<sup>29</sup> This provision regulates the cases in which a reduced VAT rate is applicable.

<sup>30</sup> Decree passed on 23 February 1995, n.41

<sup>31</sup> Directive 1977/388/EEC.

<sup>32</sup> Decree 26 April 1986, n.131.

<sup>33</sup> Article 2, Tariff of the Tax, Part I.

<sup>34</sup> Oddný Helgadóttir, “The New Luxury Freeports: Offshore Storage, Tax Avoidance, and ‘invisible’ Art,” *Environment & Planning A* 55, no. 4 (June 1, 2023): 1020–40.

<sup>35</sup> Charlène Adline Herbain, *VAT Neutrality* (Windhof: Larcier, 2015); Marco Gregg, “Neutrality and Proportionality in VAT: Making Sense of an (Apparent) Conflict,” *Intertax* 48, no. 1 (2020): 122–31.

was in turn increased by the previous application of the tax when the artwork was sold from a business to a non-business ... who eventually decided to sell it to another business entity.

This is a challenge to VAT actual neutrality that has to be dealt with every time used goods are traded and their exchange involves business (with the right to deduct input VAT) and non-business entities (without such a right).

The VAT special regime for “second hand” goods, works of art collectors’ goods and antiquities<sup>36</sup> is used in this scenario to avoid duplication of the charge, and Italy has introduced a special variation of it<sup>37</sup> to be applicable to the auction houses when they sell artworks, eventually making liable to VAT only the variation of value of the asset sold to the purchaser.

All the other compliance duties inherent to the implementation of the tax (such as invoicing, etc.) are valid and applicable.

## 5. The Italian “*Art Bonus*” and the Other Tax Incentives Applicable

The Italian tax system has never stimulated the trade of artworks or their negotiation via tax incentives, rather it has promoted (and is currently promoting) new creations, new artistic performances and their protection via the so called “*Art bonus*”<sup>38</sup>.

The use of tax incentives / expenditures to promote artistic creations is coherent with Article 9 of the Constitution, and has been validated in the past by the Constitutional Court<sup>39</sup>.

The “*Art Bonus*” is a tax relief granted to whom subsidizes art and is made available on several occasions and in different ways (depending on the activity to be promoted). Its goal is to facilitate intellectual creation via the attribution of a tax credit for an amount of 65% of the donation given to the artist (individual or an entity) or to anyone engaged in the artistic sector. The idea is that the credit should stimulate generosity and *Mécénat*: in this respect there’s nothing new as to similar initiatives taken in other countries<sup>40</sup>.

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<sup>36</sup> Directive 94/5/EC of 14 February 1994 (Special arrangements applicable to second-hand goods, works of art, collectors’ items and antiques). The directive is no longer in force as it has been recasted in the 2006/122 one. Now the so-called “*Margin scheme*” is addressed by articles 311, 312 and sub. of the last mentioned directive.

<sup>37</sup> Decree 23 February 1995, n.41. See in particular Article 36 and *sub.*

<sup>38</sup> Decree 31 May 2014, n. 83, Article 1.

<sup>39</sup> Constitutional court sentence n. 346, 28 November 2003. G. Marongiu, *Le agevolazioni per gli immobili di interesse storico o artistico*, in *Giurisprudenza tributaria*, 2004, p. 312 and sub.; F. D’Ayala Valva, *La tutela del patrimonio storico e artistico della nazione e la funzione di stimolo della corte costituzionale*, in *Rivista diritto tributario*, II, 2004, p. 23 and sub.

<sup>40</sup> J. Schuster, *Supporting the Arts: An International Comparative Study. Canada, Federal Republic of Germany, France, Italy, Great Britain, Netherlands, Sweden, United States*, ed. Massachusetts Institute of Technology (ERIC, 1985).

The *Art bonus* is just the latest of a number of measures that are present in the Italian Tax Act<sup>41</sup> to stimulate artistic growth and creativity, yet none of them is applicable to the trade of artworks. All of them, to the opposite, are aimed at stimulating creativity and, where necessary, investments in the artistic sector.

