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A Pleasure Yacht Named 'Business'

The difficulty of persuading Customs that an apparent hobby pursuit such as yachting can be a legitimate business enterprise for VAT purposes is as old as the EC VAT system itself. Customs' scepticism is founded on VAT law's notion of business – or 'economic activity'. And in some case



law the courts have agreed with Customs that there was no business being carried on. But there has been some rebalancing in favour of the taxpayer in recent years, which is good news for the pleasure yacht owner-user.

Back in 1976 (case 242), K G Coleman acquired a pleasure boat and let it to a company carrying on the business of holiday boat hire. The company was to use the vessel in its business, maximise the hire revenue and pay Coleman 45% of the hiring fees achieved. Coleman applied for VAT registration but Customs refused the application, maintaining that the hiring out of the vessel did not amount to the carrying on of a business. The Tribunal agreed with Customs, concluding that the hiring of the boat for holiday use was a trade but one in which Coleman did not participate. It determined that Coleman's intention was only to make an investment.

Six years later the Queen's Bench Division of the High Court supported this decision in *Three H Aircraft Hire v CCE* [1982] STC 653. Here three individuals in partnership owned an aircraft, which they hired out to a company that leased aircrafts to qualified pilots by way of business. For this the partnership received a fee based on the hours flown. Customs concluded that the partnership was not carrying on a business. The High Court agreed, adding that the charter of a single asset to a single customer did not constitute a business.

In 2000 Mark and Christine Berwick appealed to the London VAT Tribunal (case 17686). Mark Berwick purchased a yacht from Sunsail. Under agreement Sunsail contracted to manage the yacht for a four-year period, seeking to hire it out for 12-month lease periods. Mr. and Mrs. Berwick applied for VAT registration as yacht charterers and claimed recovery of the input tax on the yacht purchase.

Customs denied the repayment, holding that Mr. and Mrs. Berwick were not carrying on a business and so were not VAT-registrable. The Tribunal agreed, deciding that the letting to Sunsail was "an isolated transaction which was not part of a sequence of transactions amounting to economic activity". It was Sunsail that carried on the economic activity.

Then came the *Stockdale* case (case 18757) in 2004. Trevor Stockdale and his wife had been in business for more than 25 years dealing in property and swimming pools. They VAT-deregistered in 2002 but in 2003 Mr. Stockdale re-registered, contending that in addition to the aforementioned activities, he intended to start a yacht-chartering business. A boat was purchased and the input tax was claimed on his VAT return. This was disallowed by Customs.

In the Tribunal Customs referred to the *Berwick* case, contending that Mr. Stockdale was not carrying on any economic activity. However, the Tribunal was able to distinguish *Stockdale* from *Berwick* because: (i) *Berwick* was trying to establish that he was engaged in an economic activity with a right of VAT registration, whereas *Stockdale* was already engaged in other activities at the time of his yacht purchase. (ii) *Berwick* at purchase only contemplated chartering for four years with Sunsail to defray his initial yacht purchase costs; after that he did not have any continuing intention to charter. *Stockdale*, on the other hand, intended to charter continually and use the yacht for his own purposes only when it was available. (iii) Trevor *Stockdale* had a continuing involvement in the decision-making for the boat, unlike *Berwick*, where all the decisions were made and expenses paid by Sunsail. (iv) Mr. *Stockdale* was also issuing and receiving invoices in respect of the chartering business and *Berwick* was not. The Tribunal found on the evidence that Mr. *Stockdale* had a long-term commitment to the business and the input tax was, therefore, recoverable.

Thanks to the *Stockdale* decision, and to more emphatic rulings at the higher ECJ level in related matters such as the *Lennartz* and *Seeling* cases, UK Customs formally gave the mixed-use yacht a fair wind in December 2004. Much like the Isle of Man, where Customs have for long accepted the registration and recovery of VAT by yacht-owning companies set up on a commercial basis, with the beneficial owner as "principal user".

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