

Galerie Karsten Greve

v

Ministère de l'Économie, des Finances et de la Souveraineté industrielle et numérique

(Request for a preliminary ruling from the Conseil d'État (France))

Judgment of the Court (Fourth Chamber) of 1 August 2025

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Special arrangements for second-hand goods, works of art, collectors' items and antiques – Taxable dealers – Margin scheme – Article 316(1)(b) – Option to apply the margin scheme – Concept of 'supply of a work of art by the creator' – Supply by the creator through a legal person)

Harmonisation of fiscal legislation – Common system of value added tax – Special arrangements for taxable dealers – Margin scheme – Right to opt for application of that scheme – Scope – Supply of works of art supplied as an input by the creator or his or her successors in title – Input supply through a legal person – Included – Conditions – Supply that can be attributed to the creator or his or her successors in title and that constitutes the first introduction of those works of art onto the EU market

(*Council Directive 2006/112, Art. 316(1)(b)*)

(see paragraphs 32, 39-47, 49, operative part)

### Résumé

Hearing a request for a preliminary ruling from the Conseil d'État (Council of State, France), the Court of Justice confirms in that judgment that the special arrangements for value added tax (VAT) for the resale of works of art acquired from their creators also applies where the work of art at issue has been supplied by its creator acting through a legal person and specifies the conditions for the application of those arrangements.

Galerie Karsten Greve ('GKG') operates as an art gallery and supplied to its customers, inter alia, paintings by the painter Gideon Rubin, which it had itself acquired from Studio Rubin Gideon ('SRG'), a company incorporated under United Kingdom law of which Mr Rubin is one of the two partners. In the context of the supply of those paintings to its customers, GKG applied the margin scheme.

Following tax procedures, the French tax authorities issued GKG with additional assessments for VAT, on the ground that the margin scheme could not apply to that supply.

Following the dismissal of its application for cancellation of the additional tax assessments by the French courts of first instance and appeal, GKG brought an appeal on a point of law before the Conseil d'État (Council of State), which is the referring court. That court states, inter alia, that national law makes it possible to opt for the special margin scheme for the supply of works of art resulting from a supply carried out by their creator or his or her successors in title and for supply resulting from an intra-Community acquisition of such works from their creator or his or her successors in title. ( [1](#) ) In the present case, the paintings at issue had not been supplied to GKG by their creator, namely the artist Gideon Rubin, who had painted them by hand, but by SRG which, in its capacity as a legal person, could not, according to the Conseil d'État (Council of State), be regarded as the creator of those paintings.

In those circumstances, the Court considers that the referring court is asking, in essence, whether Article 316(1)(b) of the VAT Directive ( [2](#) ) must be interpreted as meaning that the supply by taxable dealers of works of art supplied to the taxable dealer by the creator or his or her successors in title acting through a legal person falls within the scope of that provision and, if so, under what conditions.

## *Findings of the Court*

The Court finds, first of all, that the wording of Article 316(1)(b) of the VAT Directive does not specify the detailed rules for the supply of works of art by their creator or his or her successors in title to taxable dealers. However, the supply of works of art is part of the commercial activity of the creator or his or her successors in title, which consists of the transfer, generally for remuneration, of the right to dispose of tangible property as owner.

Accordingly, the wording of Article 316(1)(b) of the VAT Directive does not expressly preclude a creator or his or her successors in title from carrying out such a supply through a legal person or such a supply from being carried out by a legal person.

An interpretation of Article 316(1)(b) of the VAT Directive which excludes from its scope all of the supply by taxable dealers of works of art supplied to the taxable dealer by creators or their successors in title acting through legal persons could undermine the objectives pursued by the VAT Directive and by Article 316(1)(b) thereof, of ensuring fiscal neutrality, avoiding distortions of competition and promoting the introduction of new works of art onto the market of the European Union. The specific objective of Article 316(1)(b) of the VAT Directive is, first, to promote the introduction onto the EU market of new works of art by providing for favourable tax treatment for the importation of such works, for their first supply after creation and for the first supply of those works by taxable dealers, and, second, to limit the administrative burdens of proof for taxable dealers, in particular, as regards whether or not the purchase price of a work of art includes input VAT, and of verification for the tax authorities of the Member States.

In that regard, when they supply works of art to taxable dealers, the creators of those works of art or their successors in title carry out identical transactions from the point of view of levying VAT, whether they carry out such supply as natural persons or through legal persons. The principle of fiscal neutrality precludes economic operators carrying out the same transactions from being treated differently in relation to the collection of VAT.

Furthermore, different treatment depending on the legal form in which the creators or their successors in title act would be likely to result in the collection of VAT at different rates for identical transactions <sup>(3)</sup> and to distort competition between taxable dealers carrying out the same transactions for the acquisition and resale of works of art, in that they would be treated differently as regards the possibility of opting for the application of the margin scheme, depending on whether those works were supplied to the taxable dealer by the creator or his or her successors in title acting through a legal person or not.

For those reasons, the Court considers that Article 316(1)(b) of the VAT Directive also covers the supply by a taxable dealer of works of art supplied to the taxable dealer by a legal person, provided, however, that the supply of those works of art by that legal person to that taxable dealer can be attributed to the creator or his or her successors in title, which may be presumed where, as in the present case, the legal person was established by the creator or his or her successors in title for the purpose of marketing the works of art created by the creator.

Furthermore, in accordance with the specific objective of Article 316(1)(b) of the VAT Directive, the supply of works of art to a taxable dealer by their creator acting through a legal person must constitute their first introduction onto the EU market, which requires that that legal person have the right to dispose of those works as an owner from their creation or at the time of that first introduction onto the EU market, where they have not been previously supplied subject to VAT.

Since those two criteria have been fulfilled, the supply at issue falls within the scope of Article 316(1)(b) of the VAT Directive and allows a taxable dealer to opt for the margin scheme.

Lastly, the Court makes clear that the application of criteria such as the legal person being subject to a special legal regime, the natural person who has created a work of art holding all or part of the share capital of that legal person and that natural person exercising management functions within that legal person and/or transferring a substantial part of the proceeds of sale to that natural person, could create excessive burdens in terms of proof and verification, thereby undermining the objective of Article 316(1)(b) of the VAT Directive.

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<sup>(1)</sup> Paragraph 2 of Article 278*septies* of the code général des impôts (General Tax Code), in the version applicable to the tax period in question, read in conjunction with Article 297 B of that code.

(<sup>2</sup>) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ 2006 L 347, p. 1](#); ‘the VAT Directive’).

(<sup>3</sup>) See, in that regard, Article 103(2)(a) and (b) of the VAT Directive.