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Selling Goods to a Floating Risk

In the curious world of conventional banking a ship is often portrayed as a 'floating risk'. This is not just because it might float away literally when the lender needs to get hold. The view is also that a ship is more difficult to realise than any other type of security - and in the meantime the value



might fritter away in steep depreciation. This view is harshest when it comes to yacht-related lending. Most lenders would sooner rely upon the ability and credit-worthiness of the borrower than on the valuation of his mammoth yacht.

Not seemingly an isolated view either. In their administration of VAT, EU Customs share this floating-risk attitude towards yachts, albeit for a different reason. They see yachts as mobile centres of consumption that are predisposed to avoid VAT. So they would sooner 'cast the anchor' on the vendor of the goods than on the elusive yacht that bought them. This means that a particular yacht may float away from the European Community (EC) with tax-free goods, but the vendor of the goods must, at pain of meeting the tax liability himself, justify with documentary evidence that the yacht deserved to have the goods tax-free under VAT rules. The fact that the purchaser may share some responsibility for the uncharged VAT is irrelevant.

This is the so-called 'evidenced-based' approach to VAT administration. The approach is driven by a number of considerations, all of which are enshrined in Community VAT law. First is the straightforward rule that goods are taxed within the EC where they are at the time of their supply or, if they are to be transported, where they end up. With ships, of course, it would be harder to try and trace where goods, once supplied, will end up.

Second is that goods sold to commercial ships are generally exempt from VAT, while those sold to pleasure boats are not. But how can Customs verify the status of each ship? In most EC countries there is no direct link between the registry status of a vessel and the payment of VAT.

Third is that goods that are bought within the EC but dispatched or transported to a destination

outside the EC, whether as stores on board ship or as consignment stock, are generally exempt from VAT. However, while it is relatively easy for a supplier to obtain and retain documentary evidence to prove that he has exported the goods he sold (e.g. waybills and certificates of shipment), it is far more difficult to ascertain where goods will end up in circumstances where the purchaser himself undertakes to dispatch or transport the goods out of the Community.

Fourth, and somewhat critical, is that Article 15 (2) of the Sixth Directive, the EC's primary VAT law, prescribes that where (i) goods sold for export are of the type for "equipping, fuelling and provisioning of pleasure boats and aircraft or any other means of transport for private use" and (ii) the purchaser himself assumes responsibility for dispatching or transporting the goods to a destination outside the Community, the vendor must not allow VAT exemption. A bona fide purchaser deserving of VAT deduction can make use of the alternative 'drawback' mechanism for recovering the VAT, which allows them to show evidence of export.

For all these reasons, therefore, it is more practical for Customs in their evidenced-based approach to place the burden of proof on the person who makes the supply of the goods. After all, it is he who has responsibility for collecting any VAT due.

Unfortunately, with the divergent attitudes now emerging between EC Member States over the status of the "commercial" yacht - whether it is a commercial ship entitled to VAT-free supplies or the putative pleasure craft that is not - applying the rules has become more challenging for vendors of goods. Some have responded catch-me-if-you-can, deploying a mixture of nerve, time and ingenuity in dodging the rules. Others have adopted a more sustainable system, with their activities structured and organised to enable them to benefit legitimately from the arbitrage opportunities available within the EC. They have a clear documentation policy regarding sales they make to yachts. They consistently track their supplies according to where they are based, where they source the goods, which yachts they supply to and where the yachts are located.

This latter category of company will be the long-term winner in the growing market for yacht supplies.

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