

# Tax Alerts and News for Swiss Individual Taxpayers

07 May 2025 | Lugano

# WELCOME



## **PRE-RETIREMENT PLANNING: FISCAL AND NON FISCAL ISSUES**

Beatrice Zibelli, Deputy Managing Director

# INDEX

- 1. INTRODUCTION TO THE SWISS SOCIAL SECURITY SYSTEM**
  - 1.1 First pillar AVS and second pillar occupational pension BVG
  - 1.2 Voluntary pension savings with pillar 3a and/or pillar 3b
  
- 2. TAXATION OF SWISS PENSION INCOME AND PENSION CAPITAL (PILLARS 1 – 3)**
  - 2.1 Taxation of 1st pillar state pension income AVS and 2nd pillar BVG pension income
  - 2.2 Taxation of capital withdrawal pension funds (BVG = second pillar)
  - 2.3 Voluntary payments into Swiss second pillar and important tax aspects
  - 2.4 Taxation of pillar 3A and pillar 3B
  - 2.5 Taxation of capital withdrawal Canton Ticino and grey clouds at Federal Level

# INDEX

## **3. INTERNATIONAL TAX ASPECTS TO CONSIDER FOR RETIREMENT PLANNING**

3.1 Basic rules according to Swiss and International Tax Law (DDT) pension income and pension capital withdrawal

3.2 Foreign pension products and their tax treatment in Switzerland

## **4. RETIREMENT OPTIONS AND CRITICAL ISSUES**

4.1 General aspects and critical aspects of pension fund capital withdrawals

4.2 Ordinary or normal retirement

4.3 Early retirement

4.4 Partial retirement

4.5 Deferred retirement

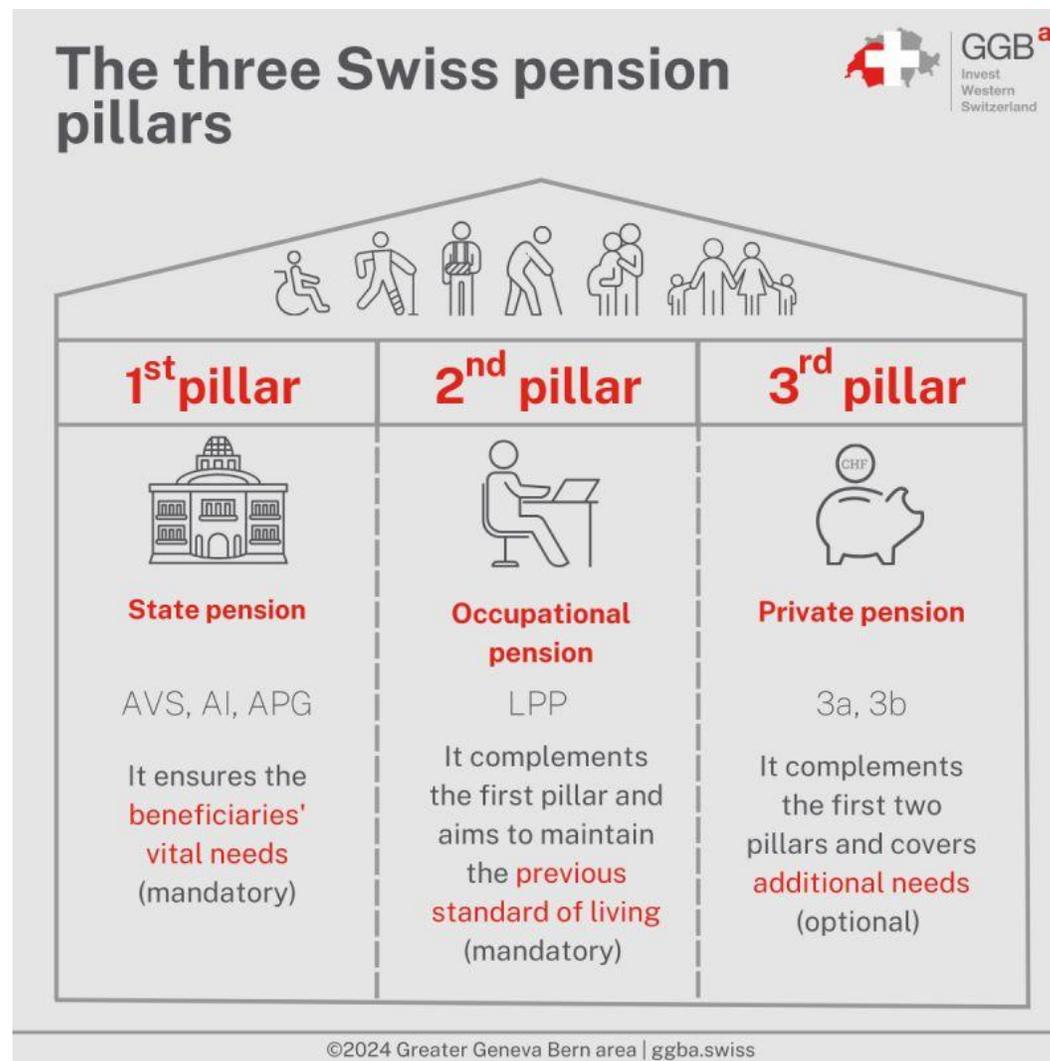
# INDEX

## **5. TAX OPTIMISATION THROUGH CAREFUL PLANNING**

5.1 Relocation to another Canton before reaching pension age

5.2 Relocation to another jurisdiction before reaching pension age

# 1. INTRODUCTION TO SWISS SOCIAL SECURITY SYSTEM



## 1.1 First pillar AVS and second pillar occupational pension BVG

- Ordinary retirement age = reference age = 65
- Compulsory Swiss state pension AVS to guarantee basic income, maximum monthly pension 2025 is CHF 2'520 for singles resp CHF 3'780 for spouses
- Contributions to AVS are paid by employer/employees, self-employed and persons without lucrative activity and finance pensions for the generations already retired
- AVS pension can be withdrawn earliest at 63 and latest by 70 and can be withdrawn in steps (early withdrawal lifelong reduction and deferred withdrawal lifelong increase)

