

MARINE MONEY

15th Annual Superyacht Finance Forum

VAT Panel

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An introduction of the VAT Panel:

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15th Annual Superyacht Finance Forum
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Le Meridien, Monte Carlo, Monaco

The Panelists

Zampa 
Debattista



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VAT PANEL

Part 1 – VAT/Fiscal Updates affecting Yachting across the EU

Part 2 – VAT on Berths: rental, sale and subleases

Part 1 – VAT/Fiscal Updates affecting Yachting across the EU

- EU (keep a watch for the proposed regulations)
- Malta
- Spain
- France
- Italy

Malta

- No Major Developments
- Importation and Deferral Conditions
- Malta Yacht Leasing Arrangements & “Letter of Comfort”
- “VAT Paid Certificate”



Spain

‘Tax on recreational yachts’: a proposal to replace matriculation tax

- ❑ Would affect to pleasure and commercial yachts
- ❑ Would be a direct tax, with periodical accrual and a taxable event consisting of the time spent in Spanish waters, and based on economic capacity and environmental parameters (e.g. CO2 emissions, length, power, etc.), with maximum caps
- ❑ Exemption for yachts effectively and exclusively used for charter activities would be subject to discussion but, in the case, there should be counterparts (e.g. use by the UBO, legal certainty, etc.)
- ❑ It would eliminate many of the problems with MT, such as some legal uncertainty, difficulties in the UBO chartering the yacht in Spain or the fact that making a mistake makes the owner liable for a tax consisting of 12% of the yacht's value.

Miguel Ángel Serra

Affidavit of responsibility: a proposal to replace charter license



- ❑ The process of obtaining the so-called "charter license" is a long process: Harbor Master offices has by law a period of 3 months to issue the license. The process is very time-consuming and requires the contribution of many documents.
- ❑ Although the 3-months period is not usually exhausted, it is excessive for the seasonal charter activity carried out by superyachts.
- ❑ We have proposed the maritime authorities replacing the "charter license" by an 'Affidavit of responsibility' issued by the owning company stating that all documents&conditions required to charter in Spain are fulfilled. This would allow:
 - Alleviate the workload of the maritime authorities;
 - Eliminates the possibility of not executing a previously contracted charter, bad image and paying the agreed compensations to the charterer;
 - Reduces the stress and nervousness of waiting to obtain the "charter license".
 - Transfer the responsibility of having all the paperwork in place to the owner but..., it depends on us;

Miguel Ángel Serra

Inward Processing Relief (IPR): No longer required to reach a non-EU country to finalise

- ❑ The Spanish position was always that, to discharge an IPR procedure (so that refit and repair jobs are VAT exempt), the yacht needed to be exported, and this meant reaching a territory outside the UCT (e.g. Melilla, Gibraltar, Argelia, etc.).
- ❑ Currently it is no longer required to reach a non-EU country to finalise if the purpose is to re-enter Spanish waters under the TA regime.
- ❑ In that case, the Spanish Customs allows to terminate an IPR procedure by just sailing beyond the 12 nautical miles from straight baselines delimiting Spanish international waters, obtaining prove of such, and re-enter Spanish waters without the need to reach a third country/territory outside the UCT.



Miguel Ángel Serra

Advantages of chartering from Melilla

Obtained since 2021 season:

- a) Charter in Spanish waters from Melilla subject solely and exclusively to 0.5% 'IPSI' (local indirect tax playing the role of VAT).
- b) VAT 'use & enjoyment rule' is not applicable when a charter sailing in Spanish mainland or the Balearics (even in French waters).
- c) Provides the possibility of discharging the TA scheme before the maximum period of 18 months in the UCT.
- d) Provides the possibility of discharging refits under IPR (VAT exempt).
- e) Melilla: bunkering with no fuel tax or VAT, only 0,5% IPSI and high flash point.



New 2022: charter under TA:

- a) Ruling of last April 2022: possibility to charter in Spain under Temporary Admission (TA) regime if holding a so-called 'establishment' in Melilla.

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Part 2 – VAT on Berths:

