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Freeports in Freefall?

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by Stacy Perman

The crackdown has begun. After months of speculation, increased scrutiny among tax authorities and regulators around the globe, not to mention a major art fraud scandal that ensnared the opaque inner workings of the Geneva Freeport, the Swiss government just announced it was placing tough new controls on its freeports, those transit ports which have, in recent years, become maximum-security safety-deposit boxes with tax benefits.

The new regulations, which take effect in January, mark a radical departure for business as usual at the freeports where secrecy and anonymity have made them attractive destinations for art collectors storing their treasures while avoiding tax liabilities. But those very protections the freeports offer its clients have also made them vulnerable to a host of illegal activities and the stricter rules are part of the government's broader clamp down on money laundering, tax evasion and black market trades. "With the introduction of the new amendment," the Swiss authorities announced, "the legislature wishes to ensure the required transparency towards domestic and foreign authorities on the stored goods. In addition, Switzerland's position in the fight against money laundering has been strengthened."

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Bloomberg News

Traditional Swiss residential apartment blocks sit on the bank overlooking Lake Geneva as the Jet d'Eau water fountain rises in Geneva.

In other words, for those who've secreted away their Picasso's and Modigliani's for years, using the freeports much like the art world's Cayman Islands — the gig is up, at least in Switzerland. Under the new set of rules, goods stored for export will now have a six-month time limit while a host of new disclosure requirements come into play, including that owners must now declare their identity as well as the identity of anyone buying those goods destined to leave the freeports. Further, the Swiss have extended their reach, adding wine, cigars, cars, and furniture to the list of goods required for disclosure.

"This could be a total game changer," says a former U.S. law-enforcement official who now deals with art market issues in private practice. "It could revert the use of the freeports back to how they were intended as furthering trade — instead of operating as tax-free stash houses." Adding, "This raises the stakes considerably and will probably cause a number of collectors to rethink the ways in which they manage, store or transfer their assets.

According to Andreas Ritter, a Zurich-based art lawyer, the move by the Swiss is in large measure preemptive, after local authorities were previously forced to pull back the curtain on their fabled banking secrecy, after the U.S. and European Union applied intense and humiliating pressure on the Swiss. "Instead of confronting new challenges, we tend often only to react when pressure comes from the outside," he says. "It's better to take internal action that better reflects self-regulation."

The latest round of terror attacks in Paris has also given reforming the freeports a new urgency. Thomas C. Danziger, a New York-based attorney who specializes in art and intellectual property law, calls the Swiss move "emblematic of a new order," saying, "the handwriting is on the wall. It will certainly not surprise me if there is further regulation, especially in the wake of the recent terror attacks going forward. He notes: "authorities are looking to cut off [the terrorists'] source of funding every way and transparency and the ability to trace funds are the order of the day when it comes to transactions in Europe."

But with estimated billions worth of treasures stored in the Geneva Freeport alone, (the Nahmad art-dealing family is reported to have countless masterpieces piled up in the sprawling Geneva fortress), the more pressing question is how the new regulations will impact the art world. "I was surprised at how strict the regulations are," says Karen Boyer, principal at the New York art advisory firm Elements in Play. "Limiting the time to keep something for export from forever to six months is a huge difference." And by removing the anonymity and implementing time caps, the new measures make it more difficult to launder money. But it also puts a damper on using the freeports as black boxes to buy and sell artworks tax-free, and shuffle around ownership, all away from the prying eyes of government authorities.

Not that there aren't winners, too. Many art experts see Switzerland's move a boon to freeports in Singapore, Beijing, and Luxembourg. "This can't help but be good business for everyone else," says Danziger, noting that other countries don't "have the same tensions as the Europeans have at this point." But he cautions, "If you are a European collector how likely will you be to send art to Singapore? There's a practical matter."

Enter Delaware, which is one of a handful of U.S. states that does not have any sales or use



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Richard C. Morais, Penta's editor, was Forbes magazine's longest serving foreign correspondent, has won multiple Business Journalist Of The Year Awards, and is the author of two novels: The Hundred-Foot Journey and Buddhaland, Brooklyn. Sonia Talati is Penta's reporter about town, both online and for the magazine. She previously worked for the Wall Street Journal and various television station affiliates around the country. Sonia has a B.A. in economics from the University of California, Los Angeles, and an M.A. from Columbia University Graduate School of Journalism.

