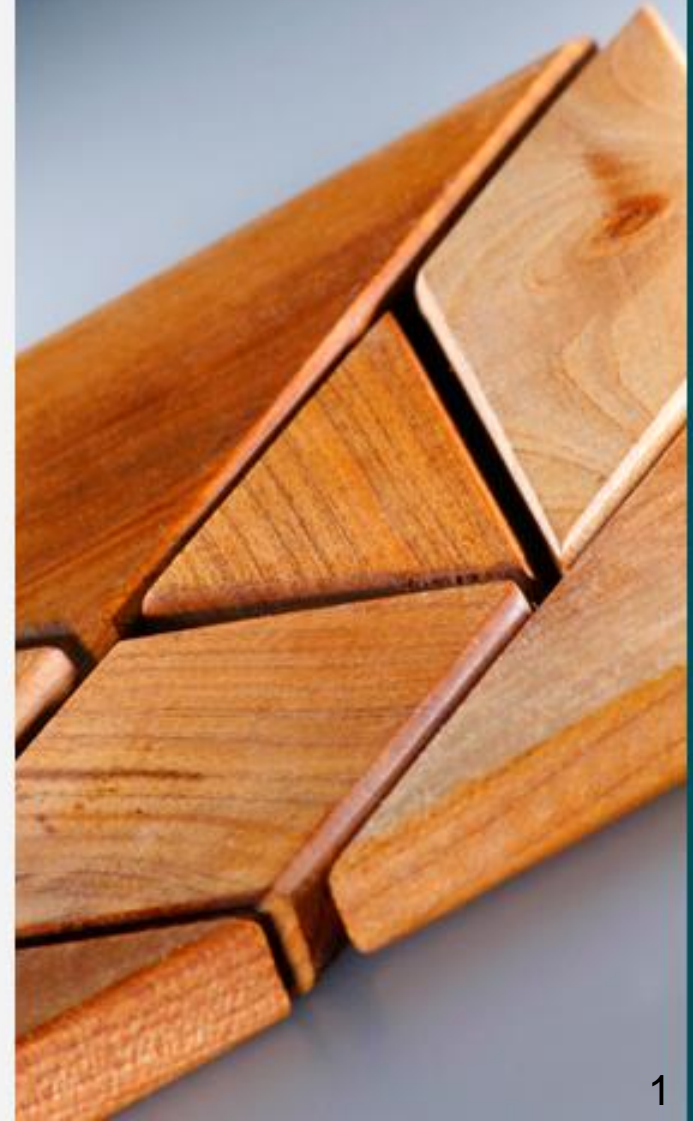


## **Works of art: taxed or not taxed?**

- 1. Receiving / inheriting works of art:  
gift / inheritance taxes?**
- 2. Holding works of art: fortune taxes?**
- 3. Selling works of art: income taxes?**
- 4. VAT?**
- 5. CH – F inheritance issues**





# 1. Receiving / inheriting works of art: gift / inheritance taxes?

- **Cantonal** tax: different for each canton.
- Competent canton in principle determined by domicile of donor / deceased.
- Tax rates dependent on degree of kinship between donor and recipient / deceased and heir.
- Tax calculated on basis of the value of the art work - in principle **market value**.  
Valuation? Insurance value – auction catalogue value – experts?
- Some cantons do not levy inheritance or gift taxes on **household**.  
VD: household is valued at 50% of the fire insurance value.  
Can a work of art be considered as household? ( see below fortune taxes).



# 1. Receiving / inheriting works of art: gift / inheritance taxes?

- **Transfer in lieu of payment** of taxes («dation en paiement»).
- **Gifts to institutions:**
  - Gift / Inheritance tax exemption for transfers to non for profit organizations or institutions of public utility
  - Income tax: gifts, also in kind, to tax exempt institutions engaged in charitable activities are deductible from taxable income (up to 20% of net taxable income for federal tax purposes).



## 2. Holding works of art: fortune taxes?

- Swiss **Federal** Act on the Harmonization of Direct Taxes of Cantons and Municipalities (Tax Harmonization Act).
- **Principle**: net assets of taxpayer are subject to **cantonal fortune tax** => also art works.
- **Exceptions**:
  - “household effects” and “personal belongings of common use” are exempt from fortune tax.
- No limit in value.
- Works of art held as business assets (by a self-employed professional trader) are always subject to fortune taxes.



## 2. Holding works of art: fortune taxes?

- **Household effects** used for furnishing: everything in the house, e.g. furniture, carpets, paintings, silverware, books, etc.
- **Personal belongings** of common use: clothes, jewelry, watches,...
- Can work of art be considered as household effect and be **exempt** from wealth tax?
- Main criterium: does the individual taxpayer hold the object for his **personal use** or as an **investment**?
- Burden of proof that work of art is to be considered as household effect or personal belonging lies with the tax payer.



