

Yachting in Malta: New Guidelines on the hiring of pleasure yachts



Background

Malta has always been at the forefront of offering solid, reliable solutions to yacht owners depending on their individual requirements and the intended use of their yacht.

Over the past years, Malta has built a formidable reputation in catering to the owners' needs while constantly taking into account industry practice and legal developments.

2019 sees the publication by the Maltese authorities of new Guidelines which relate to the place of supply of the hiring of pleasure yachts.

These new Guidelines, which clarify the manner in which hiring of pleasure yachts is to be taxed, may be availed of within the context of attractive operating lease models based on fiscal, legal and financial considerations.

The Guidelines

The "Guidelines regarding Item 12 of Part II of the Third Schedule to the VAT Act" relate to the use and enjoyment by Lessees of yachts within and outside EU territorial waters in the case that a yacht is supplied by the Lessor to the Lessee in Malta.

The Guidelines establish the manner in which the use and enjoyment of such pleasure yachts is to be treated for VAT purposes.

Use and Enjoyment

Article 59a of the VAT Directive allows Member States to tax the use and enjoyment of services, which would therefore include the lease of a pleasure craft, for the time that the

service is effectively used and enjoyed within Community waters.

- Essentially the Guidelines provide that for the purposes of Item 12 of Part Two of the Third Schedule to the VAT Act, the Commissioner for Revenue shall consider the place of supply of the hiring of pleasure yachts as being situated outside EU territorial waters:

- i. if the actual effective use and enjoyment of the services, in whole or in part, takes place outside EU territorial waters and
- ii. as long as the conditions of the Guidelines are satisfied.

- For the purpose of applying the Guidelines, the Lessee is to provide the Lessor with documentary and/or technological data to determine the actual effective use and enjoyment by the Lessee of the pleasure yacht within and outside EU territorial waters during the lease period.

- The Guidelines provide for (i) a method of calculation of a preliminary ratio on the basis of which initial VAT returns are submitted by the Lessor (ii) a method of adjustment of such preliminary ratio based on the actual use and enjoyment of the Lessee subsequent to the first year of the lease.

Operating Leases

- The new Guidelines may be applied within the context of the setting up of operating leases,

whereby the Lessor/owner of a yacht would make the yacht available to a Lessee for a consideration for a specified period of time.

- This would envisage the setting up of a Maltese shipping organization that would be the owner of the yacht – the Lessor, who would lease the yacht to another entity – the Lessee.
- General principles relating to intra community supplies and importations at the time of acquisition of the yacht by the Lessor and place of supply rules at the time of the supply of the yacht to the Lessee will apply.
- The lease period and the consideration paid to the Lessor by the Lessee for the use of the yacht are commercial decisions that are established contractually between the parties.
- Such decisions would be based on an assessment of the type of yacht involved, her specifications and value together with the prevailing market conditions.
- A number of financial models, dependent on the specifications of the particular yacht and her intended operations, would offer clients a range of fiscally attractive propositions.
- By virtue of the application of the Guidelines, the Lessee would pay VAT on a quarterly basis on the monthly lease instalments to the Lessor depending on the actual use and enjoyment of the yacht within EU waters.

Fenech & Fenech Advocates

Fenech and Fenech Advocates is the oldest law firm in Malta. It was founded in 1891 and has over the years moved from strength to strength offering the services needed at the relative moments in time to both local private individuals and businesses and to foreign clients, institutions and organisations. Particularly renowned for its maritime related services, it was at the forefront of the development of the Maltese flag. It is the only law firm on the island having four separate and distinct departments dealing with maritime related services being marine litigation, ship registration, ship finance and yachting. At the core of each is a work force ready to work 24 hours a day to accommodate the needs of owners and financiers coming from America and the Far East and having an excellent working relationship with the maritime and fiscal administrations, surveyors and other authorities.

Its solid maritime experience has stood it in very good stead in developing over the past 12 years an independent and thriving department focusing on the yachting industry which provides the same level of comprehensive legal assistance to both private yacht and commercial yacht owners in assisting with their registration, financing, chartering, yacht leasing and fiscal requirements and solutions.

Our Services

With its vast overall maritime experience the team of professionals at Fenech and Fenech Advocates are able to advise yachting clients on their immediate yacht requirements by looking at the larger picture for the benefit of the client.

Our services include:

- Advice on the best solutions for the owner, charterer, financier and manager
- Sale and Purchase
- Solutions relative to both private and commercial yacht registration
- Yacht leasing VAT models
- Tax advice
- Private yacht registration
- Commercial yacht registration
- Importation Procedures
- Registration of mortgages and ship finance
- Setting up of shipping organisations
- Employment law and social security advice
- Tailor made guidance based on the clients' particular requirements

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