

Introduction

In an effort to further strengthen the yachting industry in Malta, the authorities have issued a set of guidelines in respect of the taxation of yachts which are leased to third parties by a Maltese company, with the option to buy the yacht at the end of the lease.

A financial leasing agreement in respect of a pleasure craft is an agreement whereby the lessor (the owner of the craft) allows the lessee (the person who leases the craft) to use the craft for a stipulated period in return for a consideration (the lease payment). At the end of the lease period, the lessee may opt to purchase the craft at a percentage of the original price.

VAT Treatment

For VAT purposes, the lease of a pleasure craft is deemed to be a supply of services; therefore deemed to take place where the person who makes the supply is established. The place of establishment of a taxable person is the country in which he has established his economic activity or has a fixed place of establishment from which he carries on such economic activity in that country.

Therefore when the lessor has his place of establishment in Malta, the lease purchase of the yacht would be subject to VAT in Malta at the standard rate of 18%. The lessor would have the right to deduct input VAT on the purchase of the vessel.

The supply of the lease purchase is taxable according to the deemed use of the yacht in EU territorial waters vis-à-vis usage in non-EU territorial waters.

This is based on Article 58 of Council Directive 2006/112/EC which provides that, in order to avoid double taxation, non-taxation or distortion of competition, Member States may, with regard to the hiring out of means of transport consider the place of supply of such services, if situated within their territory, as being situated outside the Community, if the effective use and enjoyment of the services takes place outside the Community. As it is very difficult to track the movements of pleasure crafts, in order to determine the period that the craft stays within or outside EU waters, a deemed usage percentage has been established by the VAT Department and published within the guidelines.



These guidelines establish the estimated percentage of the lease subject to VAT based on the time that the craft is used within the territorial waters of the EU member states. The percentages are set according to the length of the craft and its means of propulsion. The standard rate of VAT of 18% is then applied to the established percentage of the lease (shown overleaf), deemed to be related to the use of the craft in the territorial waters of the EU member states.

Conditions

In order for these guidelines to apply the following conditions must be satisfied:

1. The boat must come to Malta, preferably at the start of the lease agreement;
2. The lessor must be a Maltese company;
3. Prior approval from the Commissioner of VAT is required. The Commissioner will confirm the rate applicable as well as the acceptability of the value of the craft as declared. A valuation certificate of the yacht must be submitted with the approval application;
4. The lessee must pay to the lessor an initial contribution of 50% of the value of the yacht;
5. The lease instalments are payable each month up to a maximum of 36 months;
6. The lessor is expected to make a profit from the lease agreement;
7. The final purchase value of the yacht, if purchased, must be at least equal to 1% of the original value of the pleasure craft and this will be subject to the full 18% VAT rate.



In addition to the above, the lessor company may be set up as an Operating Company to benefit from certain additional advantages.

Please see separate tax alert in this respect. In brief, the lessor company should be subject to a tax rate of 35% on its profits in Malta. However, upon the distribution of a dividend by the lessor company, the shareholders of the company would be entitled to a tax refund of 6/7ths of the tax paid by the

Established Percentages

Length of Sailing Boats	% of lease subject to VAT	Effective Rate of VAT
Over 24m	30%	5.4%
Between 20.01m & 24m	40%	7.2%
Between 10.01m & 20m	50%	9.0%
Sailing boats up to 10m	60%	10.8%
Craft Permitted to sail in protected waters only	100%	18%

Length of Motor Boats	% of lease subject to VAT	Effective Rate of VAT
Over 24m	30%	5.4%
Between 16.01m & 24m	40%	7.2%
Between 12.01 m & 16m	50%	9%
Between 7.51 m & 12m	60%	10.8%
Up to 7.5m	90%	16.2%
Craft Permitted to sail in protected waters only	100%	18%



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