## 1.1 First pillar AVS and second pillar occupational pension BVG (continued)

- Compulsory second pillar occupational pension scheme (Cassa pensione, Pensionskasse) according to pension schemes and contributions plus interest accumulated in my own pension fund
- Second pillar occupational pension either as income or capital or mix
- Earliest withdrawal age 58 (if pension plan allows, otherwise 63) and latest by 70
- Voluntary payments into second pillar according to yearly pension certificate to cover contribution gaps and optimize pension fund are fully tax deductible
- Pillar 1 and pillar 2 should cover ca 60% of income before pension

## 1.2 Voluntary pension savings with pillar 3a and/or pillar 3b

- Pension income from pillar 1 and pillar 2 not sufficient today to cover financial needs for retired generations due to longer life expectancy and increasing livelihood costs
- Pillar 3a eligible only for employed or self-employed persons and either insurance policy or pure saving policy with bank institute
- Pillar 3a only capital withdrawal with taxation at privileged tax rates and contributions fully tax deductible
- Withdrawal earliest 5 years before reaching reference age 65, earlier withdrawal for exceptions, no withdrawal in steps possible
- Pillar 3b examples life policies, bankable assets, other
- Taxation of life insurances, annuities, etc, to be carefully assessed

## 2. TAXATION OF SWISS PENSION INCOME AND PENSION CAPITAL (PILLARS 1 – 3)

### 2.1 Taxation of 1<sup>st</sup> pillar State pension income AVS and 2<sup>nd</sup> pillar BVG pension income

- 100% of the AVS pension income is fully taxed together with any other income at ordinary income tax rates
- 100% of the occupational pension income is fully taxed together with any other income at ordinary income tax rates

## 2.2 Taxation of capital withdrawal of occupational pension funds

- Capital withdrawal is taxed at comunal, cantonal and direct federal level, at federal level 1/5 of ordinary tax rate
- The Cantons have their own tax system and tax rates, depending from the Canton one might realise important tax savings
- Taxation separate from other income resulting in reduced ordinary income tax rates
- Capital withdrawals (pillar 2 and/or pillar 3) made in the same year are cumulated resulting in higher tax rates (progressive tax rates)
- Capital withdrawal CHF 1 mio in Canton Ticino in one instalment CHF 76'000 whereas splitted in three withdrawals CHF 54'000

## 2.3 Voluntary payments into Swiss second pillar and important tax aspects

- Voluntary additional payments with the exclusive aim to improve the pension fund savings are fully tax deductible
- To prevent abuse for tax optimisation, legal basis of blocking period of 3 years and no exceptions
- If not respected, voluntary payments done during blocking period are recaptured and taxed

## 2.4 Taxation of pillar 3a and pillar 3b

- Capital withdrawal pillar 3a with privileged tax rates at Federal level 1/5 of ordinary tax rate equal to occupational pension fund
- Taxation separate from any other income
- Any capital withdrawals made in the same year are cumulated
- Taxation of pillar 3b depending what kind of life insurance policy, to be carefully assessed as different products have different taxation

## 2.5 Taxation of capital withdrawal in Canton Ticino and grey clouds at Federal level

- Ticino Tax reform implemented in 2024 sets maximum cantonal flat rate at 3%
- Goal: to become more competitive with other cantons and avoid exodus of important tax payers to other Cantons prior to pension
- Proposal at Federal Level: abolish privileged taxation 1/5 of ordinary tax rate and introduce a progressive tax rate resulting in significant tax increases
- Goal: one of the measures to restore the financial situation at Federal level
- Will there be a referendum?

# 3. INTERNATIONAL TAX ASPECTS TO CONSIDER FOR RETIREMENT PLANNING

## 3.1 Basic rules according to Swiss and International Tax Law

- Pension income and capital withdrawal from private pensions/state pension is taxed in the country of residence of the beneficiary according to article 18 of the Treaties
- Pension income and capital withdrawal from Government service is taxed in the country of source according to article 19 of the Treaties
- Exception Treaty Switzerland with Sweden: pensions fully taxable at source in Sweden and fully taxable in Switzerland. Sweden grants tax credit of Swiss taxes paid on Swedish pensions
- Not applicable to pensions and annuities already running on February 28, 2011 and paid to a person resident in the other contracting state who is taxed in the source state on February 28, 2011

## 3.2 Foreign pension products and their tax treatment in Switzerland

- Assess if foreign pension products can be assimilated to Swiss occupational pension BVG or to pillar 3a
- If yes, taxed like Swiss occupational pensions or pillar 3a
- Examples: US IRAs (NOT Roth IRA), US 401 Plans, other
- The tax impact on the capital withdrawal or pension income must be assessed together with the taxation of the Swiss pension products
- According to information received from the cantonal tax administration, foreign pension fund capital withdrawals shall not be cumulated with Swiss pension fund capital withdrawals → first obtain approval from tax administration

## 4. RETIREMENT OPTIONS AND CRITICAL ISSUES

### 4.1 General aspects and critical aspects of pension fund capital withdrawals

- Reform AVS 21 entered into force on 1.1.2024 opening new possibilities
- AVS pension income earliest at 63 with lifelong reduction of 6.8% per year (13.6% at 63) and latest at 70 with lifelong increase
- AVS pension income can now be withdrawn in steps and can be deferred
- Occupational pension income earliest at 58 (if pension scheme allows, by law 63) and latest at 70
- Occupational pension capital withdrawal earliest at 58 (if pension scheme allows – by law 63) and pension capital can be withdrawn in maximum three steps in three different fiscal years
- Occupational pension fund capital withdrawal: attention to three years blocking period for tax purpose

