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Secure Deal in “International Waters”?

Phil Berriman is an enterprising yachtsman. On 4 July 2004 he anchored his 72ft-long yacht 13 miles off the North East coast of England and began to sell boxes of cut-price alcohol and cigarettes that he had bought from Germany. Mr Berriman was sure



that he was breaking no EU duties or VAT laws. His yacht, aptly named “Rich Harvest”, was after all moored outside the 12-mile limit - in “international waters”. For one week he held the news headlines, running his “first floating off-licence”. Then on the night of 11 July 2004 there was a natural storm, which forced Rich Harvest to take refuge in Hartlepool nearby. UK Customs officials saw their chance. They moved in, detained the yacht and seized all his goods.

No single practice has so embodied the yachting industry’s quirky response to VAT. The removal of vessels into international waters in order to complete a sale became fashionable in the 1980s as a response to EC Single Market regulations. The practice was supposed to shelter the parties from VAT. What has it actually done?

Three points stand out. First the promise of a VAT free outcome was largely empty. Certainly the vendor of the yacht and his broker were its chief beneficiaries. Because the vendor’s liability to VAT is determined by the location of the yacht when it is sold, selling the yacht in waters outside the EU ensured that no VAT was charged on the sale. And the broker’s commission on the deal, which followed the liability of the principal transaction, would be VAT free as well. But there was no benefit at all for the purchaser of the yacht should he seek to return the yacht to the EU sooner or later after the sale. He would have a non VAT Paid yacht subject to import VAT at first port of entry into the EU. Sometimes events would spin out of the new owner’s control, which may mean a higher amount of VAT than would have applied in the first place.

Second, because the same broker may then be engaged to broker the boat for charters, the problem of regularising the VAT status of the yacht would often fall in his lap, causing extra expense,

recriminations and delayed or lost business.

Third, the peculiar protocol has created two contrasting approaches to the VAT aspects of a typical yacht sale transaction. Bigger organisations with retained VAT expertise have generally coped better than small ones. Their more systematic approach does consider the individual VAT aspects of the sale transaction well in advance of closing. But for some smaller organisations the unquestioning adherence to the international waters mantra has brought a false sense of security as well as extra costs. It is not just the pointlessness of powering a boat to the high seas after having sold it in Antibes or some such place; it is also the costly complications that often arise when they and their clients discover that they have compromised the VAT paid status of the boat in the process.

Is all this sinking in? Growing use of the more EU based VAT solutions suggests that it is. It may not mean the passing yet of the ritual of sailing 13 miles to fend off the VAT man. But the fuzzy wisdom of sheltering in international waters is being questioned.

Liability of Yacht Brokers’ Services Examined in Lipjes

On 27 May 2004, the European Court of Justice (ECJ) published its ruling in the case between *Staatssecretaris van Financiën and D. Lipjes* (Case C-68/03).

Mr Lipjes, who resides in the Netherlands, is a broker in the sale and purchase of yachts. In 1996 and 1997, he was twice involved in the purchase of yachts located in France, in both cases on behalf of an individual purchaser residing in the Netherlands. The vendor of the yachts was an individual residing in France. Mr Lipjes did not declare the VAT pertaining to those two intermediary operations in either the Netherlands or France.

Following an audit, the Netherlands tax authorities charged VAT retroactively on those supplies of services. Mr Lipjes appealed to the Regional Court of Appeal at The Hague, which found in his favour. The court held that in the light of the place where the yachts were situated at the time of the sale, the broker’s services had not been supplied in the Netherlands and that Mr Lipjes was therefore entitled not to declare the VAT there. The ECJ agreed.

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