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Need to Adjust your Set?

Speak no more of the whistling wilderness of the old AM radio desperately trying to pick up signals from stations ashore. Communication on board yachts is having its high-tech makeover rapidly. Nowadays smart little receivers pick up radio and TV broadcasts from satellites or the Internet. The sound is clean, crisp and clear and the pictures are vivid. For the yachtsman or VIP on the move, enjoying a charter or just a "personal" on the floating villa, they no longer need to constantly re-tune their receivers. Their sets no longer sound rotten, not swamped by interference and white noise. So who to thank for all this?



The army of technology and software vendors now said to be piling into the yachting industry. They bring with them a swathe of transmission and compression products: set top boxes that unscramble the signals of cable operators, on-demand radio and video services recorded on a data carrier or delivered over the Internet, bundles of data, voice and video, or even mobile phone, services supplied digitally from afar – in short, a vision designed to transpose the "digital home" into the yacht with all its excitements.

If you were thinking that EU VAT is the first casualty of this yachting technology stampede, you'd be right. For reasons that are understandable, VAT is often the last consideration that crosses the mind of the yacht owner. As to the vendor, he is most likely to be non-EU and therefore not familiar with VAT.

Witness the way it all tends to work. First there is, for instance, standard compression software already in use onshore. The software vendor undertakes to install the basic software under licence and customise it to enable the yacht owner to use it in his yacht's communication or entertainment systems. The price is never small. The parties enter into a contract. The vendor hands over a data carrier with the basic software to the yacht owner, who brings it onto his EU-based yacht. The vendor's engineer then follows suit, installs the basic software, customises it, gives a few days' training to the yacht crew, carries out a general acceptance test between the parties and off he retires to his non-EU home.

To all intents and purposes this looks like a very normal, private deal. And it takes place on a means of transport, which, although permanently in the EU, plies its trade across several EU member states. So what has Customs got to do with it?

A lot actually, because the deal has literally everything that EU VAT seeks for a legal context. The yacht owner is an EU consumer. He has acted as an importer of goods (the data carrier) into the EU and should declare and pay import VAT. And although the software supplier is established outside the EU, the yacht owner is also the recipient, within the EU, of a complex supply of a service consisting of the customisation of the basic software, its installation and the agreed training of his staff - all of which under the VAT place of supply rules are taxable where he is established within the EU.

Nor would the VAT treatment have been any different had the yacht owner received the software via the Internet. Since 1 July 2003 the supply of software and "digitized products" are deemed to be electronically supplied services for the purposes of EU VAT. This has meant that EU VAT-registered customers who receive these services must account for VAT on the supply by reverse charge – i.e. they must charge themselves output VAT and recover input VAT under the normal rules. However, if the consumer was a private individual or a business not registered for VAT and he receives these services from a non-EU supplier, then the non-EU supplier would become liable to register for VAT in the EU.

But what chance has Customs got of finding out?

The yacht owner proudly showed his new state-of-the-art entertainment and electronics systems to the Customs Officer, who had boarded his yacht for a routine check of his yacht's VAT status. The Customs Officer was impressed. "How much did all this cost?" he asked.

"Not cheap," the yacht owner replied. "About \$500,000 in all."

"You're joking!" said the Customs Officer. "Let me see the invoice."

The Customs Officer went back to his office and raised an assessment for \$98,000 of TVA for settlement within 14 days.

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