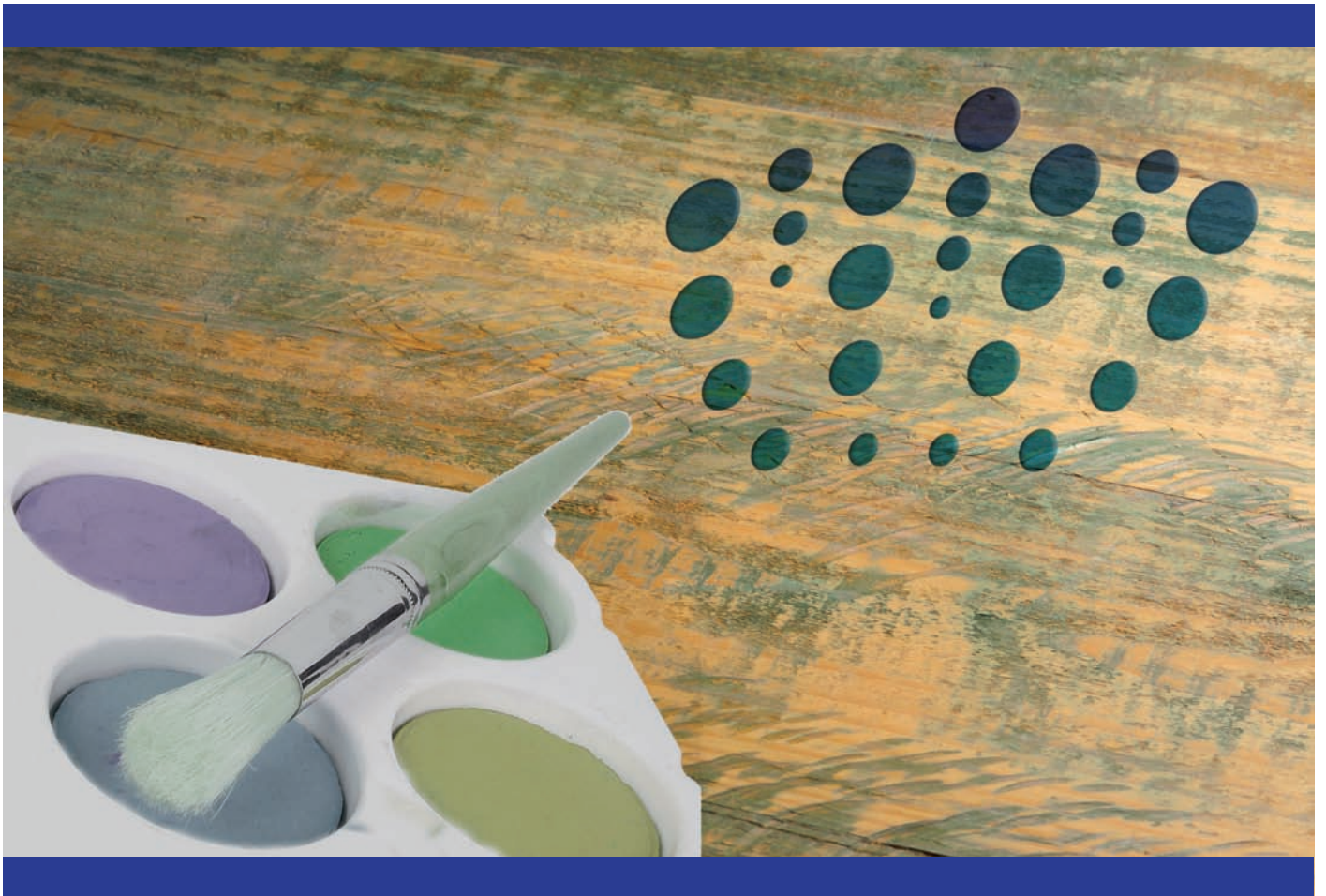




Guidance for Business on Artist's Resale Right



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Introduction

Artist's resale right (ARR) is an EU right introduced into the UK in 2006. This intellectual property right entitles certain artists and their successors in title to a royalty, for a limited period of time, each time their art work is resold through an art market professional such as a gallery, art dealer or auction house. This guidance covers the following issues:

Who is entitled to this royalty?