## 4.2 Ordinary or normal retirement

- At reference age receipt of monthly AVS pension income fully taxable
- AVS pension can be deferred until maximum age of 70 and can be taken in steps
- At reference age receipt of monthly second pillar income fully taxable
- Second pillar income and/or capital withdrawal can today be deferred to age 70
- If chosen pension fund capital withdrawal, receipt of capital and investment
- Some pension funds require a notice in advance if capital will be withdrawn
- Combination of pension income and capital withdrawal possible
- Attention to three years blocking period

## 4.3 Early retirement

- For early retirement, careful financial planning is unavoidable to detect any possible financial shortfall in time as AVS and second pillar suffer important lifelong reductions
- AVS pension income earliest at age of 63 with lifelong reduction and if pension age prior to 63, compulsory contributions payable on basis of wealth up to 63
- Occupational pension fund income or capital earliest at age of 58 according to pension scheme, by law at age of 63; early withdrawal causes lifelong reduction
- Most occupational pension institutes do not allow to defer the pension income start or defer the capital withdrawal -> in most cases either one or the other must be taken at the moment of early retirement
- If capital withdrawal, attention to the three years blocking period

## 4.4 Partial retirement

- Ideal solution allowing to gradually reduce occupational activity and optimise taxation on second pillar capital withdrawals as no cumulation of pension capital funds occurs → reduced tax rates
- The second pillar capital can be withdrawn in maximum three instalments in three different tax years and the first withdrawal must correspond to at least 20% meaning that the first work reduction must be at least 20%
- Between one withdrawal and the next, minimum exactly 365 days must pass
- The salary must be reduced accordingly and the reduction must be durable
- The option to withdraw in three steps must be expressively stated in the regulations of the second pillar institution
- If conditions not fulfilled cumulatively, taxation of total pension capital in one step

## 4.4 Partial retirement

(continued)

- Special attention to planning in case of shareholders and self employed with previous approval by tax administration
- AVS pension income earliest at age of 63 with lifelong reductions and possibility to apply for AVS pension income in instalments, deferrable maximum until 70
- Occupational pension fund income or capital earliest at age of 58 according to pension scheme, by law at age of 63 and latest by age of 70
- If capital withdrawal, attention to the three years blocking period

## 4.5 Deferred retirement

- Solution for those eager to work beyond ordinary retirement age
- AVS pension income will be deferred up to age of 70 and can be taken in instalments
- Compulsory AVS contributions paid up to age of 70 will increase lifelong AVS pension to be withdrawn latest at age of 70 whereas AVS contributions paid after age of 70 are à fond perdu
- Deferral occupational pension fund possible up to age of 70
- Check with occupational pension scheme if contributions can be made from 65 – 70 so to increase your pension funds
- Deferral of pension income can be tax advantageous avoiding high income (salary, AVS pension and second pillar pension income cumulated)

## 5. TAX OPTIMISATION THROUGH CAREFUL PLANNING

### 5.1 Relocation to other Canton before reaching pension age

- If domicile when capital withdrawal is in Switzerland, withdrawals are taxed with capital withdrawal tax in the Canton of residence of the beneficiary
- Potential tax savings on pension fund capital withdrawals of pillar 2 and pillar 3a
- Due to intercantonal tax concurrence, every canton has different tax rates and important tax savings at cantonal level can be achieved – Canton Ticino rather attractive after 2024 tax reform setting maximum tax at 3% at cantonal level
- Attention: transfer of domicile to another more attractive Canton must be real and not faked, tax administrations can check.
- Example: capital withdrawal CHF 1 mio Ticino/Lugano: total tax CHF 76'000 – Canton Graubünden/Chur: CHF 59'600 – Canton Zürich/Zürich CHF 115'000

## 5.2 Relocation to another jurisdiction before reaching pension age

- If domicile when capital withdrawal is outside Switzerland, withdrawals are taxed at source in the Canton of domicile of the pension fund institute
- Potential tax savings on pension fund capital withdrawal pillar 2 and pillar 3° as taxation at source is generally at lower tax rates than the ordinary capital withdrawal tax
- If relocation to country with DTT, in almost all cases the tax at source withheld can be claimed back or tax credit claimed
- Taxation of capital withdrawal according to tax laws of State of Residence → best case scenario zero taxation possible?

## 5.2 Relocation to another jurisdiction before reaching pension age

(continued)

- AVS pension income and second pillar pension income taxed in country of residence according to local tax law, with some countries without a DDT in force, Switzerland might apply tax at source
- Attention: transfer of domicile to another more attractive jurisdiction must be real and not faked, tax administrations can and will check
- Countries such as Germany, France, Italy or Austria might be advantageous for taxation of pension fund capital withdrawals
- Thailand might not tax pension income from Switzerland



## **CAPITAL GAINS TAXATION AND EXEMPTION FOR INDIVIDUALS**

Peter Steimle, Managing Director  
Nicolas Sandrinelli, Tax Counselor

# INDEX

## 1. GAINS ON MOVABLE PRIVATE ASSETS

1.1 Tax exemption on realised capital gains

## 2. GAINS ON MOVABLE AND IMMOVABLE BUSINESS ASSETS

2.1 Independent entrepreneurial activity - Securities and real estate traders

2.2 Partial taxation of qualified participations as a business asset

## 3. REQUALIFICATION OF PRIVATE ASSETS IN BUSINESS ASSETS

3.1 Indirect partial liquidation

3.2 Transposition

## 4. INTERNATIONAL TAX TREATMENT OF CAPITAL GAINS ON MOVABLE PRIVATE ASSETS

4.1 Double tax treaties and taxing rights

# 1. GAINS ON MOVABLE PRIVATE ASSETS

## 1.1 Tax exemption on realised capital gains

- Art 16/3 of the Federal Law on Direct Federal Tax (FLDF):
  - "Capital gains obtained from the realisation of private assets are tax exempted"
- Capital gain = It's not earning from assets but inflow of added value from a sale
- Realisation = Sale or disposal of the asset
- Private assets = Privately owned tangible and intangible assets (except real estate) not owned in a capacity of an independent entrepreneur = business asset
- **Alert: Art 16a-d Ticino Cantonal Tax Code (TCTC)**: The qualification of capital gains realised as employee participations (such as stock options, but not founders shares) translate into the taxation of any economic / monetary benefit derived from such participations, which is subject to income taxation

