

Vat Structures for Yacht Leasing

The Maltese VAT structure

Towards the end of November 2005 a set of guidelines were issued by the Maltese VAT Department tackling the issue of taxation of lease-purchase yachts to third parties by a Maltese Company.

As per the Guidelines, a lease-purchase financial agreement is defined as **“a leasing agreement of a pleasure boat is an agreement whereby the lessor contracts the use of the boat to the lessee in return for a consideration.”** In this case, a lease-purchase is seen as a situation where a Maltese company purchases the boat and consequently leases it to a third party, thereby acting as a lessor. On termination of the lease, there lies the option in favour of the third party to purchase the boat at a percentage of the original price. This final purchase is strictly an option which may be exercised at the end of the lease for a separate consideration.

The new VAT structure

From the Maltese perspective, it is to be considered that the Maltese VAT Guidelines provide that financial lease-purchase agreement is considered as a “supply of services” for VAT purposes, such a supply of services is taxable depending on the use of the boat, which use is calculated by the sailing made through the territorial waters of the European Union.

Since the supply of services depends on the use of the boat, then a method to trail the movements of the boat must be done. A way to track the movements as well as the time the boat spends within the territorial waters of the EU and the time it spends outside the EU is to be kept. Since such calculations would result to be a daunting and complex task, the Guidelines laid down by the VAT Department established the estimated percentage portion by which to compute such “use”, or “presumed” length of stay during which the yacht is presumed to be in EU waters.



The estimated percentage portion of the lease is based on the time that the boat is used within the territorial waters of the EU. These percentages are set according to the length of the boat and its means of propulsion, meaning the power or sailing effort employed.

As was mentioned above, the lease-purchase agreement is considered a supply of service in Malta; therefore the standard rate of 18% VAT applies. Under the new Guidelines, the percentage is applied on the established portion (percentage) of the lease, which is considered to be related to the use of the boat in EU territorial waters. Depending on the size of the yacht concerned, the effective rate of VAT will vary between 5.4% to 9% of the lease value.

This emanates from Article 58(b) 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, when such services are situated within their territory, as being situated within their territory, if the effective use and enjoyment of the services takes place outside the Community.

In the table below other percentage portion variations are shown which variations are calculated according to the type and length of the boat.

Percentage of lease taking place in the EU	Computation of VAT	∴ Effective rate of VAT
30%	30% of consideration multiplied by 18%	5.4%
40%	40% of consideration multiplied by 18%	7.2%
40%	40% of consideration multiplied by 18%	7.2%
50%	50% of consideration multiplied by 18%	9%
50%	50% of consideration multiplied by 18%	9%
60%	60% of consideration multiplied by 18%	10.8%
60%	60% of consideration multiplied by 18%	10.8%
90%	90% of consideration multiplied by 18%	16.2%
100%	100% of consideration multiplied by 18%	18%

The transaction costs related to the implementation of this structure may increase the total outlay by a margin of approximately 2 or 3%.

It is the lessor, i.e. the Maltese company, who has the right of deduction of the input VAT, where such right of input VAT applies. In all cases, the lessor must be a Maltese company leasing the boat to any Maltese or non-Maltese person or company.

If the lessee exercises the option to purchase the boat after the end of the lease, a VAT paid certificate will be issued to the lessee, on satisfaction that all VAT due has been paid. Another condition which applies here requires that the final purchase price shall in no case be less than 1% of the boat's original value.



On satisfaction that conditions and other aspects of the transactions are adhered to, the Department of VAT will issue a Yacht VAT Paid Certificate to the owner that VAT has been fully paid in Malta on the boat, once the lessee has paid all the tax and VAT due.

Council Directive 2008/8/EC amended the abovementioned Directive 2006/112/EC as regards the place of supply of services introducing new rules on the place of supply of means of transport. The general principle remains that where services are supplied to non-taxable persons (which includes a person or entity not engaged in business activities), the place of supply of services, that is the Member State in which VAT would be payable, is the place where the supplier has established his business.

The amending Directive introduces an exception to this principle, which exception will come into effect as from the 1st January 2013

The requirements under the scheme

The following requirements must be concurring:

1. The Leasing agreement shall be between a Maltese company (which may also be a commercial bank) and any Maltese, non-Maltese person or company;
2. The boat must sail into the Maltese territorial waters, preferably at the beginning of the lease agreement;
3. The Lease installments shall be payable every month for a period of not more than 36 months;
4. Prior approval shall be sought in writing from the Commissioner of VAT for the confirmation of the rate applicable according to the use in EU territorial waters as well as the acceptability of the value of the craft. Each application is considered on its own merits and certain conditions may be applied (see table). Moreover, the Commissioner of VAT may require the lessor to submit details regard the use of the boat. A valuation certificate of the craft is to be submitted with the application for approval;
5. An initial contribution is payable by the lessee to the lessor amounting to 50% of the value of the craft;
6. The lessor shall be expected to make a profit from the Leasing agreement over and above the value of the boat;

7. Any purchase value at the end of the lease agreement shall not be less than 1% of the original value of the craft, and this will be subject to the standard rate of VAT at 18%.

In all cases, no actual financial transfers need to take place. The structure has the advantage of having tax and VAT paid over a maximum 3-year period, which is desirable in the cases of cash-flow problems.

The implications

One may argue that by means of this scheme, there is a reduced amount of VAT which is made payable in Malta. In fact, with careful planning, the lessee of the yacht can now become the owner of an EU VAT-paid yacht paying as little as 6.18% VAT on the original value of the yacht. However, this is not the reason behind the implementation of such system. On the other hand, one is to consider that in the market of such pleasure boats, such large vessels have the tendency to spend a short period of time in European Union's territorial waters, in comparison to the time spent sailing across foreign seas. The aim of this scheme is to assist yacht owners to pay VAT on their yachts at an attractive VAT rate, thus allowing them to circulate freely within the European Union.

By means of the abovementioned list of requirements, the VAT Department would have at its disposal the details in relation to the value and size of the yacht, and whether the yacht is new or used. It is only at satisfaction of the VAT Department on the proper provision of the right details that the provisional certificate with the approval applicable rate is issued.

The operation of commercially registered yachts for chartering purposes using a Maltese company is very tax advantageous. This is because when the chartering business is carried out by a Maltese registered entity, VAT is exempt with credit. This implies that no VAT is charged to the client chartering the yacht, and all VAT paid on purchases by the Maltese company may be reclaimed. Consequently, all effective tax rates on profits from chartering can go down as low as 4.17%.

Hence, thanks to this VAT exemption with credit, and the low costs for forming and maintaining a Maltese registered company makes the Malta flag very attractive for the operation of Commercial Yachts.

The initial VAT payable at source by the purchaser on the purchase price of the vessel would in actual terms not be payable by the Lessor to the seller/supplier of the yacht. In



making this statement we are conscious of three possibilities that may apply and in any one of them the end result would be nil VAT or refundable VAT on the purchase of the yacht. These scenarios are:

- The yacht is purchased locally;
- The yacht is purchased from another Member State;
- The yacht is imported into the European Union.