

With Brexit, now is the time to consider whether you should move your art

04 JUNE 2019

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As we approach several upcoming European art fairs and events such as Art Basel in Switzerland and Frieze London, artists, investors, galleries, dealers and shippers are moving art between and around different European jurisdictions. For the art market, Brexit introduces a range of issues that cannot be ignored, especially for those who wish to be able to display and enjoy their art beyond the borders of the United Kingdom.

Therefore, it is helpful that Arts Council England has published a guide on how to deal with a 'no deal' Brexit, but a number of questions, inevitably, remain open.

Some key issues we have seen clients facing, with little guidance, include:

Shipping, movement and freeports

At a simple level, shippers will already be booked up well in advance and documentary requirements if no deal is agreed are unclear.

In a last minute agreement, the EU stated in late March 2019 that it would allow UK art shippers and other luxury goods haulers to continue to enter the continent with a permit in the event of a 'no deal' Brexit – but only until the end of the year.

This gives a stay of execution, but in practical terms means that anyone wanting to move art to the EU should do so by the end of the year unless there are clear agreements as to how matters will carry on thereafter.

Shippers have to apply for specialist permits issued by the European Conference of Ministers of Transport. There could be a shortage of permits and, in the event of a no deal, permits would inevitably be given in priority to essential supplies, such as food and medicine.

Import taxes, free circulation and VAT

It is trite to remind ourselves that a key benefit of EU membership is free circulation of goods and services. Somewhat less trite is the point that exiting the EU removes this advantage absent agreement to retain it in some shape.

For the art market this means any works from the EU currently in the UK which galleries or individuals might want to return to the EU should do so sooner rather than later. In particular, there is a fear of import taxes and we are aware that some galleries in London closed shows early to return works back to Italy specifically to avoid the risk of a multimillion GBP reimport bill. Different import taxes apply throughout the EU, and with Italy's at 10%, it is something that clients wishing to have art in Italy will want to think about – and make sure they return the art in good time.

The other way round, it was reported that some London dealers looking to show works by a French artist at Frieze London in October have already imported the works. This is to avoid the imposition of UK import duties.

And let us not forget VAT. It has been reported that shippers are opening additional bonded warehouses so that art can move to a bonded warehouse without duties or taxes being paid at that stage.

Applicable duties and taxes will, of course, have to be paid when the works move out of the bonded warehouse. A key issue here is that no one yet knows the position where you have art in the UK, which entered the EU and on which full VAT has been paid, if you then want to move that art back to the EU after Brexit. One of the reasons the position is unclear is the lack of clarity as to what form Brexit will take. Do you have to pay VAT

again? Maybe, maybe not. It is an unsatisfactory position for clients and for us as their advisors who are currently unable to give them any certainty in this ambiguous environment.

What should clients do?

In many ways, the answer depends on whether the longer term wish is to have the works in the UK or the EU – if in the UK then the position is clearer. However, some clients may wish to move the art to the EU while this can be done relatively easily, and then take a view.

As ever, much will turn on specific client objectives, but it is important to be aware of the uncertain backdrop to any decisions with respect to the location of art, and in sum the key considerations are:

- (i) Where is the art?
- (ii) Is the intention for it to stay there?
- (iii) If not, have shippers been lined up?
- (iv) Should it be moved ahead of time while the EU pillars of free movement remain in place?
- (v) If import taxes and/or other duties would apply, how high would they be – this should be considered ahead of schedule.

Meanwhile, there will likely be meaningful and regular developments as the Brexit negotiations continue, and it is to be hoped matters will become at least somewhat clearer!

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