## 2. GAINS ON MOVABLE AND IMMOVABLE BUSINESS ASSETS

### 2.1 Independent entrepreneurial activity - Securities and real estate traders

- Cumulative conditions to be met to avoid a professional trader qualification and subsequent income taxation and social security contribution on the capital gains (Circular letter 36 FTA):
  - securities are held for at least 6 months before being sold
  - securities capital gains contribute to less than 50% of the total net income
  - transaction volume during a year does not exceed five times the investment portfolio value at the beginning of the year
  - investments not financed with third party loans
  - no trading in derivatives (e.g. warrants), except to hedge risks

## 2.1 Independent entrepreneurial activity - Securities and real estate traders

(continued)

- Federal court indicators to be considered as a real estate trader and consequently subject to income taxation and social security contribution on the realised gains (BGE 2C\_1204/2013):
  - systematic approach (value-increasing activity through parcelling, advertising or acquisition with the obvious intention of reselling as quickly as possible)
  - frequent real estate transactions and short period of ownership
  - connection with the taxpayer professional activity and use of special expertise
  - utilization of third-party funds or partnerships to finance the transactions
- **To note**: According to Art 123-139 TCTC, capital gain from the sale of real estate is a taxable element (TUI) => to avoid real estate speculation

## 2.2 Partial taxation of qualified participations as a business asset

- According to Art 17 TCTC, capital gains from the sale of any assets, which are used for the independent / self-employed business activity including a participation of at least 20% of the share capital (and declared as business asset to the tax authorities), are taxable as business income
- Furthermore, according to Art 17b TCTC, a partial reduced tax base (70%) can be applied on the realised capital gains, if:
  - the participations represent at least 10% of the share capital
  - the participations were owned for at least 1 year when alienated

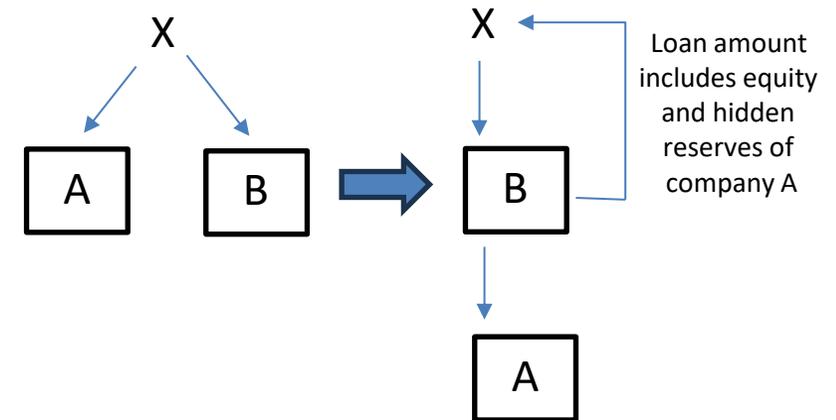
## 3. REQUALIFICATION OF PRIVATE ASSETS IN BUSINESS ASSETS

### 3.1 Indirect partial liquidation

- In case of a sale of privately owned participation to the business assets of a third independent active entrepreneur or entity, there is a high risk of tax recovery procedure from the authorities through an indirect partial liquidation imposition, if the following conditions are met (Art 20a/1a FLDF):
  - at least 20% of the share capital is sold (by one or more individuals)
  - the distribution within 5 years after the sale of financial and tangible means not necessary for the business operations, which already existed at the time of sale and could have been distributed previously
  - collaboration of the seller to the operation, i.e. the seller was informed that some assets could have been distributed to finance the purchase

## 3.2 Transposition

- In case of a transfer of privately owned participation to the business assets of a corporation or entity, where after the transfer the seller(s) own more than 50% of the share capital, there is a high risk of tax recovery procedure from the authorities through a transposition taxation (Art 20a/1b FLDF)
- Example: individual X owns controlling participations in the companies A and B; X sells participations in A to the company B against a loan  
=> If X owns at least 50% of the share capital of B (after the sale) the tax authorities would consider the difference between the selling price and the nominal value as a notional taxable dividend due to transposition and tax accordingly



## 4. INTERNATIONAL TAX TREATMENT OF CAPITAL GAINS ON MOVABLE PRIVATE ASSETS

### 4.1 Double tax treaties and taxing rights

- Based on Art 13 of the Swiss-Swedish double tax treaty:
  - capital gains from immovable assets are taxable in the country where the properties are located
  - capital gains from any other assets are generally taxable only in the country where the seller is a resident (exception of movable assets of a PE)
  - however, capital gains from the alienation of participations of a Swedish national individual, who was previously resident in Sweden and has become resident in Switzerland, shall be taxable in Sweden if the alienation takes place within five years after that person ceased to be resident in Sweden

## 4.1 Double tax treaties and taxing rights

(continued)

- Comparison with Art 13 of the Swiss-UK double tax treaty:
  - *"(...) right of the UK to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is, and has been at any time during the previous six fiscal years, a resident of the UK (...)"*



## **PRIVATE ART COLLECTIONS: TAX, VAT AND CUSTOM RELEVANT ASPECTS UNDER SWISS LAW**

Stefano Grisanti, Esq.  
Partner Fiduciaria Mega SA

# INDEX

- 1. MAIN DIRECT TAX CONSEQUENCES IN SWITZERLAND**
- 1.1 Tax aspects of art
  - 1.1.1 Main tax aspects - in general
  - 1.1.2 The definition of a work of art from a tax point of view
  - 1.1.3 Tax-relevant moments and activities
- 1.2 Tax aspects of acquiring works of art
- 1.3 The Valuation of Works of Art
- 1.4 Lump sum Tax payers (Ct. Ticino) and art

