

VAT and Artists

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Introduction to VAT

It should be noted from the outset that this text is a simple guide to VAT general rules and administration. Where large sums are involved it is in the interest of the artist to seek specialist advice especially in respect of larger commissions and particularly if that commission is in another EU country.

There is a huge amount of Revenue and EU legislation on VAT, which makes it a very complicated subject, where large amounts are involved the artist should always seek specialist advice.

Background to VAT

Value Added Tax is a European Tax, and every member state of the European Union must have a system of VAT which is compatible with European legislation.

VAT was introduced to Ireland on 1st November 1972

The primary Irish legislation is the VAT Act 1972. The VAT act is amended every year in the Finance Act.

The VAT Act lays down all the basic rules of the tax.

The secondary legislation is made up of VAT regulations and orders. The regulations are provided for in the primary act and are signed by the Revenue Commissioners. They have full statutory effect.

The European legislation governing VAT is contained in the 6th EC VAT Directive of 1977. This sets out the fundamental principles of VAT and is an attempt to harmonise the laws of EU member states relating to turnover taxes.

The Directive outlines to Member states the principle to be adopted and each state implements these principles into its own national legislation. There are a number of other directives, which also relate to VAT.

VAT Registration

Requirement to Register

In Ireland you are subject to VAT if you are self employed or work on a freelance basis and have sales in excess of the following thresholds: The threshold for registration is €37,500 for services and €75,000 for

goods. If the income from your business activity exceeds these limits within any 12-month period it is necessary for you to register for VAT.

Artists can be deemed to be selling goods or services, it depends on what type of work you are doing. If you sell works – for example a painting – this is considered a sale of goods, and the €75,000 income threshold will apply.

You may also provide some ‘services’ which include restorations or admission fees – for example if you charge a fee to your exhibitions. Performance artists are generally providing services. Writers are also deemed to be providing a service.

The table below shows a list of selected art related activities deemed to be either goods or services. You will find more information in the Applicable VAT rates section below.

Goods	Services
Selling a painting or sculpture	Facilitating workshops or art classes *
Selling catalogues of your work	Giving a talk or presentation*
Sales of prints	Giving a performance
Undertaking a private commission***	Sales of video / new media artwork **
	Undertaking a public commission ***

* This activity is considered a service, but is generally VAT exempt and not applicable to the threshold.

** This activity is considered a service in the creative context. A video retailer is selling goods, but a person who is commissioned to make a video or a piece of media art is providing a service. A person who creates a piece of media artwork and regulates where it can be shown is providing a service. A person who makes their own videos and sells the videos independently is selling goods.

***These activities can be considered either goods or services. It depends on what is being commissioned. Where there is any doubt in your mind you should contact your local Revenue VAT district and seek clarification.

Option to Register

If your turnover is below these limits you can opt to register for VAT should you wish to do so. The advantage of being VAT registered is that you can reclaim VAT on your business costs, however this means that you also have to charge VAT on your income.

If your customers are VAT registered and entitled to reclaim VAT charged to them on the service provided then this option can be favourable. Where your customers are not able to reclaim the VAT it results in the service or goods being more expensive for your customer, and may have a negative impact on your sales.

How to register – TR1

If one of the following applies;

1. You are registered for [PAYE Anytime](#)
2. You are registered for the [Revenue Online Service \(ROS\)](#)
3. You are represented by a Tax Agent (accountant or tax advisor)

Then you must use the Revenue eRegistration Service ([details here](#)) to apply for a VAT registration. This must be done via ROS, which you can register for [here](#). Once you have ROS up and running you can set up your VAT registration and manage your tax affairs using the service.

If none of the above three scenarios apply to you then you can complete a paper form TR1 – in the case of individuals or partnerships, or a TR2 – in the case of companies. The TR1 is available from the Revenue website [here](#). It is necessary to provide Revenue with bank account details to register, as they will only issue VAT refunds electronically.

When you can De-register

If you decide to stop being a practising artist for whatever reason you should deregister for VAT. This can be done easily via ROS, or by cancelling your registration by arrangement with the local inspector of taxes. Note that if you deregister Revenue assess the VAT that you have reclaimed on goods and services sold to you, and if this has not resulted in a work being produced and sold by yourself, they can ask for this money back.

