MOORE STEPHENS
CONSULTING (ISLE OF MAN) LIMITED

YACHTING VAT NOTE

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Export Therapy, Uncertain Relief…

With a question such as "Do you do or do you don't?" one is more likely to pause and wonder at the intended joke than contemplate a reply. But for those who are used to dealing with tax authorities, this is a question that alerts you that they have come fishing because there is something in the air. So what is it that has got the combined force of the Dutch, French, German and UK Customs asking some such baffling questions of the yachting industry recently? It is the so-called "Artificial Export Scheme". This is the practice whereby yachts or other means of transport are removed out of the EU for the purposes of Community VAT, only to be returned for use in the EU under the provisions of the Community Customs Code – for no other purpose than to avoid VAT.

The practice has attracted attention lately because it is perceived as successful, as well as having something of the gang about it. Typically, an EU yacht builder may set up a non-EU company to which he exports the yachts he builds for onward sale to customers who end up using their yachts in the Med. No EU VAT is charged or paid anywhere. By the book, the yacht builder will have declared his supply as a zero-rated export and the yacht user will have entered his yacht as a VAT-free "temporary import", because a non-EU company legally owns it.

In one brazen, eye-popping variant of this scheme, the non-EU company would contract with an independent non-EU yacht Charter Company, which would charter the yacht to an EU-based intermediary, who would import the yacht back into the EU in a chartering capacity and report and reclaim the import VAT due in a single VAT return. Then the intermediary would charter the yacht to the end user (often the beneficial owner) for a token fee plus VAT. By this convoluted structure, the yacht owner is said to be able to reduce his VAT liability to a fraction of 1% of the yacht's purchase price.

The fact that artificial schemes like these were being promoted as legitimate solutions within the yachting industry was already a cause for concern. But what appears to have triggered the strong and co-ordinated response by several EU tax authorities is because such schemes are now being linked, rightly or wrongly, to some influential industry advisors. This, together with the legal certainty engendered by the recent European Court of Justice (ECJ) judgments in the cases of *University of Huddersfield, BUPA Hospitals Limited* and *Halifax plc*, has made the authorities more eager to challenge aggressive VAT planning schemes that are based on literal application of Community VAT law with no apparent commercial purpose.

In their current snooping about the Dutch, French, German and UK authorities seem determined to look underneath the surface. Even yachting services providers involved indirectly or inadvertently at various stages of these "export" supply chains are being asked on-off, oblique or leading questions as the authorities assemble their case. As always, the penny is likely to drop with their real targets only at the last moment.

But the consequences for the wider yachting industry are likely to manifest themselves much sooner - in tighter controls on yacht builders and yacht brokers; in a more sceptical attitude to Temporary Importation requests and hostility to non-VAT Paid yachts; in more arbitrary revenue raising/protection measures directed at yachts entering individual EU Member States; and in more onerous VAT registration and reclaim procedures for yacht owners and operators.

No VAT on Inter-Branch Services

International yachting businesses will be interested in the recent European Court of Justice (ECJ) ruling in the case of *FCE Bank plc.* FCE Bank is a UK bank, with a subordinate branch established in Rome as FCE IT. FCE IT received supplies of services from FCE Bank in the form of consultancy, management, staff training, data processing and the supply and management of application software. The Italian authorities sought to collect VAT from FCE IT on the payments made to FCE Bank, on the grounds that FCE IT had an independent direct tax status in Italy. FCE Bank argued conversely that as a branch FCE IT has no separate legal personality for VAT purposes. Its charges to FCE IT were merely an allocation of costs within the same company.

The UK government and the European Commission backed FCE Bank. And the ECJ agreed that no VAT was payable in respect of cross-border supplies or charges between branches of the same company.

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