

YACHTING VAT NOTE

June 2006

A Short History of Un-free...

The news in May 2006 that the government of Sardinia has introduced an "arrivals tax" to be payable each year on a yacht's first arrival in a Sardinian port was greeted with dismay across the yachting industry. The tax is another body blow to free cross-border yachting in the EU, coming as it does in the midst of the industry's campaign against Spain's Matriculation Tax. It has generated worry about a slippery slope, that Sardinia's tax may be the harbinger of more revenue-raising measures to come from EU regional or national authorities. Unsurprisingly, one industry official called for collective protest to the EU Authorities in Brussels, on the grounds that the tax "breaches all EU laws on free trade and movement of assets."

If only. As it happens, the history of EU legislation applying the principle of freedom to provide services to maritime transport does not afford much comfort to yachts and yacht operators. This is because yachting has historically been cast as none other than a "pleasure craft activity." The activity of a cruise ship or a merchant ship, on the other hand, is characterised as "a maritime service normally provided for remuneration". This primary distinction is dated but seminal. It has afforded the yacht a Cinderella treatment that has meant that yachting services do not fall within the scope of the key Community Regulations that define and protect the freedom enjoyed by cruise services and traditional merchant shipping. In this sense, the story of the yacht is that of the un-free, the rank outsider excluded from a freeman's club.

There are two key Community Regulations that liberalise maritime trade: Council Regulation (EEC) 4055/86 concerning trade between Member States and between Member States and third countries; and Council Regulation (EEC) No 3577/92, which concerns trade within Member States. Both Regulations apply to the carriage of passengers and goods by sea.

Council Regulation (EEC) 4055/86 gives Member State nationals (and non-Community shipping companies using ships registered in a Member State

and controlled by member State nationals) the right to carry passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State or of a non-Community country. Subsequent amendments to this Regulation have dealt with matters such as competition, unfair pricing practices and free access to ports and ocean trade, so as to phase out any national restrictions that impede the freedom to provide such maritime services. But yachting activities, it seems, were never meant to be part of the deal.

Similarly, Council Regulation (EEC) No 3577/92 and its subsequent amendments, which sought to eliminate restrictions on the freedom to provide maritime transport services within Member States (so called "maritime cabotage"), never brought yachts or yachting within its scope. The question as to why this should be so was asked with some persistence in the late 1990s. So the European Commission decided, "in the interests of transparency", to publish its interpretation of the provisions of that Regulation on 22 December 2003. "Regulation (EEC) No 3577/92 only covers maritime services normally provided for remuneration", the Commission stated. "Accordingly, most pleasure craft activities fall outside its scope."

At least they did not say *all* pleasure craft activities. So the door to liberty is thus held ajar for the huddled masses of yachting. But there is little prospect that in the practical application of the laws that institute freedom to provide maritime transport services within the EU yachts will be let in *en masse*. Judging by the experience so far, commercial yachting is being grudgingly admitted. Pleasure yachting, on the other hand, will remain outside for a while yet, exposed to the raids and vagaries of the EU taxman.

Timetable for Changed EU POTS Rules

It is now certain that the changes to the VAT rules on place of taxation of services, including hiring of means of transport, will not come into effect on 1 July 2006 as mooted.

According to the results of the European Council's Finance Ministers meeting on 7 June 2006, the new rules would most likely come into force as from 1 January 2008. The changes will affect yacht owners yacht operators, yacht brokers and the like. Forward planning is therefore essential.

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