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Of Movers, Shakers and Leasing

The movers are those super-rich folk who are able to afford the large yachts that have become the epitome of the modern yachting industry. The number of this traditional class is being swelled by two other trends. First is the growth of "fractional ownership": time-shares in luxury yachts formerly available only to those wealthy owners paying a full price. Fractional ownership first got noticed when firms started selling access to private jets. It has since spread to yacht ownership. Alongside this fractional ownership is the growth of yacht leasing. Leasing's distinguishing feature is the rental, as opposed to the outright purchase, of a yacht.



Fractional ownership and leasing have lowered the entry threshold for new movers into an industry that was once the preserve of a very wealthy few. The rank of the mover, it seems, is now legion.

The Shakers...

The class of shakers too has grown exponentially in recent years, far outstripping the movers. Shakers are the providers of a gamut of goods and services to and around the large yacht. Managers, brokers, crew suppliers, victuallers, consultants, banks, painters, port agents...The shakers have tended to make things happen for the yacht and its mover (the owner). Time was when the mover depended on a handful of them. Nowadays in a fast changing yachting industry, being conspicuous as a shaker is getting harder and harder. This is no bad thing, since it is driving up service standards. But could this also explain the tendency of some to take undue risks with treasured assets and familiar tools of the trade?

Do-It-Yourself Leasing

Take leasing again, which is now raising the hackles of several EU VAT authorities. The concept itself is as old as time: you rent a yacht for an extended period rather than purchase it outright. Depending on the intrinsic elements of the contract, you may call it an "operating lease", a "contract hire", a "contract purchase" or a "finance lease" – and you may end up owning the yacht or not. Because such leasing involves the exploitation and consumption of a taxable asset, it is one of the primary candidates

for the VAT charge under EU VAT law. And this liability to VAT is settled case law. So what is going on in yacht leasing that so provokes the VAT man?

There are three broad areas of concern, it seems. First is the institutional asset financier (say a bank), who relies too heavily on the general exemption of financial services for VAT and fails to consider the specific exceptions relating to credit advanced in connection with the supply of goods. So the financier may actually provide instalment credit finance with a yacht without charging any VAT, thereby knowingly or unknowingly "cheating the Revenue".

Second is the sort of self-financing instalment credit provider who does not involve a bank or a finance company but behaves, to all intents and purposes, like a bank. Typically the provider, who is VAT registered in one EU country, would purchase the yacht from another EU country on "reverse charge" without paying VAT. The yacht is then "structured and buried" into a supposedly VAT-exempt finance leasing arrangement. The customer is not charged any VAT on the instalment credit and the VAT due on the yacht is never accounted for.

Third is the sale and lease back or lease and lease back scheme. This is where a beneficial owner (BO) who is not entitled to VAT recovery wishes to recover input VAT on a yacht that he will put exclusively to his personal use. The BO advances a "loan" to a service provider's (SP's) in-house VAT registered company set up purely to avoid VAT. The SP's company buys the yacht as an intra-Community acquisition. The SP's company recovers the VAT on the purchase, grants a standard-rated lease of the yacht to the BO's own VAT-registered company (also administered by the SP) which in turn grants a VAT-free lease of the yacht back to the BO for his personal use as a "principal charterer". By such rigmorole, both VAT registered parties thus recover input tax while the yacht is diverted to VAT-free private use. The scheme is a modified version of the much-abhorred "Robert Gordons" scheme used by some property developers in the UK - until Customs effectively killed it in 1995.

The fact that Robert Gordons and finance-type schemes are resurfacing in the moveable asset sector such as yachting is unfortunate, as they will only give leasing a bad name. But this is also symptomatic of yachting industry's growing pains.

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Moore Stephens Consulting (Isle of Man) Limited
26 -28 Athol Street, Douglas, Isle of Man IM99 1BD.

More Information? If you have any queries concerning our services then please contact us by telephone on +44 (0) 1624 662 020, or email:

Ayuk Ntuiabane: ayuk.ntuiabane@moorestephens.co.im
Clive Dixon: clive.dixon@moorestephens.co.im
Anthony Cashen: anthony.cashen@moorestephens.co.im