

Key Facts

Yacht Leasing

Malta is an established registration and structuring hub for the international yachting industry. In February 2019 Malta overhauled its long-established yacht leasing framework, which offers lessees of pleasure yachts the opportunity to reduce their VAT liabilities in line with the amount of time the leased vessel spends in EU waters.

The guidelines for the yacht leasing scheme primarily relate to the use and enjoyment by lessees of yachts within and outside EU territorial waters and in this regard, the guidelines provide the manner in which such use and enjoyment is to be determined. The resulting ratio shall determine the overall VAT rate to be charged on the hiring of a yacht, the supply of which shall take place in Malta.

As the guidelines are still based on Article 59a of the EU VAT Directive, the Commissioner for Revenue may consider the place of supply of the hiring of the means of transport to be outside Malta if the effective use and enjoyment of the yacht takes place outside EU territorial waters. To this end no VAT shall be due on the portion of the lease where the yacht is effectively used and enjoyed outside EU territorial waters.

Conditions for the Applicability of the Guidelines

- The lessor must be a Maltese entity and possess a valid Maltese VAT identification number
- The lessee must be a non-taxable person, i.e., not using the yacht for commercial business purposes
- There must be a yacht leasing agreement in place between the lessor and lessee setting out the conditions of the lease
- The yacht must be placed at the disposal of the lessee in Malta

- Prior approval of the lease in writing must be sought from the VAT Department for the lessor to apply Maltese VAT based on the effective use and enjoyment principle
- The lessor must maintain reasonable documentary and/or technological data to determine the actual use and enjoyment of the pleasure boat within and outside EU territorial waters
- An annual declaration must be filed by the lessor with the Commissioner for Revenue within the prescribed timeframe

Ratio of Effective Use and Enjoyment

The guidelines provide that a preliminary ratio is to be assessed based on the effective use and enjoyment of the yacht in the first and/or second tax period, depending on the commencement of the lease and this ratio shall be used for the first twelve months of the lease. On the basis of such preliminary ratio, VAT shall initially be declared and paid to the Maltese VAT Department on submission of the VAT returns by the lessor.

After the lapse of the first twelve months of the lease, an actual ratio is obtained, and this will be used as the provisional ratio for the subsequent year. The guidelines provide for an adjustment mechanism, so that the difference between the

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provisional and the actual ratio is accounted for in the tax return for the tax period following the end of the relevant annual period.

The end result will be that VAT would only be charged on the actual use and enjoyment of the yacht by the lessee in EU territorial waters.

Termination of the Lease

The new guidelines provide an element of flexibility when it comes to exiting or terminating the lease, leaving it up to the parties to decide accordingly. In the eventuality that at the end of the lease the lessor decides to contract the sale of the yacht in Malta, then VAT at the standard rate of 18% is charged on such sale. In such a case the Maltese VAT Department reserves the right to issue a VAT Paid Certificate if the law and other general principles are duly observed.

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