



*cutting through complexity*

# Yachts and Aircraft VAT workshop

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- **Temporary importation**
- **Charter structures**
- **Leasing schemes**
- **Purchasing a yacht or aircraft**
- **An update on chartering in Spain**

# Temporary Admission



# Temporary Importation/Admission

- **Temporary admission of a non-EU means of transport – civil aircraft (includes light aeroplanes and helicopters) sea going vessels (includes all pleasure craft) and motorised road vehicles**
- **Different rules apply if brought in to EU for sale or exhibition**
- **Rules differ slightly in different jurisdictions but generally all follow the EU VAT Directive 2006/112/EC**
- **What is a non-EU means of transport?**
  - *Registration*
  - *Ownership*
  - *What about Gibraltar, Jersey and Guernsey?*

## Temporary Admission – Arrival and Departure

- Different countries have different requirements
- EU territory 12 miles limit
- May be no official documentation necessary on arrival or departure
- *If you do not import the aircraft or yacht it will be assumed that you are using temporary admission and it will be checked that the requirements are met*
- *Should check requirements before you depart to the EU*

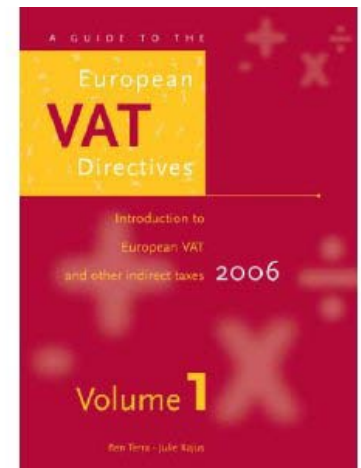
## Temporary Admission – Do's and Don'ts

- **Time limit aircraft (6 months) yachts (18 months)**
- **non-EU owner can use privately in EU**
- **Any commercial use must begin and end outside the EU**
- **EU resident can only use with permission of non-EU owner and non-EU owner must be in EU at the time**
- **EU resident that is an employee of the non-EU owner and private use is allowed in the contract of employment**
- **Routine maintenance and repairs allowed**
- **Overhaul, refit or renovation – need to bring into EU under IPR**
- **Sale or exhibit – need to be brought in under different regime**

## Temporary Admission – Documents

- **Proof the aircraft/yacht is registered outside the EU in the name of a non-EU person**
- **If not registered proof that it is owned by a non-EU person**
- **Passport should show that used by non-EU person**
- **If being used by EU resident proof of compliance with use (ie that the yacht/aircraft is going to be exported)**
- **Documents supporting entry and departure from EU. (When and where?)**
- ***Keep for 4 years on board if possible***

# Charter Structures



## **Charter – *Is it subject to VAT?***

**In accordance with the VAT Directive the charter of a yacht or aircraft can be considered as a supply of either:**

- **Passenger Transport; or**
- **Hire of a means of Transport**

**The local interpretation of the Directive will determine how a charter is treated for VAT purposes**

## Passenger Transport

### *Article 98*

1. Member States **may** apply either **one or two reduced rates**
2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III

*Annex III item(5) transport of passengers and their accompanying luggage*

### *Article 48*

The place of supply of Passenger Transport shall be ***the place where the transport takes place, proportionate to the distances covered***

- International/ intra-EU passenger transport – mostly 0%
- Domestic transport – VAT rate varies

### Is the Hire of a means of Transport subject to VAT?

#### EU Directive - CHAPTER 7

#### EXEMPTIONS RELATED TO INTERNATIONAL TRANSPORT

#### Article 148

Member States shall exempt the following transactions:

- (a) the supply of goods for the fuelling and provisioning of **vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities**, or for rescue or assistance at sea, or for inshore fishing, with the exception, in the case of vessels used for inshore fishing, of ships' provisions;
- (c) **the supply, modification, repair, maintenance, chartering and hiring of the vessels** referred to in point (a), and the supply, hiring, repair and maintenance of equipment, including fishing equipment, incorporated or used therein;
- (d) the supply of services other than those referred to in point (c), to meet the direct needs of the vessels referred to in point (a) or of their cargoes.

## *Charter of a yacht can be treated as*

1. **Passenger transport – subject to VAT**
  2. **Passenger transport – zero rated**
  3. **Passenger transport – reduce rated**
  4. **Hire of a means of transport – short term subject to VAT**
  5. **Hire of a means of transport – short term exempt from VAT**
  6. **Hire of a means of transport – use and enjoyment provisions**
- 
- ***Where do we currently stand?***
  - ***Who is responsible for declaring any VAT due?***

## Charter – place of supply – Hire of a MOT

**Short term – 30 days or less (for yachts 90 days or less)**

**Long term – more than 30 days (for yachts more than 90 days)**

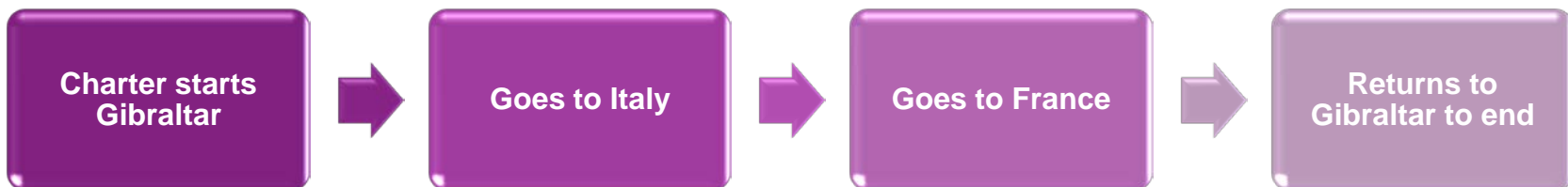
Type of Hire	Place of supply
B2B short term	Where put at customer disposal
B2C short term	Where put at customer disposal
B2B long term	Customer location
B2C long term	Supplier location (changes 2013 to Customer location unless hire of a pleasure boat)

