



Illustration: M.S. Fitzsimons

The financial benefits of astute VAT avoidance may soon be harder to attain and secure

The taxman cometh

THE DOWNTURN MEANS LESS REVENUE FOR TAXMEN AND NOW THEY'RE EYEING UP LARGE YACHTS. HOW HARD WILL THESE NEW — AND STRINGENT — AUDITS REALLY HIT?

BRANSOM BEAN REPORTS

It's a story that could have easily slipped beneath the radar — yet it is one that may ultimately have far-reaching implications for the entire superyacht industry. In late November the *Malta Independent on Sunday* ran an editorial on what it described as a European Union 'crackdown' on the superyacht industry. The headline ran: 'Maltese super yacht tax check yields two VAT violations'. Reading between the lines it seemed the taxman was training his sights on the big boat industry.

"It's quite simple, actually," explains Ayuk Ntuiabane, a VAT expert with Isle of Man-based Moore Stephens Yachting. "Revenue sources have dried up for the tax man and this is accelerating a tightening process that has already begun for superyachts."

In short, the spectre of VAT is set to come out and haunt an industry already spooked and nervous following rumours and reports of cancelled new-build contracts, delayed construction to mitigate cash outlays, big yachts owned by oligarchs going onto essential 'maintenance only' mode — and an

apparently less-than-buoyant winter charter season in the Caribbean.

While the *Malta Independent on Sunday* referred specifically to just two yachts in Maltese waters, it has become clear that it was actually a broader concerted effort — a pan-European initiative. Dutch and British VAT authorities are now in the process of compiling a report on VAT and superyachts — and the numbers are big.

"The total value of yachts investigated across the EU amounts to over €1 billion, according to figures published by the Dutch ➔

finance ministry,” the paper reported. “The Dutch tax authorities are set to recoup more than €31 million from additional VAT assessments following the exercise. The owners and companies involved in some 300 super yachts across 11 EU member states have already been found to be in violation of the countries’ VAT legislation.”

Price of success

Indeed, www.tax-news.com also reported that: “The various tax authorities and customs services involved in the exercise carried out 322 investigations into 225 transactions. In addition to the Netherlands and France, the joint initiative was assisted by 10 other member states, including Belgium, Denmark, Germany, Ireland, Italy, Luxemburg, Malta, Spain, the United Kingdom and Portugal. In all 150 people were involved in the probe. The complete operating chain — from yacht builders, dealers and intermediaries, up to the end user — was closely scrutinised during the investigation.”

And it is naïve to consider that VAT is a problem merely for owners. “The VAT issue is an issue for the entire industry,” says Chris

investigate people who do not do so,” says Dutch Finance Minister Jan Cornelis de Jager.

But some targets are definitely more popular than others.

Spirit of the law

So how can this be such a problem? After all it should be so simple and European VAT is something that’s been around since 1967.

“The VAT system is simply the vehicle to get the tax to the consumer who is the ultimate payer of the tax,” says Ntuiabane. “It is not a charge on business itself, but it is easy for the consumer to hide behind the ‘business’ to avoid paying.”

The problem comes because avoiding paying 15 per cent to 25 per cent VAT on the price of the yacht — as well as on what it costs to service, provision and bunker her, while at the same time using the yacht as if she was not really a business but private — is just too tempting.

And in their effort to do this, owners, captains and managers — while not ignoring the detail of the law — may at times have overstepped the *spirit* of the law.

The *Malta Independent on Sunday* went on

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Allix of Dominion Marine, another prominent superyacht VAT specialist. “It’s the owners of course — ultimately they write the cheques — but it is also the builders, the brokers, the captains, everybody. The day has ended when the superyacht industry could play ostrich, bury its head in the sand and pretend VAT doesn’t exist.”

Of course, the superyacht industry is a victim of its own success. Bigger and more expensive yachts mean bigger VAT targets — and bigger penalties when it all goes wrong.

Again, it’s not just the purchase price of the yacht that the VAT man wants a look at. The VAT and duties that can be associated with bunkering it can easily total up to the price of a nice little excise patrol craft.

And politically, if it can be safely assumed that collecting any tax is never going to be popular, particularly in difficult times, who better to be seen to be collecting it from than fat cats in huge white boats with helicopters teetering off the back.

“Most people just pay their taxes properly. Then they expect that the tax authorities

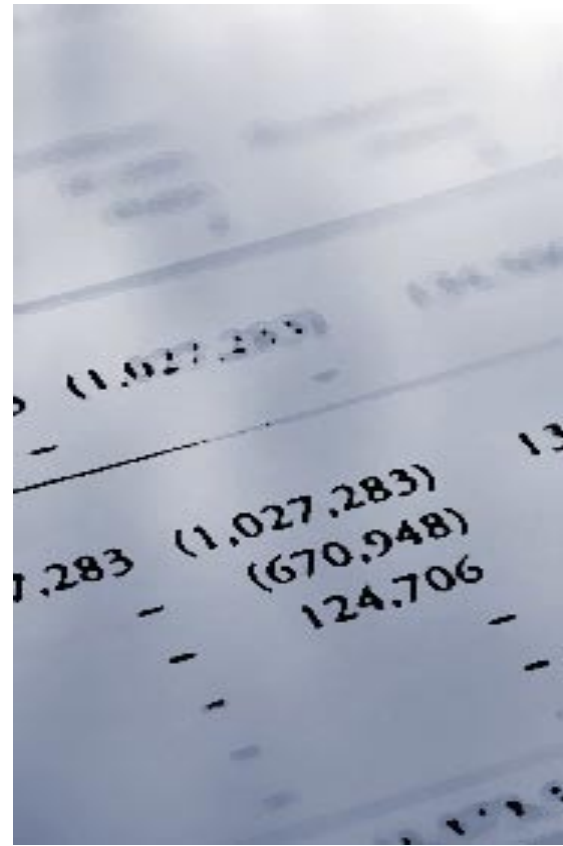
to explain that what the EU is now uncovering is not, however, that simple.