# INDEX

- 1.5 The transfer of works of art and its tax aspects
  - 1.5.1 Transfer vs/ cash
  - 1.5.2 Deductible expenses
  - 1.5.3 Transfer for free (donations and/or inheritances)
  - 1.5.4 Donations to charitable foundations or public entities
  - 1.5.5 Transmission within the family
- 1.6 Concluding remarks for direct tax aspects

# INDEX

## 2. SOME VAT AND CUSTOMS RELEVANT ASPECTS IN SWITZERLAND

2.1 Introduction

2.2 Legal Bases and Administrative Practice

2.3 Definitions

2.3.1 VAT Provisions

2.4 Possession of Works of Art and Collectors' Pieces

2.4.1 Purchase in CH

2.4.2 Purchase abroad

2.4.2.1 In general

2.4.2.2 Import Tax

# INDEX

- 2.4.3 Customs warehouses
- 2.4.4 Inheritance from foreign resident decuius
- 2.5 Donation to foundation/charity organisation in CH
- 2.6 Concluding remarks for VAT and Custom Duty

# 1. MAIN DIRECT TAX CONSEQUENCES IN SWITZERLAND

## 1.1 Tax aspects of art

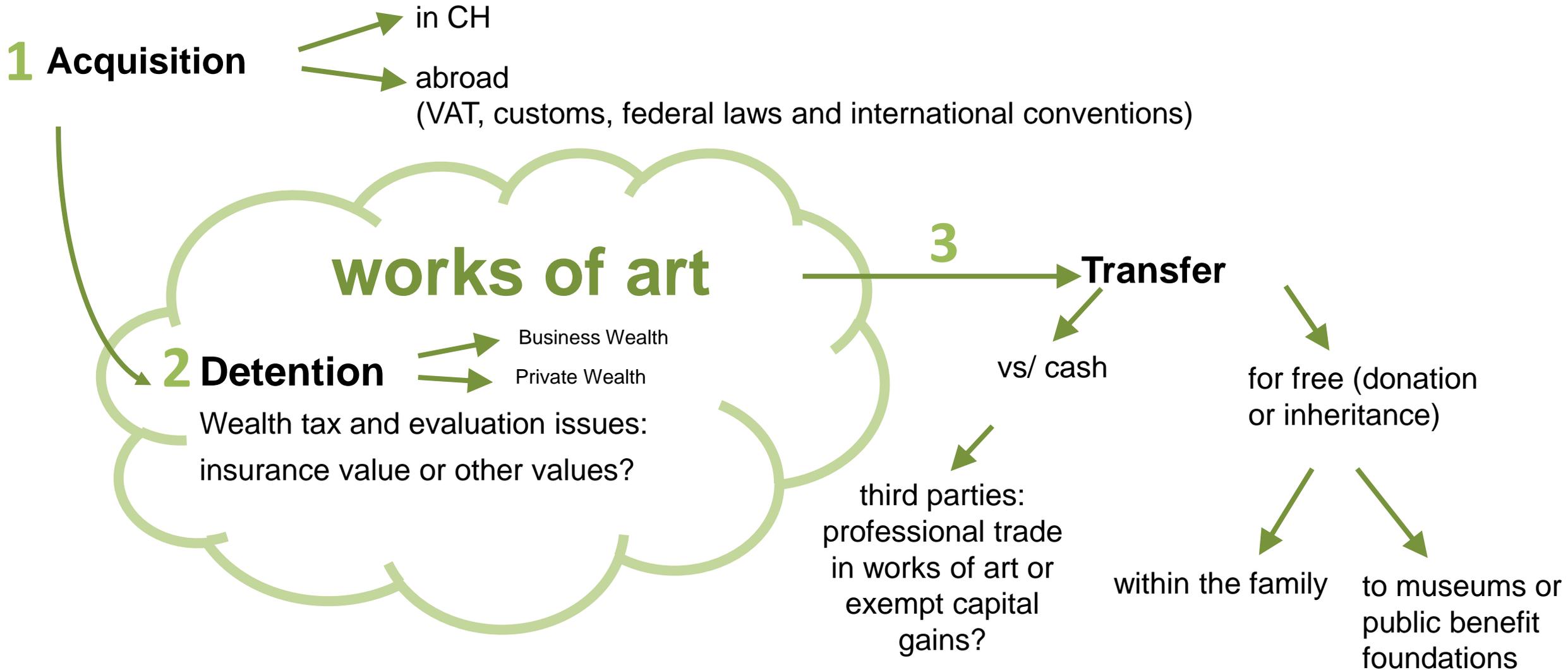
### 1.1.1 Main tax aspects - in general

- The tax authorities consider art from two perspectives:
  1. as an **asset** subject to **wealth** tax (tax on fortune)
  2. as a value with a **continuously rising trend** that may trigger a **taxable event**:
    - either in a transaction between third parties
    - or in the transfer within family or to foundations
  
- There are **several issues specific** to the art world:
  - in relation to the **tax object**: the work of art **is a «unicum»**
  - in relation to the **tax subject**: the **speculator** in works of art is considered as a **professional trader**, differently from private collectors or amateur

## 1.1.2 The definition of a work of art from a tax point of view

- The legislator has merely included works of art in the general definition of «**total net worth**» (Art. 14 par. 1 LAID)
- **The different tax laws lack a definition** and specific rules that are tailored to the issues concerning works of art
- However, the Federal Customs Administration (FCA), issued a special publication 'Import Tax on Works of Art' (Customs Office, Publication 52.22), where it **defines the meaning of a work of art**

# 1.1.3 Tax-relevant moments and activities



## 1.2 Tax aspects of acquiring works of art

- The art collector can come into legal possession of works in various ways:
  - purchases from third parties
  - exchanges or other legal transactions
  - heritage
  - donations
  - dissolution of matrimonial regimes
  
