

January 2010

YACHTING VAT NOTE

YACHTING VAT POST TRAUMA

The turn of each year has a flavour. Lessons are drawn from the receding year to inform expectations of the coming one. Thanks to the economic crisis which hit the yachting industry with unprecedented severity, the turn into 2009 will go down as a time of trauma. The current year, 2010, has a distinctive flavour too. It is a turn of apprehension, of uncertainties in various aspects of yachting business that have seemed strangely to reinforce one another.

One symptom of the mood is the muddle over value added tax (VAT). When the UK Revenue issued their 'Brief' number 56/09 stating their view on the VAT treatment of yacht chartering or leasing activities in August 2009, it was turned into big news. Then the industry media's attention wandered – just as the phoney echoes were wearing off. As the end of 2009 approached, the serious scaremongering started. There was talk of a mass clampdown on yachting by the authorities. Yacht owners and operators, deeply unsettled because of the 'zero-VAT' dream injudiciously sold to them over the years, suddenly began to ask questions of their legal and corporate service providers. Summits were called to which some interested authorities despatched officials to answer questions about the scope and impact of that Brief. Was the woe just beginning or petering out? Will it be mercifully brief or utterly ruinous? Torn between the realities of the law they have to enforce and their own solicitous instincts towards the yachting business they want, the officials' explanations could only be blurry at best. And far from being reassuring, their "everything-is-fine-but-we-are-not-sure" messages only yielded more exaggerated depths of feeling. Worries over whether commercial yacht owners could ever be allowed to use their yachts personally; whether leasing as a concept was now dead in the water; whether it was time to pack out of key yachting business hubs like the Isle of Man; and whether yachting in the EU as a whole was safe at all. Yet now the dust seems to be settling, the plague seems less threatening as people take a more nuanced understanding of these matters.

Cross-border VAT changes

The same sort of ambiguity clouds the wider EU VAT picture too. Take the cross-border VAT changes being introduced from 1 January 2010. These changes seek to: modernise and simplify the current rules relating to cross-border supplies of services; make the recovery

of VAT on purchases made in other EU countries more efficient; and help counter VAT fraud. To better achieve taxation where services are consumed, there are now two general rules for the place of supply of services, one for business to business (B2B) and one for business to consumer (B2C) supplies. In essence, the rule changes mean that most services provided to business customers will be treated as supplied in the country where the business customer is established, and the business customer will account for VAT under the reverse charge mechanism. Services provided to non-business customers will still generally be liable to VAT in the country of the supplier. The implementation plan requires these changes to be phased in throughout the EU on: 1 January 2010, 1 January 2011, 1 January 2013 and 1 January 2015.

Crucially, for services of the hiring of means of transport (including yachts), the impact of the new rules depends on who receives the supply and how long the means of transport is hired for. This is because in addition to the general rules distinguishing between B2B and B2C, there are also special place of supply rules for hire of means of transport which divide the service into 'short term' and 'long term'. Short term hire of yachts is hiring for a continuous period not exceeding 90 days. Any hire beyond this period is a long-term hire. B2B and B2C short-term hiring of means of transport are supplied where the means of transport is put at the disposal of the hiree – meaning the place where the customer takes physical control of the yacht. However to accurately interpret the rules and determine where a charter is actually liable to VAT, it is essential to identify the exact nature of the services supplied. Simply deducing liability to VAT on a generic 'hire of a yacht' can be misleading, for example, where the actual supply includes the services of a pilot or crew. And even when the nature of the hire is determined, additional rules relating to where the supply is used and enjoyed, and what special local rules apply (e.g. the French commercial exemption), have to be taken into account.

Yet a tendency in the yachting industry to overstate the case while glossing over such detail of nuance and/or timing has kicked up another fuss, with some blithely suggesting that yacht owners would now be better off applying for VAT registration in France or Malta.

Behind all these quandaries, of course, lies 2010's basic question. In a finite EU VAT space where consensus is calling time on artificial leasing or chartering activities, how long will business models built on zero VAT principles last?



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