Similarly, a person whose turnover has fallen below the appropriate turnover threshold may have the registration cancelled.

A person ceasing to trade should cease all taxes via ROS, or notify the inspector of taxes of this fact, so that the VAT registration number can be cancelled without delay. This is important to note, otherwise return forms and demands for estimated VAT liabilities will continue to be issued automatically.

Artist Exemption doesn't apply to VAT.

In cases where Artist Tax Exemption has been granted it is important to note that this applies to income tax only. The exemption does not extend to VAT.

Selling your work outside of Ireland

Some artists might sell their work outside of Ireland. If these sales are made to another EU country then you may be required to register for VAT in that EU country, regardless of whether you are VAT registered in Ireland or not. A list of EU Member States can be found [here](#).

1. Distance Sales

A sale is considered a "distance sale" if the goods are dispatched or transported from Ireland to a customer in another EU Member State, who is not registered for VAT. As art is quite often sold to

individuals for private use then this would normally be considered a distance sale.

If you are registered for VAT in Ireland then you must charge Irish VAT on all distance sales as normal. However if your distance sales to a specific EU Member State reach a certain threshold then you must register and account for VAT in that Member State, as opposed to Irish VAT. A list of the relevant thresholds can be found [here](#). For example, the threshold for UK VAT registration is £70,000 Stg. This means if you make more than £70,000 worth of distance sales to the UK in a twelve month period then you must register for and apply UK VAT to all UK distance sales.

More information on distance sales can be found [here](#).

2. Sales to VAT registered traders in another EU country

These are known as “Intra-Community Supplies”. If you are registered for VAT in Ireland then sales of artwork made to VAT registered traders in another EU country can be “zero rated” if the following conditions are satisfied;

- the customer is registered for VAT in that other EU Member State
- the customer’s VAT registration number (including country prefix) is obtained and retained in the supplier’s records
- this number, together with the supplier’s VAT registration number, is quoted on the sales invoice
- the goods are dispatched or transported to that other Member State.

Note that this also applies to goods/materials moving in the opposite direction. If you are VAT registered in Ireland then you should not get charged non Irish VAT on goods purchased from other EU countries. If you provide your supplier with your Irish VAT number this should be enough to zero rate the VAT.

Intra-Community supplies are dealt with in more detail later in the article, and Revenue offer some guidance [here](#).

3. Selling from within another EU country

If you sell your work from a location in another EU Member State (for example an art gallery) then there is a chance you will need to register for VAT in that country, regardless of whether or not you are registered for VAT in Ireland. For VAT purposes you are considered to be making taxable supplies in that country, and in most cases you must register for and charge VAT in that EU country.

Since 1st December 2012 if you sell *any amount* of goods within the UK you must register for and charge UK VAT at 20% on all UK sales. This means if you are selling your artwork from a UK location, you must register for and account for UK VAT on all such sales.

This abolishment of registration thresholds is common throughout the EU. If you are making sales from within another EU country then it is recommended that specialist tax advice is sought.

Note that in some cases an artist might sell their work directly from Ireland to a gallery in another EU country. As ownership is transferred to the gallery the responsibility of VAT in that EU country lies with

them, and not the artist. Normal Intra-Community or Distance Sales rules (1 & 2 above) will apply to the selling of work to the gallery, which might avoid the artist having to register for VAT in the EU country to which the sale is being made.

4. Sales made outside of the EU

Any sales made to countries outside of the EU, whether dispatched from Ireland or sold from within the non-EU country, is outside the scope of VAT. This means that there is no need to charge VAT, Irish or other, on any sales made to or taking place outside of the EU.

The article from here deals mainly with Irish VAT. For artists who sell their work outside of Ireland and within the EU it is recommended that specialist tax advice is sought.

General Rules:

Charging VAT on Sales

Once you are VAT registered it is necessary to charge VAT on your sales. The rate of VAT charged depends on the goods or service you provide. The applicable VAT rates are 0%, 13.5%, 9% and 23%. These rates are occasionally changed by Finance Acts.

Most artists will have to charge VAT at 13.5% on sale their work. For admissions to cinemas, theatres, certain musical performances, museums and art gallery exhibitions the applicable rate of VAT has been reduced to 9% since 1st January 2011. More details on the applicable VAT rates are included below.