- Those legal transaction have consequences, which are:
  - practically **not relevant** for **direct tax** purposes
  - **relevant for VAT and customs** purposes

## 1.3 The valuation of works of art

- In principle, assets belonging to private property must be valued at **market value** (Art. 14,1 LAID)
  - that value derived **from a legal transaction between third parties** that is generally determined by supply and demand
- Although the principle is clear, in the case of works of art there are certain aspects that **make their evaluation more difficult**:
  - since they are **unique pieces**, a market price is difficult to determine
  - only **1-3% of artists have a secondary market for their works**

## 1.3 The valuation of works of art

(continued)

- In cantonal practice, the following values or methods are used to determine the value of works of art:
  1. **purchase value:** applicable if a work of art was bought through a gallery or auction house; but even in this case, the auction result often depends on a whole series of random factors
  2. **insurance value:** in many cases, this does not fully reflect the actual market value; in fact, the insurance value is often higher than the market value and usually represents the amount the owner would have to spend to replace the insured object when an insured event occurs (used by several Cantons)
  3. **other auxiliary methods:** expert opinions, databases and auction results are often referred to as auxiliary methods for determining value



## 1.4 Lump sum Tax payers (Ct. Ticino) and art

- If the collector is a lump sum tax payer (globalist, forfait or tax on expenditure) under art. 14 SFDT and Art. 13 TI-Tax Law, the following consequences apply:
  - the **professional trading in works of art** performed in Switzerland is considered being a gainful activity: this will jeopardize the status of lump sum tax payer (working abroad is permitted)
  - depending on where the works of art are located (in CH or in a customs warehouse in CH or abroad), they will have to be taken into account for the **control calculation for wealth tax**
  - in the **absence of own profitability**, the possession of works of art **should not generate any income tax consequences**

## 1.5 The transfer of works of art and its tax aspects

### 1.5.1 Transfer vs/ cash

- To determine when an assignment for consideration exceeds ordinary management and constitutes an independent activity, **we refer to the general rules regarding:**
  - **professional trade in real estate**
  - **professional trade in securities**
- The capital gain exemption (Art. 16 para. 3 DFT) is **limited** to those that arise:
  - within the framework of the **usual administration of assets**, i.e. without any particular activity of the taxpayer aimed at making a profit, or
  - as **a result of an opportunity that randomly** presents itself
- According to the Federal Supreme Court's conclusion, profits deriving from an activity **that goes beyond the mere administration of private assets** constitute income from independent activity

## 1.5.2 Deductible expenses

- Should one be qualified as a professional art's dealer; following costs might be deducted from the income deriving from the trade of pices of art:
  - Incurred costs, to be assessed in about 20%-25% of the transaction value
- In relation to the proceeds from the sale of antiques, the federal Court confirmed (2C\_308/2003, E. 4 ff.) that following costs could be deductible:
  - **investment costs**, including purchase costs and any restoration costs and insurance costs
  - **social contributions**
  - expenses that are **directly incurred** and related to the realisation of the income (**auction expenses and, eventually, evaluation expenses**)

## 1.5.3 Transfer for free (donations and/or inheritances)

- For the art collector, sooner or later the question of succession planning will arise
  - who will be responsible in the future for continuing and further developing the works collected over time?
- The following choices have to be considered:
  - **donation** (during life or 'mortis causa') to **public benefit foundations** or **public entities** dealing with art
  - **donation** and/or **inheritance** within the **family**

## 1.5.4 Donations to charitable foundations or public entities

- The art collector who proceeds in this manner aims to:
  - **give continuity and unity to his collection**
  - **obtain**, inter alia, tax benefits with:
    - the reduction of wealth tax
    - deduction from taxable income for income tax purposes
    - the reduction of inheritance taxes
- The revision of the Federal Law on Foundations in 2004 also had the effect of **increasing the tax deductibility of donations up to 20% of net income** (before deduction of donations themselves) to charitable organisations

## 1.5.5 Transmission within the family

- All cantons, with the exception of SZ (LU donations only), impose **donations and inheritances**
- In the **absence of harmonisation**, provisions vary from Canton to Canton, but as a rule:
  - transfers between spouses or between parents and direct descendants are **exempt**
  - transfers are **taxable** to the beneficiary at market value at the time of donation or at the time of death
- Here again, the issue of the valuation will arise, along with the cash out needed, in case of a taxable transfer

## 1.6 Concluding remarks for direct tax aspects

- In the **absence of specific regulations it is necessary to refer to general regulations** that are not adapted to the peculiarities of the art world
- Lack of clarity will lead on **increasing disputes between taxpayers and tax authorities**
- It is advisable to **increasing legal certainty and establishing clear rules on how taxation takes place in case of capital gains**, clearly distinguishing speculators and exempting other collectors (connoisseurs and/or amateurs) and others who come into possession of works of art by chance

## 2. SOME VAT AND CUSTOMS RELEVANT ASPECTS IN SWITZERLAND

### 2.1 Introduction

- In addition to the direct tax consequences, it is also essential to consider other aspects, **particularly VAT and possible customs duties**
- We are in fact **increasingly** involved with cases that also have **significant consequences** for these types of taxes and levies
- In this section, we will explore **some VAT- and customs-relevant moments and activities**, with some **practical cases** that might be of interest to **people living in CH**, whether they are **collectors or simply enthusiasts of**:
  - works of art, such as **valuable paintings and/or sculptures**
  - collector's items, such as **vintage cars**

## 2.2 Legal Bases and Administrative Practice

- Below are the **main VAT and customs provisions** applicable in transactions with works of art and collectors' items (non-exhaustive list):

### VAT

- Value Added Tax Act (VAT Act; *SR 641.20*)
- Value Added Tax Ordinance (OIVA; *SR 641.201*)
- Info VAT 23 concerning the culture sector

