

## September 2004

### Leasing's Growing Pains with VAT

Leasing itself is as old as time. But from 1 August 2004 it has been newly defined in the context of VAT anti-avoidance legislation in the UK. This is unfortunate but typical - the practice of leasing has, in VAT terms at least, tended to evolve by thrust and counterthrust.



In the beginning there was the old broad rule that the lease of an immovable asset (land) was exempt from VAT, subject to the owner opting to tax it. Some decided that this could just as well apply to moveable assets like yachts, until they were reminded that it was never meant to be so.

Then came the classic avoidance scheme abhorred by Customs: the sale-and-leaseback or lease-and-leaseback scheme. This is where the yacht owner wishes to recover input tax on a yacht that will not be put to any real business purpose. He sets up a VAT registered company to acquire the yacht, which the company sells or leases on to a connected party that is also registered for VAT. The connected party leases back to the owning company or, more likely, its subsidiary. All parties ostensibly are in 'business' and the input tax on both the acquisition and lease of the yacht is thus recoverable. This scheme was effectively dented in the tail wind generated by the leading cases of BLP Group Plc (1993) and Robert Gordons in 1995. Anti-avoidance rules introduced in their wake declared such arrangements as non-business, with no entitlement to recover input VAT.

Next, "planners" modified the lease-and-leaseback scheme by setting up the connected company in a non-EU location. The yacht that has been the subject of input tax credit on purchase was sold or leased on to this connected party without VAT, because it was non-EU. Then, again, the yacht was leased back to the owner without VAT.

Customs' antidote to this one was the introduction of the 'use and enjoyment' rules at EU level. This made the exploitation of such a yacht within the EU subject to VAT regardless of the leaser's non-EU location.

However, judging by the recent anti-avoidance disclosure rules, even 'use and enjoyment' liability has not eradicated artificial leasing schemes. This is why, with effect from 1 August 2004 in the UK/IOM, the leaseback of any moveable asset, and any related service agreements involving 'offshore loops', have become 'listed' or 'hallmarked'. Such schemes must be disclosed to Customs.

The good news is that the turnover thresholds for being liable to notify Customs (£600,000 for 'listed' schemes and £10 million for 'hallmarked' schemes) have initially been set generously high. But for how long will smaller operators remain outside of the reporting net?

Time will tell. But time enough to take another look at existing leasing schemes to ensure that they are arms-length transactions that stand up to scrutiny.

### VAT Refund Claims on Exhibitions

It is high season again, thanks to the busy schedule of yacht shows and exhibitions. More than usual, VAT will be incurred on business purchases ranging from subsistence expenses (meals, hotel accommodation) to direct exhibition costs (stands, berthing etc.). Cumulatively these VAT costs can be significant. But taxable persons who incur them may be inclined to treat them as irrecoverable. There is after all no lack of anecdotes about the reluctance of some EU tax authorities to pay up.

However, these costs can be recovered and, to the extent that they are not negligible, should be. Member States have a legal obligation under the EC Eighth Directive to refund VAT suffered by taxable persons where the basic criteria are met and the claim is properly evidenced. Since supporting evidence of the VAT incurred is crucial to the success of any refund claim, it would be a good start if taxable persons kept full record of their business purchases, together with proper VAT invoices.

### Monaco Yacht Show Management Meeting – 23<sup>rd</sup> & 24<sup>th</sup> September 2004

Moore Stephens has agreed to co-sponsor *The Yacht Report's* breakfast seminars during the Monaco Yacht show. Ayuk Ntuiabane will also join a panel of VAT, Customs and legal experts on both days to present up-to-date information and cases on the topical subject of private use of yachts.

Moore Stephens Consulting (Isle of Man) Limited  
P.O. Box 25, 26 Athol Street, Douglas, Isle of Man IM99 1BD

**More Information?** If you have any queries concerning our services then please contact us by telephone on +44 (0) 1624 662 020, or email:

Clive Dixon  
clive.dixon@moorestephens.co.im

Ayuk Ntuiabane  
ayuk.ntuiabane@moorestephens.co.im

*This bulletin is prepared by Moore Stephens Consulting (Isle of Man) Limited. Yachting VAT Note is designed to keep readers abreast of current developments. But it is a general guide only and is not intended to be comprehensive. No liability is accepted for the opinions it contains, or for any errors or omissions. In all cases you should seek professional advice specific to your circumstances.*