The first, and more comprehensive, measure to this purpose has always been a part of the Income Tax Act ever since its inception. Under Article 15, § 1, letter (h) a tax credit equal to 19% of the donation is attributed to the donor (natural; legal persons are admitted to this credit only insofar they aren't company operating for-profits<sup>42</sup>).

Such credit is granted only if the donation goes in favor, *inter alia*, to entities operating in the artistic sector or for protection of the cultural heritage of the Country. These might include entities operating for the preservation and protection of immovable properties, or real estates, with an historical or cultural value<sup>43</sup>.

The provision also covers the donations in favor of exhibitions or equivalent events, as they are intended to promote cultural development or to showcase artistic achievements: alas, the measure is not intended to promote the sale of artworks neither in a profit nor in a non-profit environment.

If a donation qualifies for the "*Art bonus*", the tax credit / allowance (equal to 19% of the donation) is not attributed as this would end in a duplication of the benefit.

Shows and artistic performances are promoted also, although the provision taking care of them (Article 15, § 1 letter (i), Income Tax Act) does not draw a precise distinction between art exhibitions and shows intended to entertain the people<sup>44</sup>.

In this case any donation (or gratuity) to entities which are not for profit, active in the art sector, cultural shows, or anyway operate for the preservation of the cultural and historical heritage can be credited for an amount of 19% but within the 2% of the overall taxable income of the donor. As a consequence if the donation is disproportionate, considering the revenue of the donor, it can not be fully credited.

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<sup>41</sup> Quite surprisingly, in Italy it is possible to pay taxes returning artworks to the State if their value is assessed and if the Ministry of Culture (MiBAC) shows interest in this purpose. If conditions are met, an artwork is evaluated, given to the Ministry of Art and its value can be used to offset outstanding tax liabilities (Article 28 *bis* Decree n. 602, 29 September 1973). Such a possibility has been introduced via the Act 2 August 1982, n. 512.

<sup>42</sup> In the case of for-profit entries the law provides for the full deductibility for tax purposes of the amount donated under Article 100, § 2, letter (f) of the Income Tax Act.

<sup>43</sup> These are defined according to the Code of the Cultural Heritage and of the Italian landscape (d.P.R. 1409/1963).

<sup>44</sup> Although the distinction would be anything but clear in most of the circumstances, in the Italian legal system a distinction occurs between shows and other activities aimed at entertaining. In the first case the goal would be to enrich the person for a social or cultural perspective while in the second the main goal for have to grant distraction and fun. To this extent, a ballet would fall into the first category, while a disco would fall in the second. This difference is not very much relevant here, but it is for VAT purposes and in the case of the (possible) application of special taxes on entertainment (which is not charged if the event is cultural). Likewise VAT is charged in a different way depending on the nature of the performance delivered or proposed.

Under Italian law donations to artistic activities are considered equal to those for the improvement and preservation of immovables and buildings of historical value and for their renovation<sup>45</sup>.

Music, as artistic performance, enjoys a special provision in the Italian tax system either. For this special kind of art, donations and equivalent gratuities given to foundations<sup>46</sup> operating in the music sector with a non-profit purpose a tax credit up to the amount of 19% is granted within the limit of the 2% of the revenue of the donating entity<sup>47</sup>.

Irrespective of all these measures, the "*Art bonus*" introduced in 2014 is still the most important and comprehensive measure to stimulate artistic development through a fiscal instrument. Article 1 of the Decree n.83 passed on 31 May 2014 introduces the core of the discipline that has been clarified and shaped subsequently by several regulations and rulings by the Tax office<sup>48</sup>.

The Italian "*Art bonus*" is a tax credit whose amount may climb up to 65% of the financial support granted to the artistic initiative. Such a credit has to be splitted on three different (and consecutive) fiscal years, starting from the one in which the money is provided to the beneficiary.