### Customs

- Customs Act (LD; *RS 631.0*)
- Customs Ordinance (SB; *SR 631.01*)
- Agreement on the Import of Objects of an Educational, Scientific or Cultural Nature (*SR 0.631.145.141*)
- Law on the Transfer of Cultural Property (LTBC; *SR 444.1*)

- **Import Tax on Works of Art (Pub. 52.22 Customs Office)**

## 2.3 Definitions

### 2.3.1 VAT Provisions

#### **Art. 48a OIVA: "Works of Art, Antiquities and Other Collectors' Items"**

##### **cpv. 1 Art Objects**

**Physical works by authors  
including** (non-exhaustive list):

- paintings created personally by the artist
- original works of statuary or sculpture executed entirely by the artist
- photographs taken by the artist, reproduced by him in a limited number of copies



##### **cpv. 2 Antiquities**

**Movable assets  
that are over 100 years old**



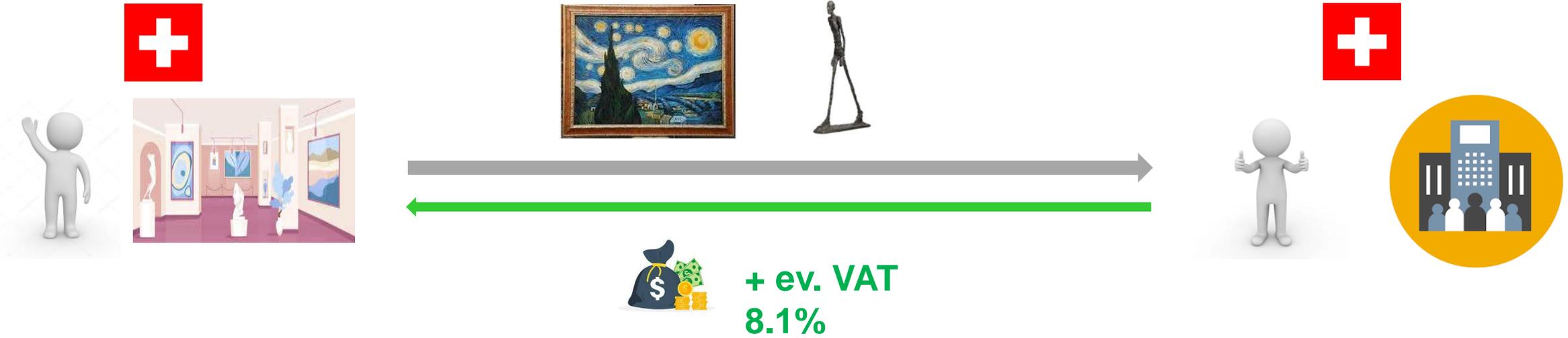
##### **cpv. 3 Collectors' items (non-exhaustive list):**

- stamps
- vehicles whose first registration at the time of purchase is more than 30 years old
- wines and other spirits bearing the indication of the vintage year
- objects made of precious metals



## 2.4 Possession of works of art and collectors' pieces

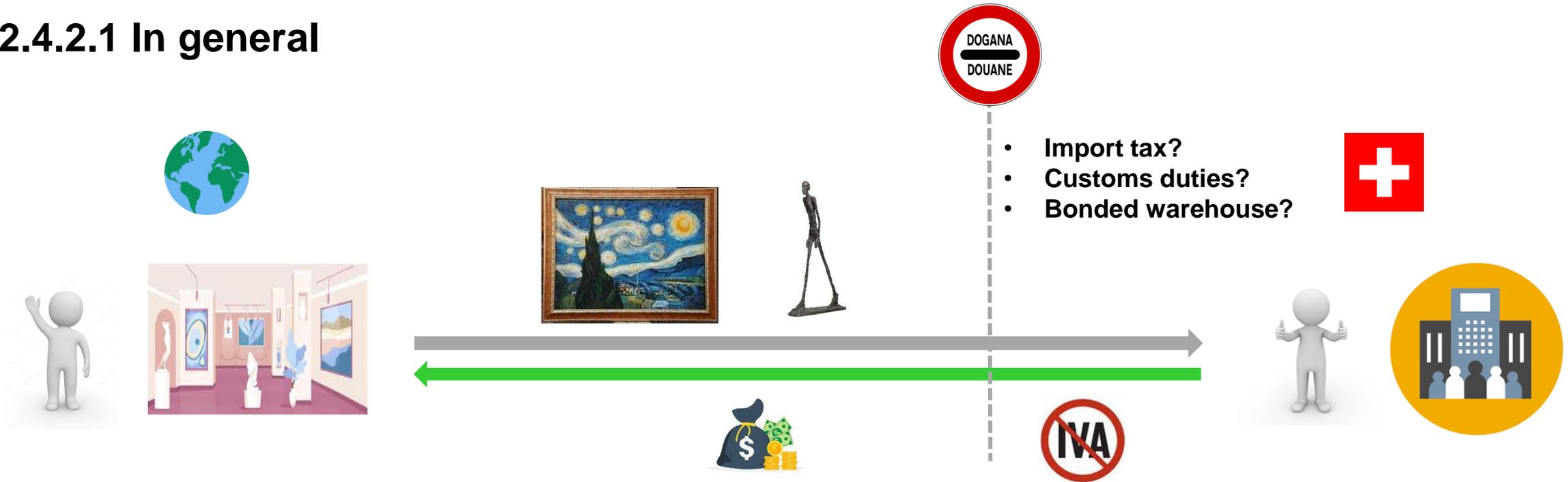
### 2.4.1 Purchase in CH



- If the supply of a work of art or a collector's piece took place in CH, there may be VAT implications for the buyer if the **seller** was a **VAT taxpayer in CH**
- In this case the **transaction** is subject to CH VAT (**current std. rate of 8.1%**)
- If the **buyer** is himself a **VAT taxpayer in CH**, the **VAT invoiced to him** can in principle be **reclaimed** in his VAT return as part of his business activity
- In case of use for **private purposes**, VAT recovery is **NOT possible**