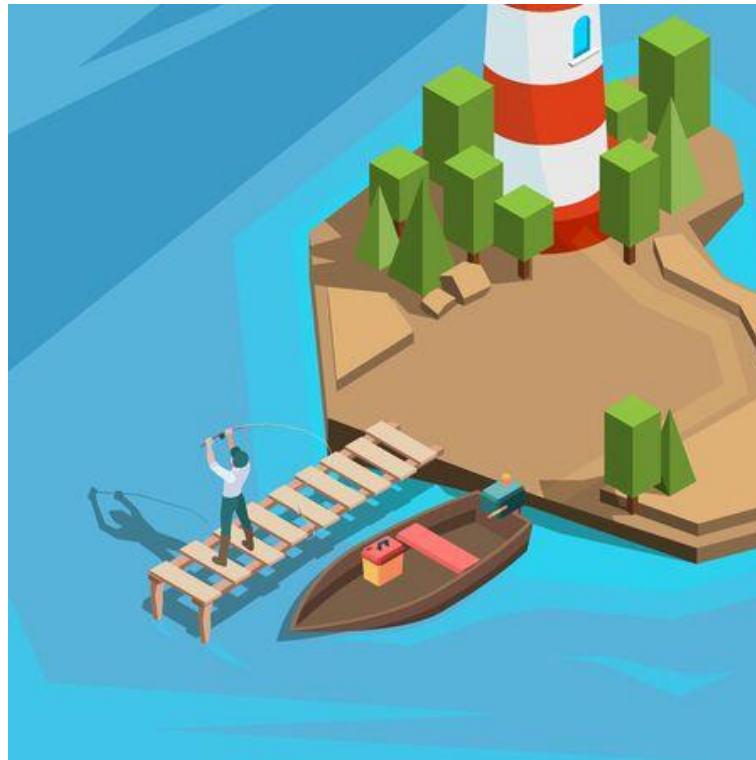
1 - Lease of berth

2 - Sale of berth

3 – Sublease of berth by a marina

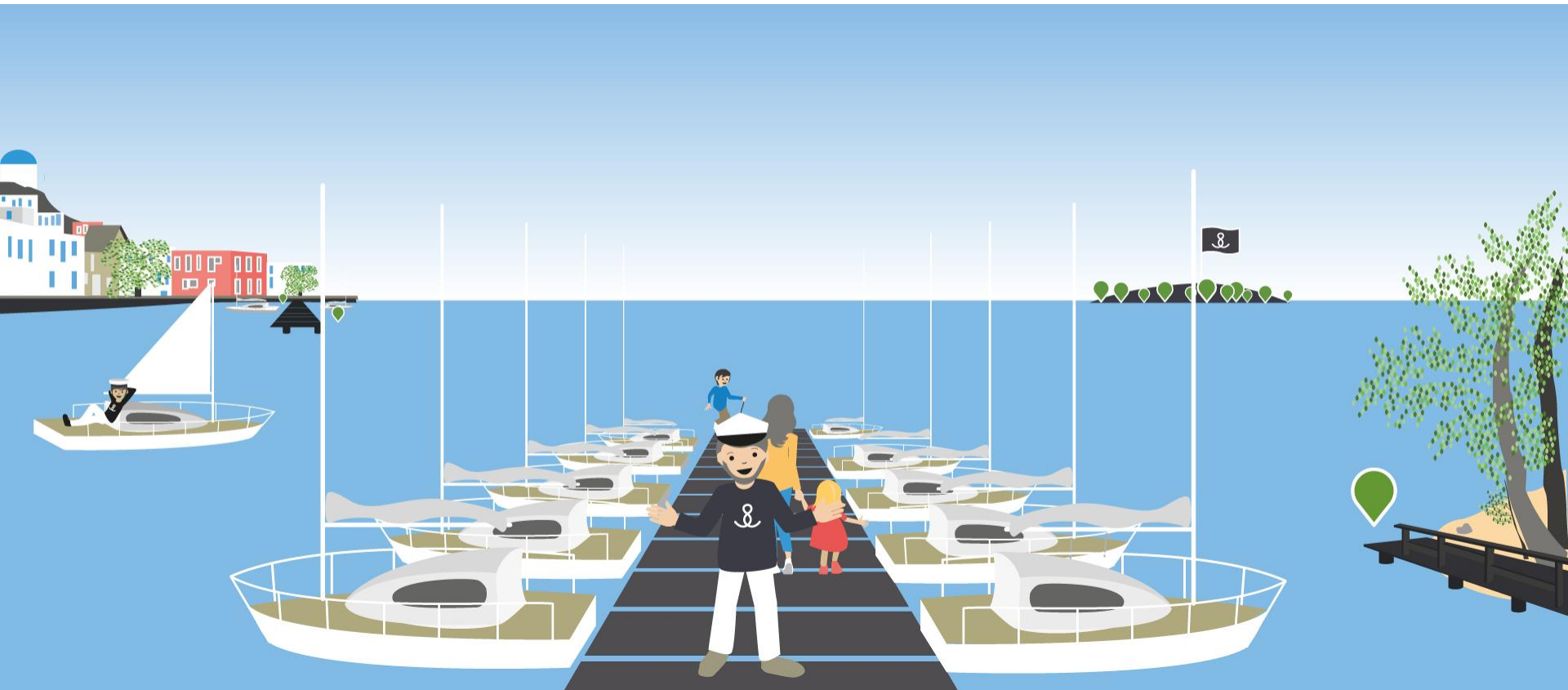
Scenario 1: A marina leasing a berth for a consideration.

How is this treated from a VAT perspective in your jurisdiction? Does the duration of the lease make a difference? What is the applicable VAT rate?



Scenario 2: The sale of a berth in the EU.

In fact, it is a transfer of a concession. How is it taxed?



Scenario 3: The sublease of a berth by a marina operator.

What changes for the owner of the berth? How should income be handled? Can we just set it off against costs?



Other scenarios to consider.

Does the acquisition of a berth create a permanent establishment or fixed establishment in that country?



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Other scenarios to consider

**What happens when the term of the concession is over?
Are there rights left to the concessionaire?**



Part 1 –VAT/Fiscal updates affecting Yachting across EU

-OSS

- Transport contract
- APA on charter
- Broker commission
 - B to B (EU/EU)
 - B to B (EU/ non EU)
 - France to France
- Use and enjoyment rule (proportionality rule)
- Charter promotional
- Trip: delivery redelivery
- FCE: only applicable to all supply only to those directly linked to the yacht (exclusion lawyers fee, garbage)

Custom update:

- Reverse charge: VAT accounted for before importation (possibility of combined system)

Part 2 – VAT on berth: rental, sale, sublease

- 2 systems: share/warranty of use
 - Warranty of use no possibility of direct renting by the beneficiary of the berth
 - Priority of mooring
- Applicable VAT 20%
- Antibes Vauban: rental via the harbour authorities
 - 75% of the berth rental paid to the beneficial user of the berth is less than 40% days of rental per year
 - 80% of the berth rental paid to the beneficial user of the berth is more than 40 days of rental per year
- Applicable tax regime for the berth contractor: one declaration per year to the tax authorities
- Sale of the warranty of use: proportional rule taking in consideration the time

Thank you

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