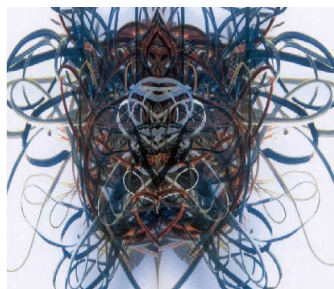


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Untangling Temporary Importation of Yachts – Part 1

Conventional wisdom says that temporary importation (TI) yachts may remain in the EU for up to 18 months without suffering import VAT. But this is only a convenient translation of a restrictive tangle of rules that are based on the Community



Customs Code rather than just VAT. Here are the finer points.

The purpose of TI is to enable non-EU yachts which enter the EU temporarily to be relieved of import VAT while being used within the EU for a given period. It is designed mainly for persons established outside the EU, but persons established within the EU may use the procedure under defined circumstances.

TI works through authorisation, so the entitlement to VAT relief can only be claimed by entering the yacht to TI. Authorisation may be “oral”, “simplified” or “full”. However, even when TI is oral, an inventory form must be completed in order to identify the yacht and person authorised.

There are three main circumstances where total VAT relief is given to non-EU persons under TI. These are:

- where the yacht is registered outside the EU in the name of the non-EU person and is used exclusively by that non-EU person for transport beginning and ending outside the EU;
- where the yacht is entered to TI in the EU and is used by non-EU persons on condition that it would be re-exported by the non-EU owner; and
- where the yacht is imported only occasionally and for a period not exceeding 3 months at a time.

In Part 2 (see YVN November 2004), we outline special situations where persons established within the EU may use TI yachts; the conditions of such use; and situations, such as yachts brought into the EU for overhaul or refit, where TI is inappropriate and a different Customs Procedure must be used.

The Virtues of VAT Invoicing

Time was when yachting business was run as a series of gentlemen's agreements. If you were a broker you sold a yacht with a minimum of formality: one contract here to agree terms of brokerage and commission, another one there to agree the sale. The vendor took his proceeds, the purchaser took his yacht, and the broker took his commission. There was no need to make an invoice of things. For evidence of any consideration, given or received, you referred to the brief standard-form contracts. Sadly, like any maturing industry, there is now so much to protect and prove by law.

Take invoicing. The EC Invoicing Directive (2001/115/EC) came into force throughout the EU as from 1 January 2004. All VAT registered businesses are now required to adhere to specific VAT rules relating to invoicing. For example, an invoice must show enough information to identify the goods or type of service supplied. And to be valid the VAT invoice must be sent or given to the client to keep.

For an industry that is not used to such formality the Invoicing Directive may seem to be just another unwelcome burden. But there is much virtue in an invoice. It is not just that it extracts and evidences the key elements of the contract better. More crucially perhaps for yachts, a VAT invoice also narrows down the chance of the VAT man nitpicking.

For example, consider how much the VAT place and time of supply rules matter in a yacht sale transaction, and how vague a typical standard contract can be on that subject. On the evidence of the contract alone, just when is a broker's commission earned on the sale of a yacht? Is it when the MOA is signed, when the purchaser takes delivery of the yacht and the Protocol of Delivery is issued, when the yacht is otherwise made available for the purchaser to use, when the broker receives payment or when the owner receives payment?

In truth, any of the above events can create a basic “tax point”. And a determined VAT officer may, where uncertainty exists, impose an **actual** tax point at a given point along the service continuum. Result? A potentially VAT-free yacht sale transaction may become liable to VAT depending on where the yacht is when the tax point falls. What a VAT invoice does best is to crystallise and anchor the elements of the whole transaction in a decided and managed way.

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