## 2.4.2 Purchase abroad

### 2.4.2.1 In general



➤ If the **supply** of the work of art or collector's piece takes place **outside the CH customs territory**, the transaction is **not subject to VAT in CH**

⚠ ➤ However, **foreign VAT or other taxes** may be levied according to the domestic provisions of the country where the supply takes place

## 2.4.2.1 In general

(continued)

- The introduction into CH of works of art or collectors' items **purchased abroad** entails, in principle, taxation:

- **import tax** and
- **customs duties**



### Exceptions:

- customs procedure of **temporary admission** (e.g. for an exhibition, for a sales attempt): after use on CH territory, the goods are re-exported
- entry into a **customs warehouse in CH**



- It is recommended to **check any export authorisations/restrictions/regulations valid in the foreign country**

## 2.4.2.2 Import Tax

- According to Art. 53(1)(c) VAT Law, **exemption from the tax** is provided for in the case of the importation of (**cumulatively**)

- 1) **a work of art** (as defined in Customs Office Publication 52.22, Section 6.2 )
- 2) **personally created by painters and sculptors** (as defined in Customs Office Publication 52.22, para. 6.3)
- 3) **introduced into CH by them or on their orders**

- Customs Office Publication 52.22 also provides:

- the list of information to be provided to the competent customs office as part of the **application for exemption**
- **an overview** of exempt works of art and those subject to import tax



## 2.4.2.2 Import Tax

(continued)

- For **vintage cars**, the provisions in force for the import of **road vehicles and boats** apply, for which there are **NO** special exemptions, **except** in the case of
  - **inherited assets**
  - **removal goods**



- For cases where **no** exemptions apply or where **there is no** agreed counter-performance (e.g. no purchase contract), the issue arises **of how to determine the value of the good** to be imported, along with the corresponding **import costs**

## 2.4.3 Customs warehouses

- There is the possibility of **temporarily placing arts** in a **customs warehouse**
- CH, and more specifically Geneva, is **known throughout the art's world**
- In these free ports, goods should be **in transit** and only **temporarily stored**, but they often remain there for several decades
- This deposit has at least four main advantages for the art market:
  1. **it is located in CH, but not yet CH customs territory**
  2. it is extremely **safe** and consequently **the insurance premiums are lower**
  3. it offers **spaces** for personal contemplation, exhibitions and the **exchange of works** between collectors
  4. **it does not** require importation into CH with advance payment of import tax, facilitating subsequent exportation

## 2.4.4 Inheritance from foreign resident *de cuius*



- **Through inheritance** the transfer of ownership of art may occur **free of charge**
- Persons domiciled in CH who inherit objects from a person who was **last domiciled abroad** may in principle **import them into CH free of** customs duties as well as import tax (Art. 53 para. 1 let. d Customs Law)

## 2.4.4 Inheritance from foreign resident *de cuius*

(continued)

- The concept of **inherited objects** also includes **valuable paintings, sculptures** as well as classic cars
- For inherited objects with a **value of more than CHF 100'000**, an **application for duty-free** entry must be submitted to the competent district directorate **before importation**
- Inherited objects must be imported, in principle, **within 1 year of the succession (death)**

## 2.4.4 Inheritance from foreign resident *de cuius*

(continued)

- The procedure for importation into CH requires the submission to the customs office of entry of **Form 18.46** (\*), including the possible **confirmation** for **goods with a value of more than CHF 100,000**, together with the following documents:
- **list** of assets to be imported accompanied by an official or notarised statement that the items from the succession have been devolved
  - **death certificate** or similar document
  - domicile or residence **permit** of the heir
  - **official certification of the *de cuius*'** last place of residence, if not already mentioned in the death certificate
  - **traffic licence** of the foreign country, for means of transport

(\*) [www.bazg.admin.ch/bazg/it/home/informazioni-per-privati/masserizie-di-trasloco--studio--domicilio-di-vacanza--matrimonio/importazione-in-svizzera/eredita--oggetti-ereditati-.html](http://www.bazg.admin.ch/bazg/it/home/informazioni-per-privati/masserizie-di-trasloco--studio--domicilio-di-vacanza--matrimonio/importazione-in-svizzera/eredita--oggetti-ereditati-.html)

## 2.5 Donation to foundation/charity organisation in CH



- For the **donor who is a VAT taxpayer** in CH, the donation of a work of art to a foundation or charitable organisation in CH qualifies as a **gift for VAT purposes** and therefore:
  - **does not** constitute counter-performance and
  - **does not** result in a reduction of input VAT in the hands of the donor (Art. 18(2)(d) VAT Law and Art. 33(1) VAT Law)

## 2.6 Concluding remarks for VAT and Custom Duty

- For those working in the art and collectors' sector, one must therefore also consider the **possible consequences for VAT and customs purposes**
- Non-payment of import tax could lead to **criminal proceedings**
- We have also seen that from a procedural point of view, it is recommended / necessary **to contact** the relevant customs authorities **in advance** in order to **avoid bureaucratic delays** when passing through customs (e.g. when moving or importing inherited objects) and to **rely on experienced forwarding agents**
- Also to be noted are the **deadlines** to be met, particularly in cases of **importing household goods and inherited objects**
- In **cross-border transactions** it is also recommended to **check possible consequences/restrictions/permissions** on both the export and import side in the **foreign country**

THANK YOU FOR YOUR ATTENTION  
HAPPY TO ANSWER ANY QUESTION YOU MAY HAVE



Steimle & Partners Consulting SA  
Via Dogana Vecchia 2  
6900 Lugano  
+41 (0)58 896 96 60  
[info@steimle-consulting.ch](mailto:info@steimle-consulting.ch)



Fiduciaria Mega SA  
Vicolo Nassetta 2  
6900 Lugano  
+41 (0)58 896 96 00  
[megalugano@fiduciariamega.ch](mailto:megalugano@fiduciariamega.ch)