It is important to remember that only donations (and other gratuities) in money are covered by such a measure, as donations or gifts in kind can not be calculated for the determination of the credit.

Although the *Bonus* is intended to cover the art sector, only qualified activities are entitled to enjoy its benefits, as the law expressly mentions four cases<sup>49</sup>.

These would include (1) the maintenance and protection and restoration of public cultural goods: goods belonging to the Church (in most of the situations catholic, but other confessions are implicitly included) do not enjoy such a benefit. It is not necessary that the entity receiving the donation would be the owner of the goods, rather, it could also be a private entity which has been entrusted with the artistic goods or has the duty to manage them. This would be the case of a private foundation which is taking care of a public good (and artwork of high value, for instance)<sup>50</sup>. Any donation to the (private) foundations taking care of the (public) artwork does qualify for the art bonus. Similarly the religious entities having in custody (or taking care) of public goods do qualify for the credit either, and their donors may enjoy the 65% tax credit.

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<sup>45</sup> The conditions for such a benefit to be granted have been recently clarified by the Tax office in the Ruling n. 461, 14 November 2023.

<sup>46</sup> These foundations are ruled by the legislative decree 29 June 1996, n. 367.

<sup>47</sup> Decree 31 May 2014, n. 83.

<sup>48</sup> For instance, Circular letter of the Tax office n. 24/E issued on 31 July 2014.

<sup>49</sup> Chiara Carolina Donelli et al., "Financing Sustainability in the Arts Sector: The Case of the Art Bonus Public Crowdfunding Campaign in Italy," *Sustainability: Science Practice and Policy* 14, no. 3 (January 30, 2022): 1641.

<sup>50</sup> This possibility has been admitted by the tax office in the recent Circular letter n. 34/E issued on 31 March 2023.

Another case of “*Art bonus*” is (2) the one covering all forms of assistance to “Places of culture” which belong to the public. These would include museums, libraries, archives, ecological parks (including gardens) and monuments, as defined under Article 101 of the Italian Code on Cultural Heritage and landscape<sup>51</sup>.

The third case (3) covered is the one concerning the lirico-symphonic orchestras, theaters of the traditions and local festivals. This broad category is intended to embrace the several cultural initiatives, which are so frequent in Italy and date back decades (if not centuries), and are very often the outcome of local traditions and provincial costumes and habits. Music, theater, festival are included as well, making this clause one of the broadest of the art bonus out of the four, as it is intended to address local necessities and traditions that otherwise might disappear without a proper financial subsidy.

On the contrary, the fourth (and last) case (4) of *Art bonus* is intended to provide a tax relief for donations in the “Art of the future”, as it covers the creation of new structures, facilities that are needed to stimulate artistic performances and alike.

In this case the structure (an *atelier*, an auditorium or alike) does not need to be of artistic relevance, rather it has to be used for artistic purposes, in a non-profit scenario. It is evident that this possibility opens the floor to an unprecedented series of situations and possibilities.

Due to the inclusive nature of the legislation, which is in theory addressing a significant number of situations, the actual application of the *Art bonus* is giving rise in the past to a number of abuses or improper applications. Some artworks or initiatives were labeled as artistic as they could loosely fall into one of the above mentioned cases, but they actually turned out to be of other nature.

For these reasons the Tax office has subsequently restricted the application of the Art bonus via ruling or interpretive guidelines in the matter.

The first and the most restrictive measure addresses the donating entity qualifying for the 65% credit to be calculated on the amount of money given.

First of all, the taxpayers eligible for the “*Art bonus*” are: natural persons resident or not in Italy, non commercial entities (resident or not), partnerships and cooperative societies, businesses and eventually permanent establishments in Italy of non resident commercial entities.

Natural persons and non commercial entities (resident or not, as the law does not discriminate in the matter) can enjoy the tax credit up to an amount not exceeding 15% of the taxable income, while commercial entities can enjoy a credit not exceeding in any case 0,5% of the overall amount of revenue in the relevant taxable year.

