

New guidelines regarding the VAT treatment of yacht leasing – March 2019

Background

The Maltese authorities have published new guidelines relating to the place of supply of the hiring of pleasure yachts. The new guidelines are applicable to operating lease structures and provide clarity on the manner in which the use and enjoyment of pleasure yachts is to be treated for VAT purposes.

The guidelines set conditions for the determination of the effective use and enjoyment of a yacht within and outside EU territorial waters. The level of use and enjoyment of the yacht in EU territorial waters shall determine the overall VAT incidence to be incurred on the hiring of a yacht, the supply of which shall take place in Malta. As a result, no VAT shall be due on the portion of the lease where the yacht is effectively used and enjoyed outside EU territorial waters.

The new guidelines follow the principle set out in Article 59a of the EU VAT Directive which grants Member States specific discretion to deal with the quantification of a yacht's sailing within EU territorial waters to 'prevent double taxation, non-taxation or distortion of competition'. The said discretion shall be vested in the Maltese Commissioner for Revenue in cases where a pleasure yacht is put at the disposal of the lessee in Malta and therefore such lease shall fall within the remit of Maltese VAT.

Conditions

The below conditions need to be fulfilled for the guidelines to apply:

- A Maltese entity, to own the private yacht and act as the lessor, is to be established and VAT registered in Malta
- The lessor will enter into a long-term yacht lease agreement (i.e. a lease covering more than 90 days' continuous possession or use) with a non-taxable third party (Maltese / non-Maltese)
- The conditions of the lease, including its duration and the consideration to be paid by the lessee to the lessor, shall be agreed contractually between the parties
- The yacht must be placed at the disposal of the lessee in Malta (to occur on the execution of the lease agreement)
- Prior approval in writing must be sought from the Maltese VAT Department confirming the application of Maltese VAT based on effective use and enjoyment
- The effective use and enjoyment of the yacht in EU territorial waters is evidence based and the lessor is required to obtain from the lessee documentary and/or technological data to demonstrate the yacht's movements within / outside EU waters;

- An annual declaration is to be submitted by the lessor with the Commissioner for Revenue within the prescribed timeframe

Effective use and enjoyment

The guidelines lay down rules for the assessment of a ratio (called *preliminary* for the first year and *temporary* for subsequent years of the lease) on the basis of which VAT shall initially be declared and paid to the Maltese VAT Department on submission of the VAT returns by the lessor.

The guidelines further provide an adjustment mechanism which shall ensure that VAT which has been declared and paid is based on the actual use and enjoyment of the yacht by the lessee in EU territorial waters for each preceding year (leading to the *actual* ratio). Such adjustment mechanism is applicable following the first year of operation of the lease.

No penalties or interest shall be levied on such VAT adjustments provided that these are in conformity with the guidelines.

This method shall ensure that VAT being declared and paid over the full term of the lease tallies with the actual use and enjoyment of the yacht by the lessee in EU territorial waters.

Next steps

Persons planning to or in the course of leasing their private yacht should consider these guidelines with regard to the VAT exposure on such leasing.

Further information

For further information on this subject contact Equiom today:

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