Treaties and EU Matters

European Union

Joanna Goyder*

1 Directive concerning VAT on Works of Art

1.1 Introduction

The Council of the European Union has, following fifteen years of discussion, adopted a Directive specifying how and to what extent transactions relating to works of art and second-hand goods should be subject to VAT.

The reason that special rules are necessary for such goods is that, if the VAT payable is calculated, as it is for new goods, on the price paid by the purchaser, then VAT is paid several times over on goods that change hands a number of times. In practice this is a problem of particular concern to dealers in antiques and artworks (as well as to second-hand car dealers). Until now, in most Member States VAT has been charged, in the case of an article being resold by the original purchaser, on the full resale price. Thus, since VAT will normally have been paid when the article was first purchased, it is being paid twice over. If the second purchaser then in turn resells it, VAT is paid yet again, and so on.

In order to remedy this situation, the new Directive essentially requires Member States as from 1 January 1995 to tax only the profit element of sales of second-hand goods and works of art.

1.2 The Directive

Council Directive 94/5/EC "supplementing the common system of value added tax and amending Directive 77/388/EEC – Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques"[1] was adopted on 14 February 1994. It is commonly referred to as the "Seventh VAT Directive".

The basic principle established in the Directive is that of taxation on the profit margin, where relevant goods are sold in the course of a business. (Transactions between private individuals are in any case exempt from any VAT requirements). For example, when an art dealer sells an engraving, the transaction will be subject to VAT only on the sum representing the difference between the price paid by the dealer when he bought it and the price he obtains on resale. If the resale price is lower than the previous purchase price, there will be no VAT to pay.

* Baker & McKenzie, Brussels.

https://doi.org/10.1017/S0940739195000130 Published online by Cambridge University Press

The tax will be charged in the seller's home Member State at the normal domestic rate. This rate currently varies across the European Union, from 15 per cent in Germany, Spain and Luxembourg to 25 per cent in Denmark.

1.3 Exceptions for Individual Member States

As a result of the difficulties encountered in trying to achieve agreement on this Directive, a large number of exceptions and transitional arrangements are included in the final text of the Directive.

One major problem stemmed from the reluctance of the United Kingdom to charge VAT on works of art, for fear of the damage that this might do to London as a world centre for the art trade, and this has been reflected in specific rules applicable only to the UK. A similar type of exemption was obtained for Germany, but for domestic sales only.

1.4 Specific Rules

Specific rules are provided to cover sales by auction houses, sales by artists (and their families and heirs) of their own works, and works of art imported from countries outside the European Union.

2 Proposed Directive on Articles of Precious Metal: Update

Following the opinion issued by the European Parliament at its sitting on 19 April 1994 on the proposal for a Directive on articles of precious metal,[2] the Commission has published an amended proposal.[3]

A number of amendments have been accepted by the Commission, including the suggestion that Member States should be required to establish controls at external borders in respect of articles arriving from third countries: a new article 2(2) has been added to the proposal covering this point.

However, several other amendments proposed by the Parliament were rejected, including the idea that the Directive should include provisions covering second-hand goods. The Commission consider this to be a matter of "national concern...in accordance with the principle of subsidiarity".

Notes

1 1994 OJ L 60/16.
2 Discussed in (1994) 2 IJCP p. 267.
3 COM (94) 267 of 30 June 1994, 1992 OJ C 209.

https://doi.org/10.1017/S0940739195000130 Published online by Cambridge University Press