As it was pointed out above, all donations and gratuities are included for the art bonus calculation, but donations in kind and in cash are not.

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<sup>51</sup> Legislative decree n. 42, issued on 22 January 2004.

## 6. Supporting Art via Sponsorships

The Art bonus described above, generous as it might seem, meets qualitative and quantitative limitations. There are cases where the 65% credit can not be granted or there might be entities active in the Art industry that might fall outside the scope of it. In all these situations, donations and gratuities might not be the best tool to be used to stimulate art production and art development.

Italy, as many other countries in Europe and in the world, has recognized from a long time the sponsorship contract<sup>52</sup> which, although non expressly regulated by the Italian Civil code<sup>53</sup>, has been codified in the praxis and is commonly used<sup>54</sup>.

There is no room here (not even need) to describe the mechanics of the contract in detail<sup>55</sup>, yet sponsorship differs from donation and gratuities due to the consideration in it, and the bond between two performances.

In this case money is given by the sponsor to the sponsee in order to have the activity of the former promoted, put under the spotlight for commercial purposes.

Yet in the Italian tax law a difference exists between advertisement and sponsorship, and it lies in the intensity of the consideration and the nature of the performance under contract<sup>56</sup>.

In the case of advertisement money is given in consideration for a clear and evident message to be given by the promoter to the audience or to the people in general. Such a message should consist in the direct, evident and manifest promotion of the goods or of the services provided by the entity giving the money. Most of the online *influencers* operate via advertisement contracts although they qualify their performances as sponsorships.

In the case of sponsorship such correlation exists, but it is looser and may assume more sophisticated, indirect forms.

Art is suitable for this purpose, as sometimes money is given to art developments or artistic performances without the necessity by the artist to expressly acknowledge such an endowment or without the duty on him to promote *expressis verbis* the virtue of the business who subsidized him.

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<sup>52</sup> Martina Gianecchini, "Strategies and Determinants of Corporate Support to the Arts: Insights from the Italian Context," *European Management Journal* 38, no. 2 (April 1, 2020): 308–18; Gaetana Trupiano, "Financing the Culture in Italy," *Journal of Cultural Heritage* 6, no. 4 (December 1, 2005): 337–43.

<sup>53</sup> Alberto Musso, "La Sponsorizzazione Come Contratto Commerciale," *Aedon*, no. 2 (2013): 9–19.

<sup>54</sup> Tina Mermiri, "Arts Sponsorship: The Facts, Trends and Potential," *Journal of Sponsorship* 3, no. 4 (2010): 307; Iryna Antoshyna and Alina Bondarenko, "Models of Administrative and Legal Regulation of Sponsorship and Patronage in the EU," *Baltic Journal of Economic Studies* 5, no. 5 (February 8, 2020): 18.

<sup>55</sup> Pippa Collett and William Fenton, *The Sponsorship Handbook: Essential Tools, Tips and Techniques for Sponsors and Sponsorship Seekers*, ed. Pippa Collett and William Fenton (Chichester, England: John Wiley & Sons, 2011); Mary Hutchings Reed, "Sponsorship and the Arts: A Brief Overview of Legal Issues for Not-for-Profits," *University of Miami Entertainment & Sports Law Review* 13 (1995): 9.

<sup>56</sup> Alberto Maria Gambino, *I contratti di pubblicità e di sponsorizzazione* (Giappichelli Editore, 2012).

Both the contracts (sponsorship and advertisement) demand payment to be made by the sponsor and by the advertised entity. Should these subjects be businesses, normally the costs would be tax deductible for tax purposes under the general rules of corporate tax: yet a remarkable difference exists.

While the costs for advertisement are ordinarily deductible in their full amount, under the condition that the contract is fair and the payment made, sponsorships costs are capped according to the revenue of the business and to their amount<sup>57</sup>.

Such a capping has been introduced by the Ministry of Finance in order to prevent abuses that occurred in the past when sponsorship was used to erode tax liability of companies thanks to the higher flexibility of this contract as compared to advertisement.