Claiming VAT on Expenses

The VAT that is charged on your income must be paid over to the Revenue Commissioners. From the VAT payable on your sales you may deduct the VAT charged on most goods and services that are used for the purposes of your taxable business. No deduction may be made for the VAT on goods and services used for any other purpose e.g. personal use. The purchases must be in "the course or furtherance of business".

Restricted expenses: A situation may arise where a portion of the purchases may be for the purposes of your taxable business and the remaining portion for your private use.

Example: Electricity, telephone charges & heating expenses where the business is carried on from your private residence. It can also arise that inputs may be used for both taxable and non-taxable activities. In such cases, only the amount of VAT that is appropriate to the taxable business is deductible. In practice this normally works by apportioning a percentage of the bills to your business.

If you use your car (if it is a diesel engined car) or have a van for business use you can claim back the VAT charged on your diesel bills but you must note that you cannot claim VAT on petrol even if you use a petrol engine car to transport your works.

Non-deductible expenses: You may not deduct VAT on any of the following, even when the goods and services in question are required or used for the purposes of your taxable business:-

- You can't reclaim VAT charged to you on restaurant or hotel bills or other personal services, for you – the taxable person -, your agents or employees, except to the extent, if any, that such provision constitutes a supply of services in respect of which he or she is accountable for VAT.
- expenditure incurred by you on food or drink, or accommodation or other entertainment services, where such expenditure forms all or part of the cost of providing an advertising service in respect of which tax is due and payable by you.
- entertainment expenses incurred by you – the taxable person – , your agents or employees
- the acquisition (including hiring) of passenger motor vehicles otherwise than as stock-in-trade (that is, for resale) or for hire in a vehicle hire business or for use giving driving instruction in a driving school business
- the purchase of petrol otherwise than as stock-in-trade

As a general rule, if registered persons are not entitled to a credit on the purchase of goods for use in their business, they are not liable for VAT on the sale of such goods.

Self Supplies

A "Self Supply" occurs when a taxable person uses goods or materials for a personal i.e. non-business use. If VAT has been reclaimed on the original purchase of the goods then it must be repaid to Revenue.

Example: if you produce a work but decide that instead of selling it that you will hold onto it for yourself or even make a gift of it to someone then you have to pay back to the Revenue any VAT that you have reclaimed on materials and other costs associated with making that work.

Administration

The information given on invoices and credit notes normally establishes the VAT liability of the supplier of goods or services and the entitlement of the customer to a deduction, where applicable, for the VAT charged. It is therefore vital that these documents are properly drawn up and carefully retained.

Requirements of a VAT invoice

A taxable person who supplies taxable goods or services to another taxable person is obliged to issue a VAT invoice showing the following particulars:

- the name and address of the trader issuing the invoice
- the trader's VAT registration number
- the name and address of the customer
- the date of issue of the invoice
- the date of supply of the goods or services

- a full description of the goods or services
- the quantity or volume of the goods supplied
- the consideration exclusive of VAT expressed in euro
- the rate (including zero rate*) and amount of VAT at each rate.

*Zero Rated intra-Community Supplies (more on this below):

Where you sell your works to the UK or install works in the UK (including Northern Ireland) or any other EU country special rules apply. These rules say that you must, in addition to the above, show the VAT registration number of the customer in the other EU Member State.

Where payment in full or by installments for goods or services supplied to a VAT-registered person is made before the completion of the supply, the person receiving payment must issue an invoice in the proper form not later than the 15th day of the month following that during which each such payment was received.

Filing a VAT Return

VAT returns must be filed every 2 months in the first year of registration. After the first year you can opt for a quarterly, bi-annual or annual return subject to turnover limits.

The VAT return for Jan/Feb is due on the 19th March. For March/April on 19th May etc.

The form to be completed is a VAT 3.

If your annual taxable income is less than €1,250,000 you only have to return VAT on sales when you have received the payment. This is known as the "Cash Receipts Basis".

If you fail to make a VAT return on time Revenue can charge interest on the late payment of tax. The rate is 0.0219% per day (approx. 8% p.a.)

Penalties & Interest

Penalties can be charged for not keeping proper books and records, failing to register, filing false returns etc. The maximum fine is €126,970 and 5 years imprisonment. This is only in extreme cases; the standard penalty is €1,520 and can normally be mitigated.