Which works of art are subject to resale right?

To which sales does this right apply to?

What does 'sale price' mean?

Does this right apply only in the EU?

How are royalties calculated?

How are royalties collected?

Do royalties attract VAT payments?

Who is entitled to this royalty?

This royalty is payable to a qualifying artists of the work and, after their death, to their successor(s) in title. The artist must be a national of an EEA state at the time of sale (or at the time of their death); or a national of a state whose legislation permits resale right protection for authors from EEA states and their successors in title (the reciprocity principle).

Which works of art are subject to resale right?

Resale right is payable on sales of works which are still within copyright at the time of sale. The term of copyright for artistic works expires at the end of the period of 70 years from the end of the calendar year in which the artists dies.

Making use of an option available under EU law, the UK implemented this right in two stages. When it was first introduced in February 2006, ARR applied only to sales of art works by living artists. In accordance with the terms of the EU directive, from January 2012 this right was extended to cover sales of in copyright art works by deceased artists as well.

All the usual works of art are covered, such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, ceramics, glassware, tapestries and photographs. Works must be "original" i.e. made by the artist himself. However, copies may also be subject to ARR to the extent that they are made in limited numbers by the artist himself or under his authority.

To which sales does this right apply?

For this royalty to be payable the art work must be resold for €1000 or more in the UK (different thresholds apply in other EEA countries).

Some sales are exempt. For example, where the work was purchased directly from the artists less than three years previously and it is being resold for €10,000 or less. This is generally known as the "bought as stock exception".

Sales between private individuals, without the use of an art market professional, or to public, non-profit making museums do not attract royalty payments.

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What does 'sale price' mean?

The "sale price" is the price the work is advertised for, net of tax. Therefore, it will be the ticket price in a gallery or the hammer price at an auction.

Does this right apply only in the EU?

No. This right also applies in EEA countries (Liechtenstein, Norway and Iceland) and in some other countries where this right is recognised by their national law.

How are royalties calculated?

Royalties are calculated in Euros (€). They are tiered and use a sliding scale of percentages of the sale price from 4% decreasing to 0.25%:

Royalty	... For the portion of the resale price
4.00%	... up to €50,000
3.00%	... between €50,000.01 and €200,000
1.00%	... between €200,000.01 and €350,000
0.50%	... between €350,000.01 and €500,000
0.25%	... in excess of €500,000

This scale is also cumulative in much the same way as income tax is calculated. For example, the royalty payable for an art work sold for €200,000 would amount to €6,500. This is made up of:

- 1st tier 0- €50,000 will attract a royalty of 4% i.e. €2,000
- 2nd tier €50,001 - €200,000 will attract a royalty of 3% i.e. €4,500

Royalties are also capped so that the total amount of the royalty paid for any single sale of a work cannot exceed €12,500.

How are royalties collected?

Resale right in the UK is managed by collecting societies who then distribute the royalty to the artists. Individual artists cannot request payments directly from the art market professionals involved in the sale.

For more information about the administration of artists' rights you can contact the Design and Artists Copyright Society (DACS) www.dacs.org.uk or Artists Collecting Society (ACS) www.artistscollectingsociety.org.uk

Do resale royalties attract VAT payment?

No. ARR is exempt of VAT.

Disclaimer

This guidance has no legal force. It is intended to help businesses and users understand the effects of ARR in the UK and therefore it should be read in conjunction with implementing legislation including Directive 2001/84/EC; The Artist's Resale Right Regulations 2006 (S.I. 2006/346); the Artist's Resale Right (Amendment) Regulations 2009 (S.I. 2009/2792) and The Artist's Resale Right (Amendment) Regulations 2011 (S.I. 2011/2873). Copies of the Directive and Regulations can be found at Her Majesty's Stationery Office www.opsi.gov.uk/stat

General information about copyright law can also be found on the Intellectual Property Office website www.ipo.gov.uk or you can direct your inquiries to our Information Centre on 0300 300 2000.

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Revised: January 12

DPS/I100/01-12



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