In the case of art, the Italian Ministry of Culture (MiBAC) has ruled<sup>58</sup> that sponsorship programs connected with arts and artistic performances are to be considered as advertisements for tax purposes. Although such a qualification should come from a ruling of the Tax office (or from the Ministry of Finance) it has always been upheld in the practice, eventually making sponsorship connected to art more advantageous for tax purposes as no capping to their amount can be introduced.

Of course such a benefit is not cumulative with others: as a consequence a payment made for sponsorship might not be considered for any other purposes of tax law (such as attribution of tax credit, if conditions are met) when it is made deductible under the ordinary corporate tax rules.

## 7. Taxation of Artworks Trade in the Forthcoming Italian Fiscal Reform

The Italian tax system is experiencing an unprecedented overhaul that will include direct and indirect taxation, procedures and taxpayers' fundamental rights.

To this purpose, the Parliament has delegated<sup>59</sup> and enabled the Government to issue several decrees: some of these provisions include the relationship between Art and taxation, and are aimed at addressing most of the uncertainties pinpointed above and to stimulate the market of artwork.

The basic idea is that capital gains realized in trading artworks are to be taxed upon the non professional (that is non commercial) trader only if the speculative purpose (mindset) is certain, or it can be presumed beyond any reasonable doubt according to specific hallmarks.

In all the other cases, sales of artworks should be never relevant for income tax purposes, and any profits incurred would be tax free.

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<sup>57</sup> Ministerial decree 19 November 2008.

<sup>58</sup> See on this MiBAC (*Ministry of Culture*) Decree 19 December 2012.

<sup>59</sup> Act n.111, 9 August 2023.

Rather than constituting an answer to the necessities raised by the practice through years, this statement would demand some further clarification regarding the "speculative" - that is, for profit - intent of the taxpayer, and would entail the abolition between two groups of taxpayers<sup>60</sup>, the collectionists and the occasional traders.

Arguably, the forthcoming decrees amending the Italian Income Tax Act would distinguish between full-fledged businesses and all the other taxpayers who deal occasionally with artworks or other equivalent goods (such as the tradeable antiquities). In this respect, the basic idea is that no (taxable) capital gain should ever arise if the artwork sold has been inherited or received by donation.

In all the other circumstances, a significant time limit should be set for a capital gain to be taxed. Arguably the five years limit which is already in force for immovable properties might be extended to this kind of situation either. In the Italian tax system if a real estate is sold after five years from its purchase, no capital gain is taxable on the seller, unless it is a business.

The reverse however should also be true: every artwork sale would become potentially taxable if made in the framework of a speculative operation.

In the case of VAT the tax reform under discussion would actually endorse the guidelines suggested by the EU in the matter with the directives 2022/5412, which amends directives 2006/112 and 2020/285.

The reduced VAT tax rate should be eventually implemented, to replace the current ordinary one at 22% in Italy, bearing in mind however that the VAT rate is already reduced to 10% if the sale is operated by the author or by an heir. Such a reduction would also cover the trade in goods similar to artworks, including antiquities.

The reduced VAT rate should essentially be introduced to create a level playing field on the Continent as currently significant distortions occur as some states use a reduced rate and others don't. Irrespective of the outcome of the reform, the adjustment of the VAT rate for artworks, in Italy just like in France should be introduced in 2024 and become effective no later than 1 January 2025.

Besides this, the legislative reform addressing the VAT regime for artworks in Italy will be essentially based on two pillars.

Under the first one, the law shall provide for an updated list of the goods which might benefit from the reduction of the rate (Annex IX, Parts A, B and C of the 2006/112 Directive).

The second pillar would be consistent with the new version of Article 98 of the 2006/112 directive, as it would allow member states to introduce a reduced VAT rate for artworks and similar objects. Italy has planned so far to bring the rate down to 5,5%.

