

YACHTING VAT NOTE

October 2006

Malta Offers Her Teat Again...

As VAT schemes go, the latest one from Malta resembles the one before. On the eve of joining the EU, Malta had briefly opened up a tempting window to non-EU yachts wishing to acquire EU status upon her accession.



They were invited to pay VAT at just 3% in order to be baptized with full EU VAT paid status. Several yacht owners did wing it to Malta to seize this massive tax giveaway before the scheme closed on 30 April 2004. They were visited by sudden guilt in the immediate aftermath, fuelled by widespread speculation that the EU was concerned about Malta's pre-accession "shenanigans" and would reverse the tax advantage on the grounds that it violated EU state aid rules. As it turned out the claims were unfounded. The yachts involved have since carried on with their bargain VAT status unmolested. So the fact that Malta's latest offering to yachting has received only a lukewarm response is truly ironic.

The idea itself, first mooted 11 months ago but only clarified recently, is simple enough: yacht owners wishing to lease-purchase yachts are invited to establish Maltese companies. Conditionally, they are promised considerable VAT savings on the lease instalment payments they make. They would be taxed on the payments only according to a presumed percentage of use of the yacht within the EU. The "use" in turn is established according to the propulsion and length of the craft. The effective rate of VAT applicable is extrapolated from the Maltese standard rate of 18%. So, for example, a sailing yacht of length up to 10 meters would be deemed to have sailed 60% of the time during which it was leased-purchased - i.e. effectively 10.8% VAT. Using this sliding scale the effective rate of VAT for sailing yachts is set according to length on an effective VAT range between 10.8% and 5.5%. For motor yachts the effective VAT rate slides according to length from 16.2% to 5.4%. Thus larger craft in particular would stand to benefit from reduced rates of VAT on the types of leases where a yacht based in Malta is lease-purchased by a Malta company.

Malta's unabashed aim is to use a VAT sweetener to nurture and promote the setting up of yacht finance

companies in Malta, as well as lure more yachting businesses onto its shores. That is a laudable enough aim. So why then are yacht owners not rushing off to Malta once again for VAT carnival?

Leasing scheme fatigue may be one reason. Malta's lease-purchase VAT scheme is not new in the wider EU context. It follows in the footsteps of the Italian, French and Dutch ones. Yacht owners, some of whom have had unfortunate experiences in recent years, are much more wary of schemes which promise a lot but deliver variables depending on which advisor you speak to or which service provider you use.

For pragmatic industry types with the long view, the Maltese scheme is predicated on the same untested logic as its predecessors. There is little evidence to support the oversold idea that finance leasing is so fundamental to the yachting industry as to offer a master key to its soul. Many owners, particularly of the larger yachts, purchase their yachts outright. Often they seek to mitigate VAT not on some finance arrangement but, first, on the whole purchase price at a go; and, second, on the ongoing exploitation of the yacht whether for third-party charter or for personal use. And yet, like its predecessors, Malta seems to be talking about short term yacht finance leasing when it should really be discussing a whole industry VAT solution for the long term.

Add to that a host of wider tax questions and it is unclear what will come out of Malta's "Official Guidelines" machine. The smart money is more on the traditional EU positions: that yachts, whatever their function, are taxable pleasure craft, as opposed to merchant ships which are exempt; that the hire of Maltese-owned yachts is liable to VAT back in Malta; and that commissions on Malta-based yacht charter and sale broking are liable to VAT in Malta. Malta is also caught by standard EU rules on social charges for employment of yacht crew. As to direct taxation, Malta yielded unconditionally on 12 April 2006 to European Commission demands to abolish its tax exemption regime for "International Trading Companies" and "Foreign Income Companies".

The reality of EU membership means that Malta has had to vacate the offshore world that yacht owners and operators continue to inhabit. It would take more than a flash of the teat to lure them to follow.

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