**The Return to the Reduced VAT Rate Is Not a Tax Gift**
*by Birgit Maria Sturm*

**The following revised article by Birgit Maria Sturm was originally published on 26 November 2024 in WELTKUNST INSIDER, the (German) online briefing for the art industry (published by ZEIT Verlag).**

BVDG
KUNST
SCHAFFT
NEUES
DENKEN

On Friday, November 22, 2024, word spread like wildfire: from 2025, galleries and the art trade will once again be entitled to apply the reduced VAT rate. In its plenary session that day, the German Bundesrat (*lit.:* Federal Council; represents the sixteen federated states of Germany) voted on the so-called Annual Tax Act 2024, which had already been adopted by the German Bundestag (*viz.:* German federal parliament) on October 18, 2024 – fortunately before the government crashed – and contained a corresponding regulation.

The return to the reduced VAT rate is not a 'tax gift'. It puts an end to the unequal treatment of artists and galleries as well as the unequal treatment of the art market compared to other sectors of the cultural industry after dashing eleven years.

The reduced VAT rate has been used in Germany for decades to indirectly support creative artists and cultural enterprises. More than 10 years ago, the EU wanted to undermine this for – or rather: against – the art market for an unknown reason, as the 7% VAT for artists (as copyright owners) was retained at the same time. As the German government ignored the VAT directive, which would have been a fatal step for galleries and art dealers, a seemingly endless battle began in February 2012 when the EU threatened infringement proceedings.

The Federal Association of German Galleries and Art Dealers (BVDG - Bundesverband Deutscher Galerien und Kunsthändler) succeeded in convincing the then Minister of State for Culture, Bernd Neumann, to address the German art market for the first time ever. All efforts were made to at least achieve compensation. After countless conversations – including with the technical department of the Federal Ministry of Finance, then headed by Wolfgang Schäuble – a special margin tax was considered. The 'French model', which allowed for standard taxation of just 30 per cent of the sales price, was to be included in the 2014 tax bill. However, the finance ministers of the federal states under the direction of Norbert Walter-Borjans, who later became the leader of the SPD, crushed the plan to such an extent that it could no longer be applied effectively.

The pointless chaos implemented in the German art world came primarily at the expense of the galleries, whose proceeds melted away. Meanwhile, the EU member states with strong art markets simply retained the reduced VAT rate or concealed it. This was followed by the gradual disappearance of domestic galleries from 2014 onwards. A study in 2018 came to the bitter conclusion that 80% of the Berlin galleries answered ‘no’ to the question of whether they would take up their profession again.

Since then, the BVDG has been confronted almost daily with questions from its members, sometimes even from perplexed tax consultants. 19% or differential taxation – and how does that work anyway? Does it only apply to purchases and sales or also to consignments? And how does the artist's share measure up? Or is the agency model preferable? What do you do in the case of co-operations, when paying on commission – in Germany, in the EU or in a non-EU country? What about private customers or B2B? All of this in the combination with artists' social security contributions, deductions and tax differences across the other EU countries. There was no limit to the expansion of the complications.

In the meantime, the Cultural Property Protection Act and the obligations to prevent money laundering hit the art market and led to further imbalances. The activities of the BVDG began to shift. In times of need, an interest group of all cultural property associations was founded. And then Corona came along. All of a sudden, politicians began to realise that, in addition to the state-subsidised cultural sector, there is also entrepreneurial art mediation: meaning that galleries do fundamental cultural work, that their artworks do not go under the hammer for millions and that they play an important role in the economic existence and career of visual artists. And so, for the first time during the pandemic, there was significant support for galleries – and the BVDG stepped up its VAT activities in this setting: art galleries don't just need temporary help, they need sustainable, better framework conditions.

The claim "7 statt 19" (*lit.:* "7 instead of 19") – printed and distributed by the BVDG on buttons and posters since 2012 – now became ubiquitous and was heard by the Minister of State for Culture, Monika Grütters, who was able to bring about an amendment to the VAT Directive 2006/112/EC in 2020, the year of the German Presidency of the Council of the EU, under the flank protection of the Ministry of Finance. The amendment of April 2022 explicitly included ‘works of art’ on a list of goods that the EU allowed its member states to exempt from standard VAT rate. As such, the necessary legal framework was finally on the table.

However, there was no automatic mechanism for transposition into national tax law and the BVDG once again went ante portas. In what is now the fourth government constellation with new contacts at all levels, Minister of State for Culture Claudia Roth also made the 7% a priority, and the government draft on new tax regulations published on June 6, 2024 contained a corresponding paragraph.

The one hundred pages strong annual tax law claims to make life easier for many social groups – employees, care-workers and low-income earners as well as microbreweries and providers of photovoltaics. It is a positive legacy of the so called "traffic light" government (*in Ger.:* Ampelkoalition) and is based on national case law, EU requirements and the original tax policy plan of the now shattered government coalition.

The paragraph relevant to the art trade is hidden almost Illegibly in the chapter on the amendment of the VAT Act in a short line: "§ 12 (2) is amended as follows: a) In number


BVDG • Dessauer Str.32 10963 Berlin • www.bvdg.de post@bvdg.de • T 030 – 263 922 980 F 030 – 263 922 985

1, the words with the exception of the items referred to in number 49 letter f, numbers 53 and 54 are deleted."

Number 53 relates to works of art, number 54 to collector's items (number 49 f to stamps). These were excluded from the reduced VAT rate in the past eleven years. These exceptions have been cancelled. Thus, they are once again included in the catalogue of reduced-price goods.

No success without hardship. Photographs are still not favoured – regardless of their artistic quality. This also applies to works of art that were made using photographic techniques or are not "created entirely by hand", as the German Customs Tariff states. This includes, for example, serigraphs or offset prints. This anachronism has long been broken in France and Belgium, for instance, where artistic photography in small editions can be sold with reduced VAT rates.

Moreover, differential taxation can no longer be applied to works of art if the reseller's incoming turnover was subject to a reduced VAT rate (amendment to VAT Law/UstG § 25a para. 7, no. 1c - new).

And finally, while France will use the lowest possible rate of 5.5%, the reduced VAT rate has apparently not been introduced in some other European countries. The BVDG will be able to comment on the consequences and further details as soon as reliable information is available.

But first things first: now it is important to await and view the publication of the so-called "application order" by the Federal Ministry of Finance for the purpose of uniform administration of the new regulations throughout Germany. This should happen by the turn of the year 2024/25 at the latest.


BVDG • Dessauer Str.32 10963 Berlin • www.bvdg.de post@bvdg.de • T 030 – 263 922 980 F 030 – 263 922 985