

ARTIST'S RESALE RIGHT: A CONSULTATION

JULY 2021



**Isle of Man
Government**

Reilrys Ellan Vannin

Contents

Introduction	3
About the consultation	4
Section 1: Background	5
Section 2: Questions	8

Introduction

Artist's resale right (sometimes known as *droit de suite*) is related to copyright. It enables artists to claim a share of the price for which a work is resold. The idea is that an artist may sell their work for a low price when they are unknown, and have no bargaining power. Should their reputation increase, their work will increase in value, and can be resold repeatedly for ever larger amounts. Artist's resale right (henceforth referred to as "ARR" in this document) enables the artist to claim a proportion of the increased value. The right is seen as justifiable because the artist is seen as responsible for the increase in value of their works and, unlike musicians, screenwriters and authors, many artists make money only from the initial sale of their artwork.

ARR has been in place in the UK for a number of years but has never been introduced in the Island. This consultation seeks the views of interested parties on introduction of the right in the Isle of Man.

Section 1 provides more detail on the background to the right. Section 2 sets out the case for introduction of the right in the Island, while section 3 sets out some specific questions on ARR.

About the consultation

Consultees are asked three questions (see section 3 below). If you would like to any or all of these questions please send a submission by email or post to:

Steven Tallach
Legislation Officer
Department for Enterprise
1st Floor
St George's Court
Upper Church Street
Douglas
Isle of Man
IM1 1EX

Tel: (01624) 685375
Email: Steven.Tallach@gov.im

Please note that the Department will assume that you do not object to your response or the name of your organisation (or your own name if you are responding as an individual) being made public *unless you tell us otherwise*.

If you want all or any part of your reply to be treated as confidential, then please indicate this clearly in your reply.

The consultation period ends on **Friday 27 August 2021**.

Following consultation, the Department will:

- review and evaluate comments received from consultees;
- advise consultees as to whether the Department intends to proceed with introduction of Artist's Resale Right in the Isle of Man;
- if it is decided that ARR should be introduced in the Island, submit suitable legislation to Tynwald for approval.

Section 1: Background

ARR entitles creators of original works of art (including paintings, engravings, sculpture and ceramics) to a royalty each time one of their works is resold through an auction house or art market professional.

The right to this royalty lasts for the same period as copyright, so since January 2012 ARR has applied to qualifying works by artists who have been dead for less than 70 years.

The right was incorporated into the Berne Copyright Convention in 1948, but on an optional basis. In 2001 it was enshrined in European Union law with the Resale Rights Directive¹.

The Directive sought to ensure a level playing field, so that sales of qualifying works were not diverted to countries where the royalty did not have to be paid. This was particularly relevant to London, as the largest post war and contemporary art market.

Switzerland, the USA and China - all of which have substantial contemporary art markets - do not have ARR.

The following paragraphs set out how ARR works in the UK and in EU member states.

Art covered by ARR

Resale right may only be exercised in respect of the sale of a work by an artist who is, or a deceased artist who was, at the date of death, a national of an EEA state or a state which permits resale right reciprocally for authors from EEA states and their heirs. There are currently 81 states which offer such rights under the Berne Convention.

It applies to any work of graphic or plastic art in which copyright subsists, such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph. Limited edition copies of a work which are made by the author or under his or her authority are also covered. The right lasts as long as copyright which for an artistic work in the UK is the life of the author plus 70 years.

Responsibility for paying the royalty

The royalty is payable by the seller and the seller's agent, or, if there is no such agent, either by the buyer's agent if there is one, or the buyer. The EU Directive states that member states may provide that a buyer or intermediary shall 'alone be liable or shall share liability with the seller for payment of the royalty'. Even if the national law chooses to make the seller's agent (an auction house) liable, it may choose to require the buyer to pay the resale royalty.

Qualifying Sales

As made clear above ARR entitles creators of original works of art to a royalty each time one of their works is resold through an auction house or art market professional (an art market professional being defined as someone "acting in the course of a business of dealing in works of art").

ARR is charged as a percentage of the entire resale price not just on profits, each time a work is resold on the commercial market. This means that the charge applies to qualifying works even when the seller makes a loss.

Some sales are exempt. For example, where the work being resold was bought directly from the artist 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'.

¹ 2001/84/EC

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

Calculation of royalties

The right only applies when the sale price reaches or exceeds the sterling equivalent of €1,000 and is calculated on a sliding scale.

Royalty Resale price

4%	up to €50,000
3%	between €50,000.01 and €200,000
1%	between €200,000.01 and €350,000
0.5%	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 to €50,000 will attract a royalty of 4% i.e. €2,000

2nd tier €50,001 to €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.

ARR is exempt from VAT.

Collection of royalties

ARR in the UK is managed by two collecting societies –the Design and Artists Copyright Society (DACS) and the Artists' Collecting Society (ACS) who then distribute the royalty to the artists. Each society has administrative costs of around 15%. Individual artists cannot request payments directly from the art market professionals involved in the sale.

It is envisaged that if ARR is introduced in the Island the DACS and the ACS would likely be responsible for collection here too.

Section 2: The case for introduction of ARR in the Isle of Man

The Department consulted on introduction of the ARR in 2011, but ultimately rejected the proposal on the grounds that Isle of Man artists were unlikely to benefit significantly from such a right, while maintaining the status quo might give a competitive advantage to the local contemporary art market. This does not seem to have borne fruit however, and the main objection to its introduction is that it may place an administrative burden on small local auction houses and galleries. The collection societies have stated that the administrative burden is minimal however, as they provide assistance.

Moreover, since Brexit the UK has been pursuing free trade agreements ("FTAs") across the globe, and it is considered that there are opportunities for the Isle of Man in being included in those agreements, where possible. It has been seen to be of benefit to the Island's reputation as a good place to do business and attractive to entrepreneurs and innovators.

As the UK has retained ARR since Brexit, it is keen to encourage other countries to adopt it as part of the intellectual property chapter of FTAs. Establishing ARR in the Isle of Man may therefore be a condition of inclusion in the UK's FTAs.

It should be noted the Island was never part of the EU and was therefore excluded from the intellectual property chapter of the recently agreed EU-UK free trade agreement. It is therefore unlikely that if ARR is introduced in the Isle of Man that there will be reciprocity with EEA states. If however the Island is included in the intellectual property chapters of other UK free trade agreements with countries which recognise ARR, local artists will be able to receive royalties from their works which are sold in these markets and vice versa.

It should be noted that if the Island were to introduce ARR it would likely to be very close, if not identical, to the UK model. However it may be that certain aspects of the framework can be adapted. For example, though in the UK the levy is calculated on the basis of euros, in the Isle of Man it will be possible to charge the levy in pounds sterling.

Section 3: Questions

- 1. Do you think ARR should be introduced to the Isle of Man?**
- 2. If ARR is introduced to the Island do you have any suggestions or comments about adaptations which could be made to the way in which ARR works presently in the UK or the EU?**
- 3. Do you have any other comments to make about the potential introduction of ARR to the Island?**

