KMLZ

VAT'S UP

VAT NEWSLETTER

Annual Tax Act 2024: Changes for coin dealers, art dealers and gallery owners

52 I 2024

1 Background

Coin dealers, as well as art dealers, antique dealers and gallery owners, are facing extensive VAT changes from 1 January 2025. On the one hand, the Annual Tax Act 2024 provides for changes to the margin scheme under sec. 25a of the German VAT Act (UStG). On the other hand, the legislator has caved in to pressure from the sector and (re)introduced the reduced VAT rate for works of art and collectors' items in accordance with sec. 12 para. 2 UStG. In doing so, the legislator is transposing Union law into national law.

2 Changes within the margin scheme

There are three main changes to the law on the application of the margin scheme according to sec. 25a UStG which will take effect from 1 January 2025, but only one of them will ultimately have any real practical impact:

- The first amendment affects sec. 25a para. 1 no. 2 lit. a UStG and is for editorial purposes only. It clarifies that the margin scheme may be applied if the supplier does not owe VAT to the reseller for his supply of goods or if VAT is not levied due to his small business status in accordance with sec. 19 UStG. In the future, supplies carried out by the small enterprises will be VAT exempt (see KMLZ VAT Newsletter 51 | 2024). With regard to sec. 25a para. 1 no. 2 lit. a UStG, this means that small enterprises will no longer be liable for VAT due to the VAT exemption. Consequently, the legislator has deleted the wording that VAT is no longer to be levied under sec. 19 UStG.
- The second change, which is highly significant in practice, concerns the exclusion of the margin scheme. In the future, the margin scheme under sec. 25a para. 7 no. 1 lit. c UStG (new version) will also be excluded "*in the cases of para. 2,*

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if a reduced VAT rate has been applied to the supplies preceding the supply of goods by the reseller". In practice, this applies to cases in which the reseller has imported the goods from a third country and applies the reduced VAT rate to the importation. This means that the requirement of the two-stage valuation procedure for coins imported by a taxpayer (1st stage: presence of a collector's item and 2nd stage: exceeding the 250% limit) is now accompanied by the exclusion of the margin scheme for direct acquisitions from third countries. Coin dealers will therefore now be punished twice in third-country cases. However, according to the wording, this legislative amendment does not apply to cases of sec. 25a para. 1 UStG, e.g. for items such as coins or works of art purchased from private individuals in Germany or from dealers in other EU Member States. In domestic and EU cases, therefore, everything remains the same and the margin scheme can continue to be applied.

- The third change concerns the removal of customs tariff number 7118 in number 54 letter c double letter cc of appendix 2 UStG. In this respect – and this is also evident from the official justification for the law on the Annual Tax Act 2024 – it is an editorial change, so that no fundamental changes to the margin scheme will result from it. Number 54 of Appendix 2 to the German VAT Act describes both – items, that may be subject to the margin scheme in accordance with sec. 25a para. 2 no. 1 UStG (direct import), and imported items, that are subject to the reduced VAT rate in accordance with sec. 12 para. 2 no. 12 UStG in its version valid until 31 December 2024. According to no. 54 letter c of Appendix 2, the objects include collectors' items of numismatic value. However, for the purposes of practical application, the legislator does not refer to the explanatory notes on the customs tariff but rather defines the term in the double-letter codes itself.

3 Reduced VAT rate in the case for works of art and collectors' items

According to the new regulation in sec. 12 para. 2 no. 1 UStG, the supply, the intra-Community acquisition and the importation of goods consisting of works of art and collectors' items will be subject to the reduced VAT rate. The legislator previously introduced the reduced VAT rate for works of art and collectors' items prior to 2013 but abolished it again as of 1 January 2014. Now, the legislator is reacting to the restriction of the margin scheme under sec. 25a UStG and reintroducing the reduced VAT rate on supplies of works of art and collectors' items. However, in contrast to the regulation in force until 31 December 2013, the reduced VAT rate does not apply to the rental of works of art and collectors' items.

4 Consequences for the practice

The legislative changes have significant implications for the supply chains of coin dealers, art dealers, antique dealers and galleries. These dealers should re-evaluate their supply chains from a VAT perspective and check whether the margin scheme is applicable. Often, a supply chain restructuring will prove useful in optimising businesses dealing in art objects, antiques and coins. A distinction must be made here between goods imported from third countries and goods purchased from the EU or domestically. The exclusion of the margin scheme for coins and works of art imported at the reduced VAT rate means additional work and a change in business models for the coin and art trade. It is a small consolation that the legislator has now, at the same time, also reduced the VAT rate for the supply of goods that have now been excluded from the margin scheme. There is no longer any unequal treatment between gallery owners and dealers, on the one hand, for whom the regular VAT rate essentially applied, and the artists themselves, on the other hand, for whom the reduced VAT rate applied.

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