***Use and Enjoyment provisions apply***

## Use and Enjoyment provisions

- **If you hire out a yacht or aircraft where the place of supply would be the UK but the yacht/aircraft is used and enjoyed outside the EU during the hire period, the place of supply is outside the EU**
- **If you hire out a yacht or aircraft where the place of supply would be outside the EU but the yacht/aircraft is used and enjoyed in the EU during the hire period the place of supply is where it is used and enjoyed to the extent it is used and enjoyed in that place**

## Example - Use and Enjoyment



# Leasing Schemes



**Changes in the UK regulations brings UK into line with rest of EU**

**As of 1 January 2011 as to what constitutes a “qualifying aircraft” and as such the supply (including lease) of which qualifies for 0% VAT**

**Previously:**

**any aircraft over 8,000kg take off weight**

**From 1 January 2011**

***“Is used by an airline operating for reward chiefly on international routes”***

## *What is an airline ?*

**Very loosely defined as “ an undertaking which provides services for the carriage by air of passengers or cargo”**

**Needs to operate at least one aircraft which it may own, lease or hire in order to provide the above**

**Can “Look through” and zero rate lease of an aircraft if end user is considered an airline**

### *What is “chiefly on international routes”?*

- **In the case of the UK 12 nautical miles from the coast. Includes trips to and from IOM to UK**
- **Chiefly means more than 50%**

*“Vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities”*

- **France and Italy challenged on interpretation**
- **Affects the supplies of fuel and repairs and maintenance**

- **Treated as a means of transport**
- **Long term B2B where the customer belongs**
- **Long term B2C where the supplier belongs – 2013 where the customer belongs**
- **For aircraft dry lease or wet lease (with or without crew)**
- **With a crew is it passenger transport?**
- **Could it be zero rated?**

- **Malta and Italy**
- **Both based on assumed usage out side the EU – open to challenge?**
- **Once gone through scheme have a fully VAT paid yacht in the EU. Do not need to charge VAT on sale of yacht as long as sold in the EU**

# Purchasing a Yacht in the EU



### What needs to be considered?

- **What is the current VAT paid status of the yacht? – *Is the yacht in the EU under temporary importation***
- **Where is the yacht at the time of the sale? – *Sale outside the EU could lose VAT paid status***
- **Does the yacht need to be imported? – *Where should the yacht be imported?***
- **Can the sale of the yacht be treated as an intra-community supply? – *Facet BV/Facet Trading BV case***
- **New build ? – *VAT treatment of owners equipment?***
- **Sale of yacht v sale of shares in the yacht owning company? – *Can the authorities look through the transaction?***

# Spanish Tax Considerations



- **Under Spanish Law, the registration of motor vehicles, yachts and aircrafts is subject to registration tax**
- **Registration tax is triggered at a 12% rate on the market value of the yacht or aircraft. Rates may vary depending on the region in which the yacht or aircraft is registered**
- **Spanish Law requires the registration in Spain of any mean of transport to be used within the Spanish territory and territorial waters by Spanish tax residents or by non resident established in Spain**
- **The term “use” should be interpreted as the holding of a right to dispose of the yacht as owner or as lessee. It is normally interpreted that crew (eg waitress, hired captain, etc) do not have the power of disposal on the Yacht. Spanish guests?**

## Exemptions

- **Yachts registered as commercial Yachts in the Spanish registry (lista 6<sup>o</sup>), provided all use is commercial use. Registration requires that all use is commercial and no private use is allowed, no matter how limited**
  
- **Aircrafts operated by companies engaged in air transport. The exemption will not apply when the aircraft is leased to the operator and the lessor's and/or related parties to the lessor's use exceeds 5% of total flying time within a 12 months period**

## **Import of Yachts and aircrafts**

- **Application of temporary importation relieves on VAT**
- **VAT exemption on imports and intra-community acquisition located in Spain applicable by established operators using aircraft mainly in international air transport (more than 50% of distance within the relevant period). No reliefs applicable to yachts or pleasure yachts**
- **Exempt intra-community acquisition for temporary use within Spanish waters by non EU resident or non EU established persons**
- **Taxable imports and intra-community acquisitions by Spanish residents and PEs in Spain**

### **Lease of means of transport (bareboat charter/ dry lease)**

**Subject to Spanish VAT under the Directive rules. Place of supply**

**B2B -> Customer location**

**B2C -> Supplier location**

**Short term lease of means of transport (vessels less 90 days)-> place of disposal**

**Rate: 18%**

### **Transport services (time charter/ wet lease)**

- **Normally a transport service will require that the supplier provides crewing. Transport will be subject to Spanish VAT on the part of the transport that takes place within Spanish waters**
- **Exemption applies for transport of passengers starting or ending in a port or airport out from the Spanish VAT territory (which does not include the Canary Islands, Ceuta and Melilla)**

- **The non remunerated private use of a yacht or aircraft (owned by a Spanish company or a PE in Spain) is contrary to Spanish income tax regulations, as Spanish transfer pricing rule should apply in order to assess the use on an arm's length basis**
- **Definition of PE: any fixed place of business from which an activity is carried out. This definition may apply also for VAT and Registration Tax purposes. Problems may arise in connection to Berths, yachting bases?**
- **Arm's length rules if Spanish source income (eg Spanish use) by non Spanish owners and users? Normally these would be international transport services, normally not linked to Spanish activities**



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*Presenters' contact details*

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