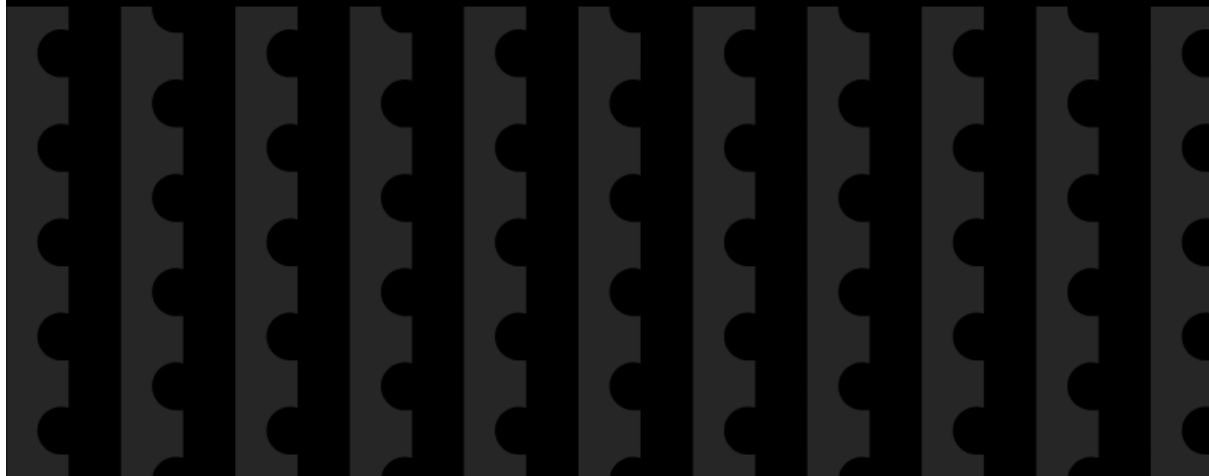


Artist Resale Royalty Guide for Art Buyers & Sellers



About this Guide

This Guide explains how the Artist Resale Royalty scheme is administered, including when a resale royalty is payable (see **Appendix 1** for a checklist), how RRA will collect & distribute the resale royalties, and Art Buyers and Sellers rights and obligations.

About the Artists' Resale Royalty scheme

The Minister for Arts Culture and Heritage has appointed Copyright Licensing New Zealand (**CLNZ**) as the collection agency for the purposes of the Artist Resale Royalty Scheme.

Resale Royalties Aotearoa Toi Huarau (**RRA**) is a wholly owned not-for-profit subsidiary of CLNZ. It will administer the scheme in accordance with the Resale Right for Visual Artists Act 2023 and its regulations (**the Act**).

Under the scheme, from 1 December 2024 a 5% Artist Resale Royalty (**Royalty**) is payable to an “**eligible artist**” each time there is a “**qualifying resale**” of an “**original visual artwork**” by that artist. (see Appendix 1), placing certain obligations on both the buyer and seller involved in a “**qualifying resale**”.

As the government appointed collection agency, RRA will:

- **help** Art Buyers and Sellers understand their obligations under the Act;
- **support** Art Buyers and Sellers to comply with their obligations;
- use its **best endeavours** to efficiently collect and then distribute each **Royalty** to eligible artists & successors in accordance with the Act.

Part 1: When is a resale royalty payable?

An “**eligible artist**” (or their successor) has a right to be paid a Royalty each time there is a “**qualifying resale**” of an “**original visual artwork**” by that artist (provided the right has not “expired” at the time of resale).

Please see the Checklists in Appendix 2 for details of each step:

Step 1 (**Checklist 1**): Is there a “**qualifying resale**”? If yes, then:

Step 2 (**Checklist 2**): Is the qualifying resale of an “**original visual artwork**”? if yes, then:

Step 3 (**Checklist 3**): is the qualifying resale of an original visual artwork by an “**eligible artist**”?

If the answer to all the above 3 Steps is yes, then a **Royalty** is payable to the eligible artist or their successor, **unless** the resale occurs *after* the “**expiry date**” of the resale royalty right. (The expiry date is 50 years from the end of the calendar year in which the eligible artist dies). Use Step 4 (**Checklist 4**) to check **expiry dates** for deceased artists.

Part 2: Reporting Obligations

Who is responsible for reporting the qualifying resale to RRA?

A **Qualifying Resale** may be either a “**Professional Resale**” or a “**Voluntary Resale**” (see Checklist 1 for definitions).