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taxes and is not quite 200 miles south of the epicenter of the New York art world. In September, to much fanfare, the [Delaware Freeport](#) opened, adding to the growing number of art storage sites popping up there, promoting themselves as a geographically beneficial alternative to the established freeports abroad but with similar tax advantages. Fritz Dietl, owner of the Delaware Freeport told the New York Times that he is upping the ante, applying for free-trade-zone status in the state.

“I think it’s interesting timing,” says Suzanne Gyorgy, Managing Director, Global Head, Art Advisory and Finance at Citi Private Bank. “When you look at what is going on in Delaware and how many openings there are – I mean we may just see a shift into the U.S. Like anything else, when you see a change in one place, the pendulum swings and markets shift to other jurisdictions.”

We’re not so sure. If the Swiss have taken the high road and effectively curtailed their freeport black box in the international financial system, we can’t believe that the U.S. Congress and Homeland security are going to passively allow an American variant of the closed financial freeport black box to operate with impunity just across the Potomac. It totally undermines the U.S. government’s credibility when applying pressure on other countries to cut off channels for money laundering and terrorist financing.

But, either way, the end dance has just begun. How much and how quickly a disruptor the new Swiss ruling will be on the art market – and whether it is just the first domino to fall across the globe – remains to be seen.

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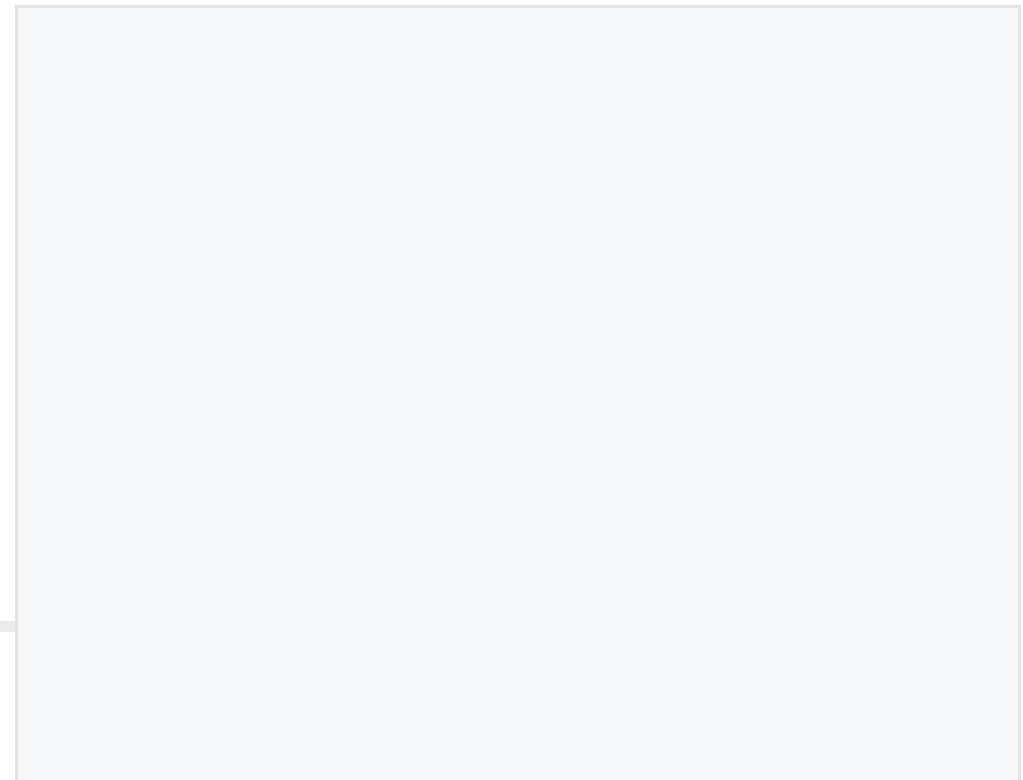
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