

MALTA VAT YACHTS SOLUTION

Malta VAT on Pleasure Yacht Leasing Set-Up

FLAG

Largest registry in Europe
6th in the world

REGISTRY GROSS TONNAGE

Over 57 million

NO. OF VESSELS REGISTERED

over 11,000

VAT ON PLEASURE YACHT LEASE

Levied limitedly on actual and effective use in the EU

VESSEL REGISTRATION

48 hours

ACCESSIBILITY & EMERGENCY

24 hours registry services



CHETCUTI CAUCHI
ADVOCATES

ccmalta.com/yachting



MALTA

Malta is the largest maritime registry in Europe and the 6th largest in the world. Particularly, it is one of the largest registries in Europe for pleasure yachts and super-yachts.

Malta's success in the maritime industry, but particularly in relation to pleasure yachts, is based on two main pillars:

1. The possibility of fiscal planning in the context of leasing of yachts and super-yachts based on their use in the EU

Malta provides for specific guidelines applying in the cases of long-term leasing/hiring of pleasure yachts. The guidelines provide that during the lease period, VAT is solely due on the use of the yacht in the EU, to the exclusion of VAT being charged on the use of the yacht outside the EU.

The guidelines, issued in March 2019 and effective as from November 2018, replace the previous guidelines issued originally in 2005 - the recent guidelines reflecting Malta's experience in the sector, EU developments and practices.

A number of models may be used depending on the intended operations and use of the yacht for fiscal planning and effectiveness. Beneficial lease set-ups wherein Malta companies lease a pleasure yacht to a non-taxable person or entity may benefit from said guidelines for VAT to be levied on the actual use of the yacht in the EU by the lessee.

2. The reputability of its flag and register.

Malta provides for a straightforward procedure for registration and deletion of vessels, including the registration and discharge of mortgages being fundamental for the purpose of obtaining financing, competitive registration and renewal fees, minimum technical requirements in relation to pleasure yachts allowing owners to freely design their own yachts and a 24 hour service to deal with urgent matters.

There is a flag state inspectorate to ensure adherence to international standards and there are no restrictions on the nationality of the master, officers and crew serving on Maltese vessels.

LEGAL BASIS

The Malta VAT treatment of yacht leasing is based on the rules emanating from the EU VAT Directive, the Malta VAT Act (Chapter 406 of the Laws of Malta) and the Malta guidelines on the leasing/hiring of pleasure yachts issued in March 2019.

The applicable rules distinguish between:

- short-term leases: the lease of a yacht for not more than 90 days; and
- long-term leases: the lease of a yacht for more than 90 days

In case of short-term leases, Malta VAT would be levied on the lease should the yacht be put at the disposal of the lessee in Malta.

In case of long-term leases, Malta VAT would be levied if the supply of the service is deemed to be taking place in Malta, that is:

- the lessor is established in Malta; and
- the yacht is put at the disposal of the lessee in Malta.

In the context of long-term leases deemed to be taking place in Malta, the guidelines on the leasing/hiring of pleasure yachts lay down the conditions for VAT to be levied solely on that portion of the lease during which the yacht is used by the lessee in EU territorial waters. No VAT is levied, on the use of the yacht by the lessee outside the EU or in international waters. This is based on article 59a of the VAT Directive which allows Member States to tax the use and enjoyment of services (including the leasing of pleasure yachts) specifically for the time that the service is effectively used and enjoyed in the EU.

The place of supply for the leasing/hiring of pleasure yachts is considered as being outside the EU territorial waters if the actual effective use takes place outside the EU and on the conditions laid down in the guidelines being followed.

The lessee therefore has to provide the lessor with records to determine the actual use and enjoyment by the lessee in and outside the EU territorial waters during the lease period.

Considering that generally yacht lease fees are paid in advance, additionally the guidelines provide for:

- a method for calculating the VAT payable based on a preliminary ratio on the basis of which the first VAT returns and VAT payments are made; and
- an adjustment mechanism to ultimately ensure that throughout the lease period, the payment of VAT reflects the actual use and enjoyment of the yacht by the lessee in EU territorial waters.