Revenue Powers

Revenue have the authority to examine your books and records to make sure that you have paid the correct amount of VAT. If they find that you have made a mistake then the authorised Revenue official may remove and retain the relevant papers and records.

In the unlikely event that they believe that you have defrauded the Revenue they can also search for records if they believe they have not been produced in full. S/he may also search for goods, but may not remove them. Revenue powers are extensive in this area and they do not need a search warrant.

Keeping Records

A VAT-registered trader must keep full and true records of all business transactions that affect or may affect his or her liability to VAT. The records must be kept up to date and must be sufficiently detailed to enable a trader to accurately calculate any liability or repayment and also to enable the inspector of taxes to check the calculations, if necessary.

A taxable person must retain all books, records and documents relevant to the business, including invoices, credit and debit notes, receipts, accounts, cash register tally rolls, vouchers, VIES and intrastat returns, stamped copies of customs entries and other import documents and bank statements. These business records must be preserved for six years from the date of the latest transaction to which they refer

Persons who carry on business, even though they may not be taxable persons, must for VAT purposes keep all invoices issued to them in connection with the business and copies of customs entries in respect of goods imported

VIES & Intrastat Returns

VIES returns – When an Irish VAT-registered trader makes zero rated supplies of goods to a trader in another EU Member State, summary details of those supplies must be returned to Revenue on a quarterly or monthly basis. This return, known as the VIES return, is to enable the authorities in each EU Member State to ensure that intra-Community transactions are properly recorded and accounted for.

INTRASTAT returns -Traders engaged in intra-Community trade are also obliged to make a periodic INTRASTAT return, for statistical purposes, where the value of goods acquired by them from other Member States exceeds €191,000 per annum or the value of goods supplied by them to other EU Member States exceeds €635,000 per annum.

Industry Specific Issues – The Margin Scheme

Special VAT schemes operate in relation to the sale by dealers / commercial galleries, auctioneers of second-hand movable goods, works of art, collectors items and antiques. The principal feature of the scheme is that dealers, galleries and auctioneers effectively pay VAT only on their margin in certain circumstances. The Margin Scheme is explained in more detail below.

Important Note to Artists

The Margin Scheme for calculating VAT is an optional scheme so galleries / auctioneers etc can chose to use it or not. Before agreeing to sell your work through a gallery it is very important that you have a formal agreement in place with the gallery as to how the VAT will be calculated. You need to know in advance exactly what the gallery is going to do and ensure that you are happy to trade on those terms.

If you are VAT registered you are liable for 13.5% VAT. It is important therefore that you price your work plus 13.5%.

Example 1: Where the gallery operates the Margin Scheme and the artist is to get 50% of the sales price.

If the work sells for €2000 the artist needs to state that they agree to 50% of the gross sales price and should issue the gallery with a VAT invoice on receipt of their fee. The invoice should then be for a total of €1000 which includes 13.5% VAT.

Example 2: Where the Margin Scheme isn't in place, the gallery will deduct 23% first and then give the artist 50% of the remaining 77%.

If they do this then the artist should invoice the gallery for their cut / income + VAT of 13.5%. This effectively costs the artist an additional 9.5% in VAT as they have 23% deducted from their income and can only recover 13.5% from the gallery.

Example 3: Where the artist is not VAT registered

The big loss to artists is where the artist is not VAT registered and the gallery doesn't operate the Margin Scheme. The Gallery can charge the full 23% and then pay the artist the after VAT share. Here the artist can't recharge any of the VAT and has to suffer the 23% deduction.

The Margin Scheme: How it Works

The margin scheme provides that VAT is payable on the sale of margin scheme goods by reference to the difference between the sale price and the purchase price of the goods. This is illustrated as follows:

Dealer's sale price of goods	€500
Less dealer's purchase price	€300
Dealer's Margin	€200

The dealer's margin is a tax-inclusive amount.

For supplies liable at the standard rate, at present 23%, the VAT payable is:

$$\text{€200} \times \frac{23}{121} = \text{€38.01}$$

The margin for the purposes of this scheme is the difference between the sale price and purchase price of the goods. This margin should not be reduced by deducting the cost of repairs, accessories, overheads, etc.