It is also important to bear in mind that under the new Article 98 *bis* the reduced VAT rate is not applicable to artwork or antiquities to whom the special VAT system (*Margin Scheme*) for used good is applicable instead, and under which the taxable base is the

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<sup>60</sup> See paragraph 3 above.

spread to be calculated taking into account the purchase price (including VAT) and the resale price.

## 8. Concluding Remarks

Despite the incredible abundance in terms of artworks and cultural heritage, Italy hasn't got a coherent and homogeneous tax system related to the trade in artworks or for the promotion of the cultural and artistic heritage: this is actually the scenario at the end of 2023.

Most of the measures currently in force are essentially tax credits or tax incentives aimed at reducing transaction costs when investments occur in the world of art, with no clear pattern of intervention and no precise strategy in the matter by the legislator. This complicated scenario might derive from a lack of coordination as art and artworks promotion ordinarily fall under the jurisdiction of the Ministry of Art and Culture, and the Ministry of Finance, to a certain extent, is called to intervene only when policies are decided by other stakeholders in the matter.

The lack of clarity in the chain of command and in the policy making has created a scenario that the legislator is eventually trying to address in 2024, bringing clarity about the tax regime of the entities involved in art production, sale and negotiation.

For these reasons great expectation are put on the forthcoming tax reform, which should eventually draw a clear distinction between professional traders and occasional ones, making liable to tax the first only, possibly attracting to the artworks ownership an negotiation a higher number of individuals that these days are reluctant in investing (also) because of the uncertainty of the tax consequences deriving from their choices and the risk of being sanctioned by the Tax administration, to whom he ownership of artworks abroad has to be reported<sup>61</sup> by the owner annually, even if the artwork is owned abroad via another entity (such as a Trust) whose beneficial owner is resident in Italy.

## 8. Bibliography

- Antoshyna, Iryna, and Alina Bondarenko. "Models of Administrative and Legal Regulation of Sponsorship and Patronage in the EU." *Baltic Journal of Economic Studies* 5, no. 5 (February 8, 2020): 18.
- Caponigri, Felicia, Lorenzo Casini, and Sabino Cassese. "Securing Cultural Heritage? Understanding the Law for Our Monuments, Artworks, and Archives Today." *International Journal of Constitutional Law* 19, no. 5 (January 27, 2022): 1683–89.
- Casini, Lorenzo. "Italian Hours': The Globalization of Cultural Property Law." *International Journal of Constitutional Law* 9, no. 2 (April 1, 2011): 369–93.

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<sup>61</sup> See Circular letter n.43/E issued by the Italian Tax office on October 10<sup>th</sup> 2009.

