

New Yacht Leasing Model in Malta

Introduction

On the 28th February 2019 Malta published Guidelines which mark the introduction of a new Malta Yacht Leasing Model. The model is also a consequence of the action by the EU Commission started on the 8th March 2018 against Malta. The EU Commission and Malta thereafter agreed on measuring the actual use and enjoyment of the yacht in the EU and non-EU waters, thereby allowing the lessor in a leasing agreement to benefit from the “use & enjoyment” principle provided for in EU laws.

The new model extends beyond mere VAT considerations, and provides a fresh and modern outlook for the leasing of yachts and superyachts. In fact, the new operating model provides security and clarity to owners wishing to enjoy their yachts and superyachts.

How does it work?

The new yacht lease contracts must be drawn up in Malta and the provisions thereof must follow the Malta and EU laws and practice, and decisions from the European Court of Justice in relation to operating leases. The knowledge provided by other industries such as the automobiles and aviation industries are also a valid source.

The operating lease agreement will be one between a Maltese Company (the lessor) and the person who leases the yacht (the lessee). The lessor (Maltese company) will purchase the yacht with an intent to conduct an economic activity, being yacht leasing, and therefore has the right to deduct input VAT on the purchase of the yacht. Thereafter the lessor will enter into a lease agreement with the lessee in respect of the use.

No minimum or maximum lease period is imposed, and the parties are free to contract the term they believe best suits their needs and business interests. We recommend an analysis beforehand keeping in due regard the intended use of the yacht, as well as other parameters relating to the yacht itself.

VAT will be charged at the Malta rate of 18% on the lease yearly / monthly / quarterly instalments, as the case may be. In addition in terms of the Guidelines published by the Maltese VAT Department named ‘Guidelines regarding Item 12 of Part Two of the third Schedule to the Value Added Tax Act’ dated 28th February 2019 , it will be possible to adjust VAT collected and paid depending on the actual use or enjoyment of the yacht during the term in EU and non-EU waters.

As is the case with any business, the lessor is expected to make a profit. Therefore the lease instalments have to be calculated accordingly and need to ensure the financial viability of the lessor’s business activity. Income tax will be paid on the profits derived therefrom.

A welcome aspect of the new Malta model is that it provides the parties with a variety of options as to how to exit from the lease, and all are available without there being the need to choose only one from the outset (and our recommendation is that the parties ensure that the terms of their agreement provide for clear procedures in this respect). A yacht lease may be terminated by the passage of time (on expiration), or by the parties according to the terms of the contract. In that case the yacht will revert to the lessor who will be free to contract a new lease, or sell the yacht. The lease may also be rolled over should the parties agree to do so. It is not unlikely that the lessees will look to purchase the yacht prior to the end of lease, or upon termination, especially in the case of a shorter lease.

In all cases where a sale is contracted in Malta, and VAT is paid on a sale in Malta, the Maltese VAT Department reserves the right to issue a VAT Paid Certificate if the law is duly observed, inter alia the parties would have paid all VAT due according to Maltese law, as well as other general principles are observed, such as ensuring that all previous transactions occurred at arms’ length.

How to implement?

Phase 1 - Set up of the Company, Acquisition of the yacht and set up the lease agreements

Prior to the acquisition of the yacht the Lessor Company in Malta needs to be incorporated and be registered for VAT & Income Tax purposes with the Maltese Tax Authority. The Lessor (Maltese company) will then enter into a lease agreement, and therefore has the right to deduct input VAT on the purchase of the yacht.

The Lessor will enter into an operating lease agreement with the Lessee when the yacht is in Malta.

Phase 2 - VAT payments during the lease period

VAT is due on the lease instalments at 18% (Malta rate).

However the Guidelines clarify how to arrive at the taxable value in case of EU and non-EU use of the yacht. The Guidelines clarify that in case of non-EU use an adjustment may be made and VAT collected according to the actual use and enjoyment of the yacht.

To be able to claim and implement the said adjustment, proof must be obtained and held by the lessor as to the actual use outside the EU. Such proof may be obtained by various means, such as the yacht's logs, letters from marinas/invoices, GPS/AIS positioning logs, etc.

The VAT department has reserved to itself a number of powers to require this proof, monitor and review same in case the lessor applies the adjustments provided for in the Guidelines. The lessor must always be in a position to substantiate its position to avoid questioning and a possible tax investigation.

The Maltese VAT Department has already made known a number of measures to ensure lessors properly administer the leases, and to avoid abuse of the new Malta lease model:

- Submission of the annual return in respect of the use of the yacht in the EU and Non-EU waters.
- The VAT department is expecting a substantial amount of use and enjoyment by each yacht, each year, in the EU (and it is likely that major and unsupported adjustments to the VAT payments will be questioned).
- The lessor will be expected to report an amount of static use each year, and the payment of VAT thereon will not be subject to any adjustment.
- An amount for mere possession of the yacht by the lessee has to be charged on the lease, and included in the lease fee. The payment of same will include VAT which will not be subject to any adjustment.

The main advantages are:

- A clear and legal model based on general principles of EU laws and recent European Court of Justice judgements;
- A clear Guideline by the Maltese VAT Department to explain how to charge in case of yacht leases;
- VAT deferment during the lease period compared to the full payment of VAT at the beginning;
- Operating leases are well known to Banks and Financial Institutions and therefore lending to yachts adopting such a model should be simpler;
- various Exit options without the need to choose from the outset.

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General Anti-Avoidance Rules

Main advantage

Contact