BENEFITS



Malta VAT Solely on Use in the EU



18% VAT rate - Lowest Amongst EU Port-States



Adjustment Mechanisms for VAT to be Paid on Actual use in EU



Guidelines Reflecting EU Developments and Practices



PROCEDURE

The Maltese solution through which VAT payments are made involves:

- the setting up of a Maltese company;
- the acquisition of the yacht through the Malta company;
- the registration of the yacht optionally under the Malta flag;
- the prior approval of the Commissioner of Inland Revenue to apply Malta VAT on the real effective use and enjoyment of the yacht by the lessee in the EU;
- the arrival of the yacht in Malta at the beginning of the lease;
- the leasing of the yacht by the company to a third party;
- the payment of VAT as provisionally calculated; and
- the yearly adjustment of VAT payments depending on actual use of the yacht within EU waters.

REQUIREMENTS

In order for VAT on Malta leases to be levied on the basis of the actual yacht's use and enjoyment within the EU territorial waters and to benefit from the guidelines, the following requirements have to be followed:

- the lessor must be a Maltese shipping organisation established in Malta for VAT purposes and holding a Malta VAT number;
- the lessee may be established outside Malta, being a non-taxable person and therefore using the yacht for pleasure and not business purposes;
- the lessor and the lessee must enter into a leasing arrangement and the lease must be for more than 90 days (long-term lease);
- the leasing of the yacht must be undertaken through Malta and hence the yacht must be placed at the disposal of the lessee in Malta;
- the lessor must keep appropriate records in relation to the actual use by the lessee the yacht in/outside the EU; and
- VAT returns must be properly submitted and an annual declaration filed with the Commissioner of Inland Revenue.

CHARGEABLE VAT

In case of long-term pleasure yacht leases, Malta VAT, would be levied if the supply of the service is deemed to be taking place in Malta, that is:

- the lessor is established in Malta; and
- the yacht is put by the lessor at the disposal of the lessee in Malta.

The VAT rate applicable is of 18%, being the lowest for EU port-states in. On approval by the Commissioner of Revenue, this rate of VAT is levied solely on that portion of the lease during which the yacht is used by the lessee in EU territorial waters. No VAT is levied on the use of the yacht by the lessee outside the EU or in international waters. The lessee therefore has to provide the lessor with records to determine the actual use and enjoyment by the lessee in and outside the EU territorial waters during the lease period.

In view of the practice being that lease fees are paid in advance, the guidelines guide the lessor as to the appropriate VAT that is to be levied on the lease:

- during the first tax period (usually three months) the lessor will need to charge full VAT due on the lease fee payable by the lessee to the lessor (specific rules apply depending when the lease starts);
- for the subsequent tax periods up to the first 12 months of lease, the guidelines provide for a preliminary ratio; calculation, that is an estimate/provisional calculation for calculating the estimated use of the yacht in the EU during this period and in relation to which VAT needs to be levied;
- at the end of the 12 month period (and for each other 12 month period thereafter) the actual VAT due (actual VAT ratio) shall be calculated based on records provided by the lessee and an adjustment mechanism is provided for to ensure that VAT paid reflects the actual use within the EU; and
- the actual VAT ratio for the previous year is to be used as the estimate/temporary calculation for each subsequent year.

SALE OF YACHT BY LESSOR

The VAT implication, if any, that arise at the end of the lease period depend on the intended use of the yacht and the plans of the lessor. Indeed, the Lessor can lease again the yacht and, should the requirements be fulfilled, re-benefit from the guidelines.

Should the lessor decide to sell the yacht, the VAT due on the sale price will depend on the place where the sale takes place for VAT purposes and the application of general principles relating to intra-community supplies and importation. If the sale is deemed to be taking place in Malta and the yacht is sold to the purchaser for private use, 18% VAT would generally be chargeable.