## 2. Holding works of art: fortune taxes?

- **Cantonal** tax: fortune tax exists in all cantons, but cantonal legislations and interpretations may differ, within limits set by Tax Harmonization Act.
- **GE** cantonal GE legislation expressly excludes from fortune taxes “furnishing furniture (“meubles meublants”, including artistic and scientific collections”:
  - => Works of art furnishing the owner’s living quarters are not subject to fortune taxes, whatever their value is;
  - => Works of art in a safe or in a warehouse are subject to fortune taxes.
- **VD**: tax administration’s practice is that art works from well known artists are subject to fortune taxes.
- **ZH**: ZH case law takes into consideration value of the art work to determine whether it is subject to or exempt from fortune taxes (limit of CHF 150’000).



## 2. Holding works of art: fortune taxes?

- If a work of art is subject to fortune tax, at what **value** will it be taxed?
- Tax Harmonization Act: "market value".
- But: market does not exist or is not liquid, work of arts are unique, market prices are volatile
  - ⇒ insurance value? Sales prices of comparable works of art? Expert valuation?
- N.B. If the value reported by the tax payer in his tax return is accepted by the tax authorities, the tax assessment can not be re-opened, and there is no issue of tax evasion.
  - ⇒ Better report all works of art in all tax returns, even pro memoria!



### 3. Selling works of art: income taxes?

- Capital gains on sale of **private** wealth assets are tax **exempt** from income taxes.
- Capital gains on sale of **business** wealth assets are subject to income taxes (federal, cantonal and communal) and social security contributions, as **taxable** income from a self-employed activity.
- Taxation depends on qualification of the sale:
  - sale of cultural goods = management of private wealth
  - => capital gain is tax free
- vs
- sale of cultural goods = professional trading in cultural goods (self-employed activity)
- => capital gain is taxable income.





### 3. Selling works of art: income taxes?

- **5 criteria** – not cumulative, 1 criterion being sufficient to qualify what was assumed to be management of private wealth as professional activity:
  - systematic and planned character of the transactions;
  - frequency of transactions and short holding period;
  - link with the professional activity of the tax payer (specific business know how);
  - foreign financing;
  - use of the proceeds, in particular their reinvestment in other works of art.
  
- Case law of Federal Court:
  - wine collection
  - sale of vintage posters
  - sale of part of a Giacometti statue.



## 4. VAT?

- **Selling works of art: VAT?**
- A taxable person for **VAT** purposes is any person that, irrespective of an intention to make profit, but with the aim of **sustainably** earning income from supplies, **carries on a business** and is not exempt from tax liability.
- Exemption from tax liability if turnover on Swiss territory of < CHF 100'000.
- VAT will have to be transferred on the final consumer by the VAT tax payer.
- A person that does **not sustainably carry on a business** is **not** a taxable person for **VAT** purposes.
- Is sale of works of art a business activity or a private activity?



## 4. VAT?

- **Importing works of art: VAT?**
- **Import**, export and transit of cultural goods is subject to a **declaration** at customs.
- **Principle**: any import of goods on Swiss territory is subject to Swiss **import VAT of 8%**.
- **Exception: exemption from Swiss VAT**:
  - Works of art that were personally created by painters or sculptors and are brought onto Swiss territory by them or on their behalf;
  - Household effects: use for the personal or business use of the immigrant upon Swiss territory – use of at least 6 months before immigration;
  - Inheritance effects: deceased abroad and heir on Swiss territory;
  - Artworks and other items to be exhibited in a museum.
- If VAT is due upon importation, calculation is based on the market value



## 5. CH – F inheritance issues

- 1953 CH – F double taxation convention on inheritance taxes provided that :
  - inherited goods are taxable in the State of the deceased's last domicile, except:
  - real estates in the State of location;
  - «furnishing furniture, as well as art collections and works» in the State of location.
- 1953 CH – F double taxation convention has been terminated by France in 2014.
  - => Swiss and French **domestic rules only** apply to inheritances of persons deceased as of 01.01.2015.
- Clear risk of **double taxation!**



## 5. CH – F inheritance issues

### ➤ Deceased and heirs resident in Switzerland – work of art located in France

- **CH** cantons having inheritance taxes are competent to levy inheritance taxes on **all mobile goods** belonging to the deceased if he had his last domicile in the canton  
=> also on art works, wherever located.
- **France** is competent to levy inheritance taxes on all **goods located in France** («actifs français»), even if deceased and heir are domiciled abroad  
=> also on art works located in France.
- CH will not grant exemption on works of art located in France, and France will not grant tax credit for Swiss inheritance taxes paid on works of art located in France.  
  
=> potential risk of double taxation
- Eg. inheritance between unmarried partners domiciled in VD:  
VD 50% + F 60% inheritance tax = 110% inheritance tax!



## 5. CH – F inheritance issues

### ➤ Deceased resident in Switzerland - heirs resident in France – work of art located in France

- **CH** cantons having inheritance taxes are competent to levy inheritance taxes on **all mobile goods** belonging to the deceased if he had his last domicile in the canton  
=> also on art works, wherever located.

- **France** is competent to levy inheritance taxes on all **goods received by heirs domiciled in France**  
=> also on art works, wherever located (French domestic law).

CH will not grant exemption on works of art, wherever located, and France will not grant tax credit for Swiss inheritance taxes paid on works of art located in France.

=> potential risk of double taxation

- Eg. inheritance between unmarried partners, and deceased was domiciled in VD:  
VD 50% + F 60% inheritance tax = 110% inheritance tax!



**Thank you for your attention**

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