- Collett, Pippa, and William Fenton. *The Sponsorship Handbook: Essential Tools, Tips and Techniques for Sponsors and Sponsorship Seekers*. Edited by Pippa Collett and William Fenton. Chichester, England: John Wiley & Sons, 2011.
- Cordeiro Guerra, Roberto. "Il Fisco per L'arte. Proposte Di Misure per Agevolare E Promuovere Il Patrimonio Culturale Italiano." *Le Arti E La Dimensione Giuridica*, 2020.
- Davies, Stephen. "Defining Art and Artworlds." *Journal of Aesthetics and Art Criticism* 73, no. 4 (October 2015): 375–84.
- Donati, Alessandra. "L'artista è Presente: Autorialità E Originalità Dell'opera D'arte Contemporanea." In *Studi in Onore Di Antonio Gambaro*, edited by Ugo Mattei, Ugo Candian, Albina Pozzo, Barbara Monti, Alberto Marchetti, Carlo. Giuffré edizioni, 2017.
- Donelli, Chiara Carolina, Isabella Mozzoni, Francesco Badia, and Simone Fanelli. "Financing Sustainability in the Arts Sector: The Case of the Art Bonus Public Crowdfunding Campaign in Italy." *Sustainability: Science Practice and Policy* 14, no. 3 (January 30, 2022): 1641.
- Francis, Chloe. "The Protection of Contemporary Art under UK Copyright Law." *Art Antiquity & L.* 23 (2018): 289.
- Gambino, Alberto Maria. *I contratti di pubblicità e di sponsorizzazione*. Giappichelli Editore, 2012.
- Ghidini, Gustavo, and Laura Moscati. "Authors Moral Rights in the Berne Convention." In *Improving Intellectual Property*, 204–13. Edward Elgar Publishing, 2023.
- Gianecchini, Martina. "Strategies and Determinants of Corporate Support to the Arts: Insights from the Italian Context." *European Management Journal* 38, no. 2 (April 1, 2020): 308–18.
- Greggi, Marco. "Neutrality and Proportionality in VAT: Making Sense of an (Apparent) Conflict." *Intertax* 48, no. 1 (2020): 122–31.
- . *Profili fiscali della proprietà intellettuale nelle imposte sui redditi*. Pisa: Pacini, 2010.
- Helgadóttir, Oddný. "The New Luxury Freeports: Offshore Storage, Tax Avoidance, and 'invisible' Art." *Environment & Planning A* 55, no. 4 (June 1, 2023): 1020–40.
- Herbain, Charlene Adline. *VAT Neutrality*. Windhof: Larcier, 2015.
- Kearney, Alison. "Beyond the Readymade: Found Objects in Contemporary South African Art Alison Kearney." Edited by Anitra Nettleton. PhD, University of the Witwatersrand, 2016.
- Levi, Donata. "The Administration of Historical Heritage: The Case of Italy." In *National Approaches to the Governance of Historical Heritage Over Time: A Comparative Report*, edited by Stefan Fisch, 103–26. IOS Press, 2008.
- Marzano, Marianna, and Monia Castellini. "The Reform of the Italian Ministry of Cultural Heritage: Implications for Governance of the Museum System." *The Journal of Arts Management, Law, and Society* 48, no. 3 (May 27, 2018): 206–20.
- Mermiri, Tina. "Arts Sponsorship: The Facts, Trends and Potential." *Journal of Sponsorship* 3, no. 4 (2010): 307.
- Musso, Alberto. "La Sponsorizzazione Come Contratto Commerciale." *Aedon*, no. 2 (2013): 9–19.
- Piergiovanni, Vito. "Norme, Scienza E Pratica Giuridica Tra Genova E L'Occidente Medievale E Moderno." *Annali Della Facoltà Di Giurisprudenza dell'Università Di Genova* 4 (1965): 230–75.
- Reed, Mary Hutchings. "Sponsorship and the Arts: A Brief Overview of Legal Issues for Not-for-Profits." *University of Miami Entertainment & Sports Law Review* 13 (1995): 9.
- Rotili, Manrica. "Che cosa è un'opera d'arte? : l'evoluzione del readymade a un secolo dalla sua nascita." In *Cose. - ( Sensibilia ; 6)*, 6:279–95. Milan: Mimesis, 2013.
- Schuster, J. *Supporting the Arts: An International Comparative Study. Canada, Federal Republic of Germany, France, Italy, Great Britain, Netherlands, Sweden, United States*. Edited by Massachusetts Institute of Technology. ERIC, 1985.
- Sgarbi, Vittorio. "Arte E Bellezza : Il Tesoro d'Italia." *Nuova Antologia*, 2014, 191–96.
- Stecker, R. "Definition of Art." In *The Oxford Handbook of Aesthetics*, edited by Jerrold Levinson, 136–54. Oxford: Oxford University Press, 2005.

- Trupiano, Gaetana. "Financing the Culture in Italy." *Journal of Cultural Heritage* 6, no. 4 (December 1, 2005): 337–43.
- Wilson, Martin. *Art Law and the Business of Art*. Edward Elgar Publishing, 2022.
- Zan, Luca, Sara Bonini Baraldi, and Christopher Gordon. "Cultural Heritage between Centralisation and Decentralisation." *International Journal of Cultural Policy* 13, no. 1 (February 2007): 49–70.