In the case of a **Professional Resale**, the person/s who must report it to RRA are:

- **each** AMP that is “involved in the resale”; or
- (if there are no AMP’s involved in the resale), each **GLAM** member involved in the resale.

In the case of a “**Voluntary Resale**”, then those parties **involved in** the resale will decide which party has the responsibility to report the resale to RRA.

“**Art Market Professionals**” are defined as:

- (a) a person who carries on business as an auctioneer (within the meaning of [section 5\(3\)](#) of the Auctioneers Act 2013):
- (b) an art dealer:
- (c) an art consultant:
- (d) the owner or operator of an art gallery that deals in visual artworks:
- (e) any other person who is in the business of dealing in visual artworks.

GLAM are publicly funded art Gallery, Library, Archive or Museum.

What Information must be provided to RRA?

If it is your responsibility to report a Qualifying Resale to RRA (see section above), then you **must** ensure the following information is provided RRA:

- (a) the name of the artwork, if known:
- (b) a brief description of the artwork:
- (c) the resale value:
- (d) the name of the artist, if known:

- (e) the date on which the resale was completed
- (f) the name and contact details of the **“person(s) liable”** for paying the resale royalty (if known);
- (g) the earliest date on which the **“person(s) liable”** became aware that they were liable to pay the resale royalty (if known)

In the case of a **Voluntary Resale**, the reporting party must also report to RRA what % of the resale value has been agreed to be payable to the artist as a resale royalty.

Please note:

“person’s liable” includes sellers (please Part 3).

Seller names and contact details are not reported to the Ministry or the Government for monitoring. This information is collected by RRA for the purpose of performing its royalty collection and distribution functions under the Act and the Regulations. All information collected is subject to our Privacy Policy (available on our website).

What is the process and timeframe for reporting qualifying resales?

Whether you are an AMP reporting a “Professional Resale”, or perhaps a buyer or seller reporting a “Voluntary Qualifying Resale”, the simple way to report the resale to RRA is to register with RRA.

Once registered, you will have access to a portal and template-form, which you can use to instantly report all mandatory information about the resale to RRA. Registering with RRA and using the built-in forms ensures we have current contact details for you and can assist you in a timely way with your reporting obligations (and/or any payment obligations) under the Act.

To register:

1. Go to www.resaleroalties.co.nz
2. Select the ‘Register’ button, complete the registration form with your contact details and register. Prior to 1 December 2024, we will supply you with an account and login credentials.
3. Once the scheme is operational, you will be able to report voluntary qualifying resales using this [form](#).

Timeframe: The mandatory information must be provided to RRA in writing and within 60 working days after the date on which the qualifying resale is completed.

Part 3: Payment Obligations

Who is liable to pay the Royalty?

Assuming a royalty is payable (see Part 1), then section 17 of the Act states that the following **two** persons are jointly and severally liable to pay the 5% resale royalty to RRA for a “qualifying resale”:

1. **The seller**, and
2. **Either**
 - **the agent** acting for the seller on the resale; **or**
 - (if the seller does not have an agent), **the agent** acting for the buyer on the resale; **or**
 - (if there are no agents), **the buyer**.

Note that seller will **always** be liable to pay the royalty. Whereas the **buyer** generally **won't** be liable, unless there are no agents involved in the resale. In many cases, the seller **will** use an agent (such as an auction house or art consultant), in which case that agent will be jointly and severally liable with the seller.

To give three contrasting examples (these examples assume that a royalty is payable (see Part 1)):

- **Seller uses an agent:** A seller chooses to sell through an auction house. Typically speaking, an auction house acts as **agent** for the seller. In this example, the seller and the seller's agent (the auction house) are jointly and severally liable to pay the Royalty to RRA. Neither the buyer or the buyer's agents will have any obligation to pay the Royalty to RRA.
- **Buyer uses an agent, and seller doesn't:** This buyer is a collector, in search of a very specific artwork to add to their collection. To help, the buyer retains an art dealer or consultant to locate the artwork, and negotiate a good price. The dealer locates the seller, prepares a contract, and negotiates a deal. The seller signs the resale contract, without ever using an agent. In this example the seller and the buyer's agent are liable to pay the Royalty to RRA. The buyer is not liable to pay RRA.
- **No agent's involved:** The seller sells direct to a Gallery. Neither seller or buyer appoint an agent, instead choosing to negotiate with each other directly. In this example the seller and the buyer (the Gallery) are jointly and severally liable to pay the royalty to RRA.

When is the royalty payable to Resale Royalties Aotearoa?

The royalty is payable to RRA within 60 working days after the later of either:

1. the completion of the qualifying resale (or)
2. on the earliest date on which person(s) liable for payment becomes aware of liability.