Where the sale price is less than the purchase price, the margin is regarded as being nil and there is no VAT due on the sale. It should be noted that in such cases the dealer is not entitled to a refund of VAT in respect of the loss nor can it be offset against profits from other transactions.

The general rule is that the rate applicable to a margin scheme supply is the rate applicable to a normal supply. However, there are some exceptions to this rule and these are itemised in Appendix I of the Margin Scheme leaflet issued by revenue and available [here](#)..

In the case of those goods the standard 23% rate applies when they are sold under the margin scheme, even though a different rate applies when they are sold under normal VAT rules.

Applicable VAT Rates – Exempt, 0%, 13.5%, 9%, 23%

Exempt from VAT:

- Providing Art Classes
- Theatrical performances where no food or drink is made available.
- Payments in respect of droit de suite / Artists' Resale Right

Where an activity is exempt, VAT cannot be reclaimed on the purchases relating to that activity. Example: If an artist purchases art materials to use in creating an art work the VAT can be reclaimed, but if they use the materials for an art class the VAT cannot be reclaimed.

0% VAT – Intra-community Supplies

0% VAT – Intra-community Supplies

Where you sell your works to the UK or install works in the UK (including Northern Ireland) or any other EU country special rules apply. You can zero rate the supply of goods to a customer in another EU Member State if:

- the customer is registered for VAT in that other EU Member State
- the customer's VAT registration number (including country prefix) is obtained and retained in the supplier's records
- this number, together with the supplier's VAT registration number, is quoted on the sales invoice
- the goods are dispatched or transported to that other EU Member State.

If these four conditions are not met the supplier is liable for VAT at the appropriate Irish rate. If the supplier is not able to satisfy the inspector of taxes that particular consignments of goods have been sold and delivered to a VAT-registered person in another Member State, the supplier becomes liable for the payment of Irish VAT on the transaction. Where any of the above four conditions are not satisfied the seller should charge Irish VAT. If the conditions for zero-rating are subsequently established the customer is entitled to recover the VAT paid from the supplier. The supplier can then make an adjustment in his/her VAT return for the period.

Unlike exempt supplies VAT can be reclaimed on expenses relating to 0% supplies.

13.5% VAT – Reduced Rate

- Intra-community acquisitions of art (in certain circumstances)
- Importation of Art -Works of Art -Sculpture (with a limit of 10 for sculpture casts copies, but this can be exceeded if Revenue agrees)
- Limited Editions (30 copies) – This relates to photographic prints taken by, printed by or under the supervision of an artist. They must be signed and numbered.

- An original lithograph, engraving or print produced directly from lithographic stones, plates or other engraved surfaces which are entirely executed by hand. There is no limit on the number produced.

- Commissioned Video work

9% VAT – Second Reduced Rate

This new reduced rate was introduced on 1st July 2011 in an effort to provide a boost to the tourism industry. It was introduced as a temporary measure, due to expire 31st December 2013, but it has since been extended indefinitely. The 9% rate applies to certain goods and services previously liable at the 13.5% rate, including:

- restaurant and catering services
- hotel and holiday accommodation
- admissions to cinemas, theatres, certain musical performances, museums and art gallery exhibitions
- fairgrounds or amusement park services
- the use of sporting facilities
- hairdressing services
- printed matter such as brochures, maps, programmes, leaflets, catalogues and newspapers.

23% VAT – Standard Rate

- Acting as an agent
- Framing
- Hiring of works of art
- Non-commissioned video production
- Acting and commercial work.
- Any work which is created for a commercial purpose rather than an artistic one is liable at 23% e.g. where a picture is created for the purpose of using in an advertisement.

By Gaby Smyth & Company

Gaby Smyth & Company is a chartered accountancy practice located in Ballsbridge, Dublin, which specialises in the music, theatre, film and visual arts. The firm offers taxation, audit and management accounting services. Gaby Smyth has delivered courses in taxation and accounting for Dublin Business School, the Institute of Bankers, AIB Corporate and Treasury, and Goodbody Stockbrokers. In addition, the firm has run courses specialising in accounting and tax in the arts for Music Network, Blackchurch Print Studio, Fire Station Artists Studios, Visual Artists Ireland and various county and city councils throughout the country.