According to the newspaper some superyacht owners had registered their vessels as commercial rather than private vessels, rendering them liable for greatly reduced VAT rates — and had in turn ‘chartered’ their own vessels at prices clearly below the market rate from companies set up to facilitate the scheme.

Others, meanwhile, attempted to find and then exploit various loopholes between different EU member state legislations and the legislations of third countries when it came to the delivery of yachts.

Ignorance of the law, as we know, is no excuse. Volumes have been written about VAT as it applies to superyachts in the EU and there are a number of VAT advisors who regularly speak at industry conferences and are able to provide solid advice on how to structure yacht ownership and operations.

“Ironically, compliance with VAT is really quite simple,” points out Ntuiabane.



“A vessel is just a means of transport which can be exploited for the purposes of providing services. So it can be exposed to VAT as both goods — when they are bought and sold — and as services — when they are exploited for various services.”

Tax authorities are now intent on digging even deeper to find out who *really* is the yacht’s beneficial owner — and their relationship to the person they find on board with a gin and tonic in hand who says: “Who me? Why I’m just chartering the boat.”

Letter of the law, yes; *spirit* of the law, no.

Change in fortune

“If the authorities can establish the true beneficial owner, they will simply annul the contract on the basis that the charter is artificial,” says Ntuiabane.

“So what?” some in the industry might have been tempted to ask.

Well, in recent years — with the much touted superyacht crew shortage — the number one reason for owners selling their yachts and leaving yachting forever has been crew problems.

But now — with the potential for massive resale profits gone and a much softer charter market ahead — VAT problems for owners are likely to replace crew problems with a knock-on effect on the entire industry.

Recently there have been some brave attempts to create solid business cases for



VAT REGULATION THE LETTER OF THE LAW

- ▶ In essence, EU VAT rules generally state that if you are an EU resident you must account for the VAT on a yacht. If you are a non-EU resident you only have to account for VAT if you are chartering the yacht to third parties.
- ▶ If you're running your yacht as a business, the letter of the law in most EU countries also states that if a yacht is registered as a commercial vessel, has a permanent crew, and operates legitimately as a charter vessel — including having a chartering agreement in place — then she is zero-rated or exempt from VAT.

owning yachts. But, after all the Excel spreadsheets, internal rate of return analyses and even the most bullish of assumptions, these models always depended on re-sales being at much higher prices than purchases.

But that was before the downturn.

Historically most owners have never really expected to make money from their yachts. Some owners will, of course, charter their boats out but usually to mitigate costs and give their crew the chance to get some nice big tips. A few on the other hand saw their yachts through the same profit and loss statements, balance sheets, and net present values that they used for their real business.

“Why do people buy yachts?” asks Allix. “Simply to have fun. They don't really need it. So when it ceases to be fun, particularly in tough times, why bother having one?”

Conversely, VAT problems for yacht owners can be very ‘un-fun’ in several expensive ways.

If VAT problems were just a matter of paying the original amount of tax and getting on with life, it would perhaps not be so bad — just pay the tax and sue the VAT advisor. But there can be nasty surprises.

“Penalties for illegal VAT avoidance can be interest plus 50 per cent,” says Allix. “And of course the yacht can be arrested.”

Arrested might not be so bad if only the crew is onboard, but being ‘chained to the pier’ in a port while things are sorted out doesn't do much to enhance ‘quality time’ for owner and family.

Then there's the detrimental effect on the yacht's brand in the charter market after a charter is cancelled. Yes, yachts that

charter — just like any other business — develop a brand in the truest sense of the definition.

Litigation — a stereotypical American solution — is not a reasonable option either. Even if you have the best legal counsel in the world, once a yacht is arrested the VAT man ends up holding all the cards.

“If they want, they'll make sure that you'll not be going anywhere soon,” says Allix. “Once the ball is in their court, things can go on for years.”

Curiously, North Americans can often be dismissive of VAT by considering it to be a merely ‘European thing’. They're wrong. “Americans often say that you're innocent until you're proven guilty — but with VAT it's the other way around,” explains Ntuiabane.

Hope up ahead

Many in the industry agree that everything must be done — particularly now — to help owners avoid VAT difficulties and thus avoid the ultimate hit to business. The industry doesn't want to hear: “That's it, this is not fun anymore. I'm cutting my losses with this boat. Tell the broker to sell her. Where's the G5?”

European VAT authorities are clearly not backing down and, in fact, the Dutch government seems intent on increasing the number of inspections in Dutch marinas with a special focus on the purchase of large yachts and warnings of further joint operations.

But they too might have something at stake. They could do worse than to take a page from the experience in the USA with post 9/11 enforcement of ISPS and immigration.

At that time many yacht captains were saying they'd go no closer to the US than the Bahamas — with the result that thousands of dollars that would have landed in the US quite simply didn't get closer either.

So with the prospects of a long recession ahead of us both our industry and the VAT man should be careful. Both are in danger of roasting the goose that has been laying the golden eggs.

But there is hope — certainly on the VAT compliance issue, and it's just business as usual, as in any other industry.

“Again, the concept of VAT compliance is actually quite straightforward and better still, the possibility of mitigating VAT is substantial,” says Chris Allix.

“When structuring the ownership of a yacht, you just have to be certain it's correct. Use an advisor who is very experienced in EU VAT across all states, not just in one country.”

“This is not really a crackdown by the authorities. They're just saying: ‘If you're going to do it, do it properly — stop trying to play games.’” ●