When is the royalty distributed by RRA to the visual artist?

Once RRA has received the total royalty payment from the liable person(s) we are required to distribute to the right holder in a timely manner (provided the right holder can be found). We distribute 80% of the royalty collected to the eligible right holder and retain 20% of the royalty for the purpose of funding RRA's operations under the Scheme.

What about GST?

The current guidance from IRD:

- The resale payment is exempt from GST when the art professional (for example an art dealer or gallery) passes it to the collection agency.
- The collection agency does not need to pay GST on the percentage of the resale payment that it keeps.
- The resale payment must include GST when the collection agency passes it to the artist, if the artist is registered for GST.

Full IRD Guidance is published here: [Resale payments for artists \(ird.govt.nz\)](https://ird.govt.nz)

Part 3: How will RRA engage with Art Buyers & Sellers?

Support Services

We offer an **email support service** to assist Art Buyers & Sellers to understand and comply with their obligations under the Act and Regulations. Please email our support service at kiaora@resaleroyalties.co.nz. Query response time will aim to be within 3 working days, or 10 working days if your enquiry involves confirming the eligibility of particular artists based in a reciprocating country.

Quick reference tools

- for a **visual flowchart** of when a Resale Royalty is Payable see **Appendix 1**.
- for **definitions** of important terms like “original visual artwork”, “eligibility” and “qualifying resale” see the Four Checklists in **Appendix 2**.

Information regarding non-compliance

RRA appreciates that the new scheme may be confusing and create legal obligations that buyers and sellers of art may be unfamiliar or unaware of, and we look forward to assisting you to understand and comply with the new law. Please note that if a buyer or seller, or anyone else involved in a “**qualifying resale**” fails to comply with their obligations, then the Act provides **RRA** as the Collection Agency the right to commence any proceeding it deems appropriate to enforce the reporting and payment of the **Royalty** including applying to a court for orders to enforce these obligations.

More information

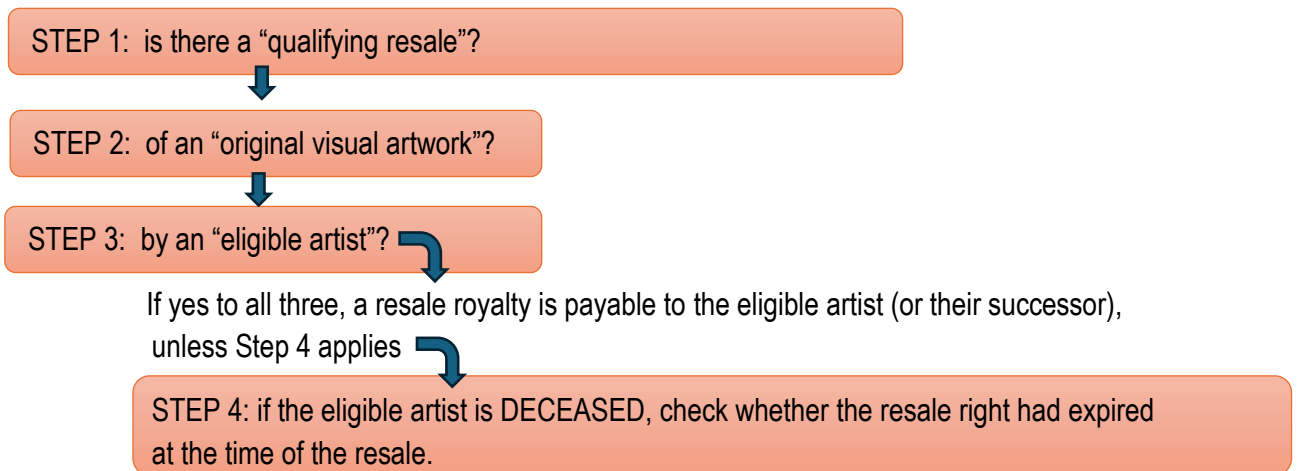
Additional information is available from www.resaleroyalties.co.nz

To talk to us please use the email address kiaora@resaleroyalties.co.nz

APPENDIX 1 – VISUAL FLOWCHART: When is a Resale Royalty Payable?

Summary: An “eligible artist” has a right to be paid a resale royalty each time there is a “qualifying resale” of an “original visual artwork” by that artist (provided the resale right had not “expired” at the time of resale).

Flowchart: Apply the above test in four steps:



Apply each step using the **four Checklists** in Appendix 2 (below).

