

# Getting the legal facts straight

The superyacht industry in Malta is compatible to EU law – so why the recent spotlight on it, asks **Alison Vassallo**.

The latter months of 2017 were characterised by the publication of a spate of articles in the local and international press which shone a bright spotlight on the superyacht industry in Malta.

The most recent development has been the reporting on March 8 of a notice of infringement being issued by the EU Commission to Malta, Cyprus and Greece with regard to the application of VAT on pleasure yachts.

My previous contribution to this supplement, last year, focused on the development of the superyacht industry in Malta, the impact of this success on our economy, and what the greatest challenges being faced were. Recent events have given a different dimension to the last point, in that what has been put to question is the legitimacy of a particular mechanism that is made available in Malta which allows superyacht owners to pay VAT on their yachts on the basis of what is referred to in legal terms as the principle of effective use and enjoyment.

This principle allows the payment of VAT on the use of a yacht depending on the deemed use of the yacht within and outside of EU waters. Given that it is difficult to pre-determine the actual percentage of use of a yacht in any particular area (yachts being by their nature assets that are intended to move with ease from one jurisdiction to another, and to cross international waters in so doing), the percentage of time that a yacht is deemed to spend in EU waters is determined according to its size and propulsion, with larger yachts being deemed to spend much more time outside EU waters.

In a nutshell, in the case of a yacht over 24 metres in length, the assumption is that it would spend only 30 per cent of its time in EU waters, with the result that VAT on the use of the yacht is charged only on the

percentage of time that the yacht is deemed to be used in the EU, VAT being a tax that is charged on consumption.

The Guidelines on the VAT Treatment of Yacht Leasing were introduced in Malta over 10 years ago and due to the consistency, certainty and professionalism with which they were applied by the local authorities and reputable service providers, today encapsulate the most effective tried and tested mechanism for a yacht to be conferred VAT paid status.

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As a result of the application of this principle, numerous yacht owners have opted to bring their yachts to Europe and pay VAT on their yachts as opposed to not paying any VAT by retaining their yachts out of the EU or devising alternative structures having the same result.

It is to be highlighted that this principle is enshrined within Article 59a of the VAT Directive, and therefore applies to all EU member States. At the time of the introduction of this mechanism by the Maltese authorities, France and Italy were already offering similar products, which are still existent to date, on which the Maltese guidelines were in fact modelled. Cyprus and Monaco followed Malta several years later with the introduction of structures based on the same principle of effective use and enjoyment.

France allows further mechanisms whereby commercial yachts are allowed 50

per cent reduction on VAT on the charter fee irrespective of the category of the particular yacht. Furthermore, yachts which spend 70 per cent of their time outside French waters are eligible to a flat out exemption on VAT on fuel, supplies and services. Considering that the global yacht charter market is expected to attain a value of \$14.987 billion by 2025 it is understandable why the French choose to support and nurture the growth of the superyacht industry close to their shores.

Given the fact that the system that has been in place in Malta for over 10 years has always been in line with EU law and has been based on practices adopted by other member states, it is difficult to grasp why a notice of alleged infringement has now been directed against Malta.

Furthermore, no similar notice was sent to other member states which apply the principle in an identical manner to Malta such as France and Italy, which understandably further begs the question of why such a notice was therefore sent to Malta, Cyprus and Greece.

Despite yachting being by its nature an international sector, due not least to the mobility of the yachts themselves, studies have shown that the superyacht fleet is predominantly based in Europe with the average yacht spending almost 70 per cent of her time in the Mediterranean. The presence of these yachts in the EU means a domino effect of increased activity for all those involved in the maritime services chain and beyond.

It is not difficult to appreciate that the building, delivery and maintenance of these assets supports the often well-paid jobs of workers within the yacht building and refit industries (and the varied artisan skills on which they are based), designers, crew, project managers, suppliers and marinas, through to the general serv-



Alison Vassallo

ices industry, entertainment venues and transportation services.

At the time of Commissioner Joe Borg spearheading the Green Paper on an EU maritime policy back in 2006, the marine leisure industry was identified as one of the key facets in the development of a competitive EU maritime sector. Given the above coupled by the fact that the Maltese structure is EU law compatible, it is rather difficult to comprehend why the Commission seems to be declaring war on a legitimate, pan European activity.

Ultimately, the time has come for a decision to be made at European level as to whether this sector will be allowed to dissipate outside the EU or whether a concerted effort will be made to continue to build on Europe's maritime dimension, at the heart of which Malta, with its strong maritime tradition, undeniably forms a key pillar.

**Alison Vassallo heads the Yachting Department at Fenech and Fenech Advocates and is a partner within the Marine Litigation Department. She is the chairwoman of the Executive Committee of the Yachting Services Trade Section within the Chamber of Commerce, a director of Malta Marittima Agency, an executive committee member of the Malta Maritime Law Association (MMLA) and a board member of the yachting sub-committee formed within the MMLA.**

## Get paid to travel the world

If getting paid to travel the world sounds appealing to you, then a maritime career awaits you.

This doesn't necessarily have to translate into a lifetime of seafaring work. You could decide to do it as a gap year or for a few years – it all depends on your expectations and your appetite for adventure.

Yes that's right, adventure, because that's what working on a cruise liner or a luxury superyacht is all about.

Think about it – you are getting paid to travel. This is probably one of the biggest pluses to working on board. As cruise liners and super yachts travel all around the world, the options are limitless. You don't have to worry about paying your bills – you can practically save all your pay, if you're disciplined enough, that is. Lodging and food are included with your salary so there are very few expenses to worry about. The crew are multinational and more likely than not, same minded as you, so making new friends is really not an issue.

Most contracts are generally on a six month on, two month off deal and when working your way up to management levels, it gets even better where you're on a



four month on, two month off rotation, which means plenty of vacation time.

If you opt for the yachting route, an added bonus of working on a super yacht is that you'll be working in luxury, rubbing shoulders with some of the most famous and richest people in the world with a much better pay. However, you really need to be top-notch crew to be chosen.

Keeping in mind that it is still very hard work, there are many different work op-

portunities available on board. Many of these can lead to shore-based careers should you decide to discontinue work at sea. A cruise ship is like a city and therefore needs all the services attributed to the running of a city. On a super yacht it is pretty much the same, with the difference that the ecosystem is smaller and that quality expectations are much higher.

So, whether you're a young, spirited hairdresser, a lawyer, a chef, a doctor, a

mechanic, a beautician, an artist, or just someone who is after some adventure and addicted to travel, this is a clear opportunity for you. And you get paid for doing it. In other words, if you've had enough of the mundane nine-to-five job or want to take a break from your studies, consider the sea, listen to its call.

To start out, make sure you have a good CV that promotes your qualities. Experience is key for most employers, so if you've never worked in the industry before, you need to show them that you're bringing something special to the table.

Most importantly be STCW certified. STCW stands for Standards of Training, Certification and Watchkeeping. Without these certificates, you will never be in a position to apply for employment on any commercial vessel, including cruise liners and super yachts.

Through its extensive expertise in the sector, MMRTC can guide you through your training needs and assist you with no obligations.

For more information on STCW courses visit [www.mmrtc.com.mt](http://www.mmrtc.com.mt).

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