REQUIREMENTS



Lessor: a Malta VAT Registered Company



Lessee: Person or Entity Leasing the Yacht for Private Use



Lease: Long Term, +90 days



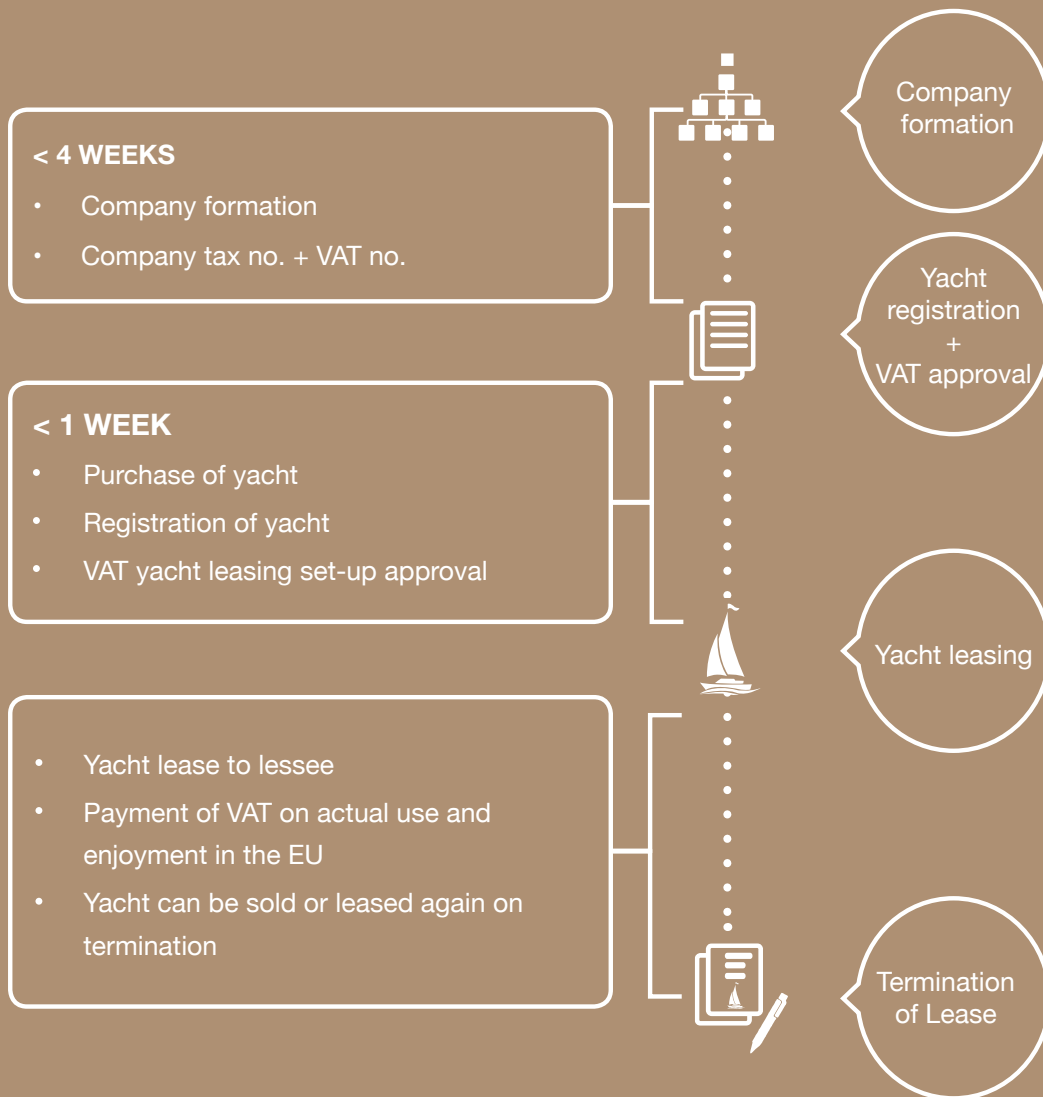
Yacht: Made at the Disposal of Lessee in Malta



Records: to be Kept Reflecting Use and VAT Levied on EU Use

MALTA YACHT LEASING SET-UP - PROCEDURE

Timeline



WHY WORK WITH US?



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