

Current State of Yachting VAT

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INTRODUCTION

Will cover developments in:

- Spain
- France
- Italy
- Malta
- Croatia
- Greece



- The “effective use and enjoyment” rule - legal source of divergence and how a new convergence is emerging.
- FAQs and icebergs - and how to navigate them?

SPAIN

- Need to be licensed to charter.
- VAT on charters - must register and charge VAT at 21% of charter fee.
- Matriculation tax (MT) applies too - up to 12% of yacht value.
- BUT merely sailing in Spanish waters if you are not connected to Spain will not trigger Matriculation Tax or VAT.

Expected Change!

- Legislation is presently going through parliament which, if passed, will exempt chartered yachts from MT.
- This will only apply if the charters are commercial.

FRANCE

- Pleasure boats, even if ‘seagoing’, are no longer entitled to tax exemption on a charter if the end user of the charter is a private person using the yacht for leisure or sport.
- Charter operators must register for VAT in France if their charters start in France.
- Intermediaries arranging charters which create a liability in France must also register and account for VAT on their commissions.
- VAT must be charged on charters starting in France where the yacht will be used privately.
- Operators not already established in the EU - appoint tax rep in France; already established - appoint tax agent.

FRANCE

- Separate tax rep or agent required for Monaco.
- The standard VAT rate to apply is 19.6% of charter fee. Any charges borne by the operator and re-charged to the charterer must also carry VAT at the full rate.
- It is possible to apply the standard rate of 19.6% on only 50% of the charter consideration if the charter includes voyages outside the EU.
- Excisable goods (alcohol, tobacco products and energy products) and general provisioning are no longer legally available tax-free to yachts.
- The new French package is still to receive final European Commission sign off – caution is in order.

ITALY

- Operators must register for VAT if their charters start in Italy.
- Appoint tax rep or agent to register and comply.
- Registration of intermediaries not yet in focus but likely to become.
- VAT must be charged on charters starting in Italy.
- Standard VAT rate to apply is 21% of charter fee. Costs charged to charterer must also carry VAT.
- Possibility of applying standard rate of 21% on only 30% of the charter fee if the charter includes voyages outside the EU.
- Excisable goods – a “hot potato”!

MALTA

- Short term yacht chartering guideline published in July.
- The standard rate of VAT of 18% is applied on set percentage of the charter based on deemed EU use table.
- 18% applied on 30% of charter = 5.4% for yachts 24+m - similar to 'Maltese leasing' VAT rates.
- Operator of the yacht charter must register for VAT in Malta for charters starting in Malta.
- Yacht charter contract content specs - place of embarkation, charter price and statement that yacht shall sail outside EU waters. Proof of payment may be requested.
- Ahead of charter, apply to VAT Dept with yacht's details.

MALTA

- Supplier of charter can reclaim the tax on fuelling and provisioning provided that these goods are sold to the charterer under a separate contract or they are invoiced separately from the charter service.
- The supply of these goods to the charter client has to be made at the full standard rate of VAT.
- The supplier of the charter is also entitled to claim input VAT incurred on fuel purchased for the ‘redelivery’ of the yacht.

CROATIA

- Croatia became the 28th member of the EU on 1 July 2013.
- Think of Croatia as another Spain - tax registration and charter licensing apply - but without MT. However, there are greater restrictions on chartering in Croatian waters.
- Yacht must flag Croatian but even so in order to be licensed at national and municipality level it must be owned by a Croatian natural or legal person.
- EU and non-EU flagged yachts do not have any right to charter in Croatia, and cannot be licensed to do so before 2017.
- Foreign yachts may visit Croatia and cruise loop-wise; but they should avoid pick up and drop off of passengers there.

CROATIA

- Pleasure yachts imported into Croatia with customs duty and VAT paid under the 5% pre-accession scheme are valid “Community goods” with right to free circulation in the EU without liability to pay further VAT on their hull value.
- There is no legal requirement for an imported yacht to flag with the Croatian Registry of Shipping; and not doing so does not jeopardise the VAT paid status acquired by paying VAT in Croatia under the pre-accession import scheme.
- Flagging a yacht in Croatia could affect your ability to charter the yacht in the EU [should you decide to – which you can] because: (i) pleasure registration only and (ii) Annex V, section 5 restriction in Croatia EU Accession Treaty. No trade access to Croatian vessels before 2017.

GREECE

- Charter licensing regime in place and VAT applies on charters starting in Greece.
- Only Greek or EU-flagged yachts can be licensed.
- Yachts are broadly classed and licensed according to navigation categories: ‘local range’ and ‘international range’ .
- Their licensed category and the duration of the charter determine the percentage of VAT applicable to the charter fee.
- 13% for up to 2 days charter and 6.5% or 5.2% for 3+ days charter depending on licensed category.
- No VAT for charters not starting in, but going into, Greece.

EFFECTIVE USE AND ENJOYMENT RULE

[ARTICLE 59A OF THE VAT DIRECTIVE]

*In order to prevent double taxation, non-taxation or distortion of competition, Member States **may**....:*

- (a) **consider** the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community if the effective use and enjoyment of the services takes place outside the Community;
 - (b) **consider** the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.
- “**May consider**” allows discretion, meaning that each MS is responsible for the implementation of the rule.

EFFECTIVE USE AND ENJOYMENT RULE

- UK does not recognise use and enjoyment in connection with short term hire of recreational vessels.
- For long term hire, use and enjoyment is recognised on an in or out basis – i.e. in if the provider or recipient belongs overseas but effective use is in the UK and out where either the provider or the recipient belongs in the UK, but the hired means of transport is used outside the EU.
- Where only part of the hire is used and enjoyed in the UK they insist on factual data before allowing any apportionment.

EFFECTIVE USE AND ENJOYMENT RULE

- **Spain** does not recognise use and enjoyment for pleasure vessels on an in or out basis - where Spanish providers or recipients are involved Spanish VAT must apply.
- **The Netherlands** does not recognise effective use and enjoyment on an in or out basis for pleasure craft.
- **Germany** does not either.
- **France** has traditionally recognised use and enjoyment for long term hire with apportionment based on factual data or a 50% reduction on the tax base. Short term charter has never been in point because of the FCE - so caution is in order.
- **Italy's** position is similar to France', but short term charter is implied in Circolare 43E. Caution is also in order.

EIGHT FAQs & THE ICEBERGS

1. Is applying VAT on a reduced tax base legal?
2. What source of MS doctrine on reduced tax base?
3. Need to go beyond international waters to secure reduced base taxation or not?
4. Import or not to import yacht and account for VAT on hull?
5. To register or not to register intermediaries and account for VAT on commissions?
6. Tax free fuelling and provisioning?
7. How to treat VAT on Advanced Provisioning Allowance?
8. VAT on sale of boats – and on commissions thereon?

Questions or comments?

Expressions of individual views by members of Moore Stephens and its staff are encouraged.

The views expressed in this presentation are those of the presenter.



Thank you for your interest...



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