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Winging it to Malta for just 5%!

In the three months or so that the Maltese 5% VAT offer to non-EU yachts lasted, it was so eagerly touted as to seem a gimmick. Yet quite a few yacht owners did "wing it" to Malta in time and were relieved to find that the offer was for real. So they paid the 5% asked and received documents attesting to the "VAT Paid" status of their yachts. The offer lapsed in April 2004 on the eve of Malta joining the EU.



A number of questions have since been asked in the wake of this freak event. Given the 15% average rate of import VAT within the EU, was the Maltese scheme legal? Were yacht owners naïve in taking up the offer? Would they be required to top the VAT up to the EU average? Was the VAT Paid status acquired for the yachts valid within the EU? Would the European Commission penalise the Maltese state for this apparent shenanigan?

A legitimate chewing of the cud, perhaps. But it is hard to see why this little pre-accession flurry in a tiny bit of the Mediterranean should bother the European Commission, especially at a time when it is more preoccupied with steering the new Member States through the brave new world of the Sixth VAT Directive. And if legality were ever the issue here, the yacht owners would indeed have both law and precedence on their side. First, they merely responded in good faith to a legal offer from the Maltese state. Second, the EC has historically dealt with the ambivalent status of yachts present in new Member States on the eve of their accession to the Community by granting them a "deemed" VAT Paid status.

In practice a Maltese VAT Paid Certificate, like its Flag of Convenience, may attract envy and, possibly, prejudice in some EU countries. But this would be because these countries are inclined to tax anything that enters their territorial waters, not because the Certificates have any inherent defect.

Untangling TI for Yachts – Part 2

Temporary Importation (TI) is a VAT relief regime designed mainly for persons established outside the EU. However, persons established **within** the EU may benefit from the relief under specially defined circumstances. These include, for private use yachts, where:

- An EU natural person hires a yacht for private use under a written contract to return to the EU; to leave the EU; or for another private purpose permitted by the relevant customs authority. The yacht must leave the EU within five; two; or eight days, respectively, from the start of the hire contract.
- The yacht is brought into the EU under TI for the purpose of registration in the name of a non-EU person, or to enable an EU natural person transfer his residence to outside the EU. The yacht must leave the EU within three months of the date of registration.
- A non-EU person while staying in the EU authorises occasional private use by a natural person. The yacht must leave the EU within 18 months.

As to commercial use, this is permitted only in circumstances where an EU employee of a non-EU yacht owner operates the yacht for a limited time under a contracted commercial purpose approved by customs. The yacht must be re-exported on completion of the specific operation.

It is worth remembering that TI yachts are generally required to remain in the same state throughout their EU stay, and that while routine repair and maintenance is allowed, major overhaul, refitting or refurbishment are forbidden because of their potential to add value. This is why yachts requiring such work must use a different Customs Procedure, known as Inward Processing Relief (IPR). This procedure is covered in YVN December 2004.

Any yacht diverted or sold for use in the EU while on TI is liable to import VAT on its full value.

Finally, if a TI yacht is to be scrapped then the relevant Customs authority must give its approval.

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