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## “Commercial” is Key - says the ECJ

The European Court of Justice (ECJ) passed judgment recently on the “Deutsche See” case (Case C-389/02) concerning duty-free fuel for “commercial” vessels.



German national excise law, derived from Directive 92/81/EEC on exempt use of mineral oils, grants tax-free fuel to vessels “deployed

exclusively for commercial navigation.” But “commercial navigation” was always interpreted to mean navigation relating to the carriage of persons and goods by sea in “ships or boats”. Thus certain types of vessels, including “private pleasure crafts”, were excluded from the exemption.

Deutsche See, a firm of undertakers and funeral directors that performs burials at sea using three yachts converted for that purpose, challenged this restricted interpretation of “commercial navigation”. Deutsche See argued that its services were commercial, and that precluding it from use of duty-free fuel on its vessels was incompatible with relevant Community law.

The ECJ agreed with Deutsche See. The Court held that, regardless of the type of vessel used, any navigation activity of a commercial nature involving the supply of services for consideration should benefit from exemption from the excise duty envisaged by Article 8(1)(c) of Directive 92/81/EEC. The only valid distinction to be drawn was between a “commercial” vessel and a “private pleasure craft”. And a private pleasure craft is duly excluded from benefit only by virtue of its use “for other than commercial purposes”.

The Court concludes: “Any divergent interpretation at national level of those exemption obligations would not only undermine the objectives of the Community legislation and legal certainty, but could introduce unequal treatment between the economic operators concerned.”

## Inward Processing Relief for Yachts

Inward Processing Relief (IPR) can be used to

obtain VAT relief on yachts imported from outside the EC for processing and re-export from the EC. “Processing” can be anything from repair or refit of the yacht to the most complicated overhaul and rebuild.

There are two methods of obtaining the relief, namely the suspension and the drawback methods.

Under the suspension method, VAT is not paid at importation and remains suspended provided that the yacht imported under IPR is actually re-exported to a non-EC country. In certain circumstances, the yacht may also be sold to another IPR trader for subsequent re-export. However, import VAT (and compensatory interest) becomes payable if the yacht is diverted to free circulation within the EC.

IPR suspension is obviously the more advantageous method for cash-flow purposes. It is most suitable where the intention to re-export outside the EU is known at the time of import.

Under the drawback method, the VAT due on the non-EU yacht is paid at the time of importation and claimed back from Customs after process and subsequent re-export.

Yacht owners using IPR drawback cannot reclaim VAT on yachts scrapped or destroyed while they are in the EU, even if the scrapping takes place under Customs supervision.

It is also a condition of using IPR drawback that the VAT must be reclaimed from Customs within six months of the date of export of the processed yacht. Customs do not allow retrospective.

A business must be properly authorised to use IPR and IPR procedures must be correctly used at import (e.g. the correct customs procedure code (CPC)), otherwise the duty relief is lost.

## Ivan’s Lingerin Effect

The devastating march of Hurricane Ivan across the Caribbean has meant that company incorporation and vessel registration lead times have lengthened. The Cayman Islands in particular is still struggling to cope and is now charging a fast track or express incorporation fee to guarantee incorporation within 36 hours. However, we are still able to provide ordinary Cayman companies within 5 days.

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