

Tax, Artists And Galleries

An artist may sell work in one of three ways:

- 1 directly to the new owner;
- 2 directly to the new owner but through an intermediary (gallery, dealer or art centre) referred to as a commission sale, or
- 3 to an intermediary who makes the sale, either to the new owner or to another intermediary, referred to as a sale on consignment.

Direct sales are straightforward transactions; sales on commission and on consignment, however, can lead to confusion, particularly with respect to the documentation involved and in the treatment of GST.

Artist sale directly to new owner

The tax implications of this sale will be dependent on whether the artist is an artist in business or a 'hobbyist'. For more information on these concepts refer back to visualarts.net.au/guides, under Tax.

If the artist is in business, and has an ABN and also is registered for the Goods and Services Tax (GST) then GST must be charged on the sale of the work and the artist should issue a Tax Invoice for the sale.

If the artist is in business but isn't GST registered then the sale is made without a GST component and the artist should issue an Invoice for the sale, which quotes his/her ABN.

Commission sales

For a work sold on commission, the seller is the artist and the intermediaries will charge a commission for facilitating their part of the sale.

Consider a work sold by an artist to a collector in Sydney. The collector will pay the city gallery \$10,000 for the work (the artist is not registered for GST). The gallery will deduct its commission of 40% plus GST, and send the artist the balance, \$5,600. The artist has then sold the work for \$10,000, paid a commission of \$4,000 and GST on the commission of \$400.

If the artist was registered for GST then the painting would have been sold for \$11,000 (including \$1,000 GST) and would have received \$6,600 – the \$11,000 selling price less the gallery's \$4,400 commission and GST. Now the artist has to account for the GST: \$1,000 has been collected on the sale of the work and there is an input tax credit to claim of \$400 on the commission

leaving a net amount payable to the ATO of \$600, and which leaves the artist with \$6,000.

The difference between the \$5,600 collected by an artist who is not GST registered and the \$6,000 collected by one who is, is the \$600 GST paid on the commission so for an artist whose sticker price can stand the GST, there is certainly a financial incentive to be registered.

Intermediaries charging GST on commissions

There is some confusion about whether the GST should be charged on the GST inclusive price or not.

For an artist who is registered for GST the commission should be charged on the pre GST values, with the GST then added to that - but you will often see commissions being charged on the GST inclusive price. In that case the commission will be GST inclusive (40% of \$11,000 = \$4,400) so make sure that GST isn't then added again to the \$4,400.

As far as paperwork goes the artist should receive a copy of the invoice to the buyer and an invoice from the gallery to the artist for the commission and GST, and a cheque for the difference. This covers the two transactions.

Sale on consignment

In this arrangement, the artist leaves the work with a dealer or gallery on the understanding that when the dealer or gallery sells the work, then it will buy the work from the artist. That is, the artist sells the work to the dealer or gallery, who on-sells the work in its own name.

In this situation, the concept of a "commission" doesn't arise, although it is frequently referred to as such. In fact, it is a profit margin, not a commission. Even though this form of transaction is simpler than commission sales, it gives rise to more confusion, usually because of the GST issues. Most galleries will be GST registered so works sold on consignment will usually be subject to GST. However many artists are not registered for GST and they will always tend to think in terms of pre-GST prices.

For example, the artist nominates a selling price of \$1000 and the artist and gallery agree on a "commission" of 40%. The work is duly sold for \$1000 but that includes GST so the artist will get \$545.45 (or

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\$1000 less \$90.91 GST less the gallery's profit margin of \$363.64 on \$909.09) – the artist was expecting, on the other hand \$600. Now if the artist wants to get \$600 either they will need to be registered for GST, or the sticker price will have to be increased, or they will need to talk the gallery into accepting a lower margin. These difficulties only crop up when the artist nominates the ultimate selling price without considering the impact of GST. If the artist is registered for GST the issue doesn't arise because the gallery will be invoiced for 60% of the price, plus GST. When the work is sold the buyer receives an invoice from the gallery and the gallery gets an invoice from the artist (which is usually prepared by the gallery).

Mixed sales

There will be situations where both methods may be used, though mainly in the Aboriginal art market. A dealer may sell on consignment (or from stock in the case of upfront purchases), selling the work in its own name, and which it will have acquired from the artist, with the art centre taking a commission for facilitating the sale to the dealer.

There, you have a commission sale (artist to dealer) followed by a sale on consignment (dealer to new owner).

Part payments

This arises where the ultimate buyer is allowed to pay for a work in installments. The simplest way to treat such transactions is to regard each payment as a separate "sale" with GST and commission/margin calculated accordingly.

Which is best: Commission or Consignment sale?

As far as net income is concerned, there is no difference: an artist may sell a work for \$10,000 and claim commission expense of \$4,000, or will record a sale for \$6,000.

However, for artists subject to the Non-commercial Loss Provisions it would suit them better to be operating on a commission basis because their sale value will be higher (\$10,000 rather than \$6,000) and they will reach the \$20,000 turnover figure sooner. On the other hand, an artist who, for whatever reasons, does not wish to be registered for GST would be

better under a consignment sale arrangement because with lower sale values it will take longer to reach the \$50,000 turnover threshold.

Understanding the Relationship

As an artist you need to know which method is being used by your gallery or dealer, for the following reasons:

If you are registered for GST, and the transaction is on a consignment sale basis, then you will record as your sale value the amount paid to you by the gallery, and will account for GST (at one-eleventh) of that amount on your BAS;

or, if the transaction is on a sale on commission basis, you would show on your BAS the "retail" price of the work and claim an input tax credit on the commission, and whichever method is adopted will have a bearing on whether or not you are over the \$20,000 turnover threshold for Non-commercial Loss purposes, or the \$50,000 turnover threshold if you are currently not registered for GST.

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