Additional support from RRA: If after applying these steps you’re uncertain or have questions:

- please email our support service at kiaora@resaleroyalties.co.nz;
- for eligible artists who consent, we will develop & publish a searchable directory of eligible visual artists on our website. (If an artist is not listed there, however, apply STEP 3 in the checklists below, or email us above).

APPENDIX 2 – FOUR CHECKLISTS

Use these **CHECKLISTS** to apply **STEPS 1 to 4**





STEP 1: Is there a “qualifying resale”?

Checklist 1: If all three boxes are checked, the resale is a “qualifying resale”


- The **resale value** must be \$2,000 NZD (excl. GST) or greater
- The contract for the resale must be entered into on or after the **commencement date** of the Act (1st December 2024)
- The sale must be a **“Professional Resale”** or a **“Voluntary Qualifying Resale”**



<ul style="list-style-type: none"> • at least 1 person involved in the resale is an “Art Market professional” (see p Error! Bookmark not defined.), or a publicly funded art gallery, museum, library, or archive that collects and displays artworks; and 	<p><i>Any resale other than a “Professional Resale” may be a “Voluntary Qualifying Resale” if all parties to the resale agree the following in writing:</i></p> <ul style="list-style-type: none"> • that the resale is a qualifying resale for purposes of the Act; and
<ul style="list-style-type: none"> • that person is either resident, incorporated, registered, or carrying on business in NZ; and 	<ul style="list-style-type: none"> • what % of the resale value they agree will be payable to the artist as a resale royalty; and
<ul style="list-style-type: none"> • the resale relates to that person’s dealings in visual artworks that occur within New Zealand 	<ul style="list-style-type: none"> • who will provide the relevant information to the Collection Agency.
<p> If you ticked all 3 boxes, the qualifying resale is a “Professional Resale”</p>	<p> If you ticked all 3 boxes, the qualifying resale is a “Voluntary Qualifying Resale”</p>

Note:

“**Resale**” does not include the first transfer of ownership of the artwork (irrespective of whether the first transfer of ownership was made for money or other consideration).



STEP 2: Of an “original visual artwork”?

Checklist 2.1: If any of the following boxes are checked, the work is a “visual artwork”:

- cultural expressions of Māori or Pacific peoples;
- painting, drawing, carving, engraving, etching, lithography, woodcutting, printing (including a book of prints) ;
- sculpture, collage, modelling;
- craftwork, ceramics, glassware, jewellery, textiles, weaving, metalware, furniture;
- photography or video art;
- multimedia art;
- art created using computers or other electronic devices;
- ethnic or cultural art that is a variation of any type of work described above in the 2nd through final bullets.

However, visual artwork **does not** include:

- a building* ; or
- a dramatic work* or musical work* ; or
- a literary work* , unless it is a compilation that includes a visual artwork.

*(*these terms are defined in s 2(1) of the Copyright Act 1993)*

Checklist 2.2: To be an “original”, the visual artwork must have been:

- Created by, or under the authority of, the artist; or
- One of a limited number of copies of visual artwork made by that artist or under their authority.

STEP 3: By an “eligible artist”?

Checklist 3.1: IF the artist is *alive* at the time the contract for resale is entered into: is the artist:

- a New Zealand Citizen, or a person domiciled or resident in New Zealand; or
- a citizen or subject of, or a person domiciled or resident in, a “reciprocating country”

→ If you ticked either of these boxes, then the artist is an eligible artist.



Checklist 3.2: IF the artist is *deceased* at the time the contract for resale is entered into: at the time of their death was the artist:

- a New Zealand Citizen, or a person domiciled or resident in New Zealand; or
- a citizen or subject of, or a person domiciled or resident in, a reciprocating country

→ If you ticked either of the above, then the deceased artist is an eligible artist. Although the eligible artist is deceased, the resale right is held by their successor(s) (meaning the successor(s) are entitled to payment of the royalty, provided they meet the same criteria for eligibility (above).

STEP 4: if the eligible artist is DECEASED, check whether the resale right had expired at the time of the resale.

In the case of deceased eligible artists, their resale right may or may not have **expired**. A resale royalty will **only** be payable if the contract for the resale was entered into **on or before** the following **expiry dates** (as applicable):

- (where the artwork is by a single artist) - the expiry date is 50 years from the end of the calendar year in which the artist died
 - (where the artwork was created jointly by 2 or more artists) - the expiry date is 50 years passed from the end of the calendar year in which the last of those artists died.
- If the resale contract was entered on or before the expiry date, a resale royalty is payable.
→ If the resale contract was entered into after the expiry date, no resale royalty is payable