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MALTA PLEASURE YACHT LEASING SCHEME – PREFERABLE VAT TREATMENT

2012

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A. INTRODUCTION

On the 24th of November 2005, the Maltese VAT Department published its guidelines on the VAT treatment of yacht leasing, giving rise to the Malta yacht leasing scheme and transforming Malta into a highly attractive jurisdiction for such an activity.

B. BENEFITS

The scheme allows a Maltese Company to purchase a yacht which it will subsequently lease, typically to the shareholders of the company, resulting in paying VAT on the value of the yacht, at reduced levels. The VAT rate may be as low as 5,4% rather than the standard 18%. Effectively, by structuring the acquisition of the yacht as a leasing arrangement, as will be explained below, the effective rate of VAT can be set as low as to 5,4%.

C. INTERPRETATION OF TERMS - VAT TREATMENT

The leasing of a yacht is considered for VAT purposes a provision of a service which is subject to the standard VAT rate of 18% in Malta but only to the extent that the use of the yacht is taking place within EU waters. When using the scheme however, the VAT application rate can be fixed to as low as 5,4%. The scheme provides for a lease to be entered into between the owner of the yacht (lessor) and the user (lessee) allowing the owner to pay reduced VAT on the yacht.
Effectively, VAT is paid solely on the part of the lease during which the vessel is presumed to be in EU territorial waters. The scheme itself provides for the presumed percentage of time spent in EU waters, based on the length and type of the vessel in accordance with tables 1 and 2 below.
The bigger the yacht, the more time it is presumed to spend outside EU waters, and vice versa.
The yacht lease-purchase agreement is an arrangement whereby the lessee (user) pays the lessor (owner) for use of the yacht. The lessor must derive some commercial benefit from the lease-purchase agreement. Additionally the contract provides the lessee with an option to purchase the yacht at the end of the lease agreement at a minimum of 1% of the original price of the yacht.

In order for the scheme to be applicable, the lessor has to be a Maltese VAT registered company whilst the lessee may be any person, physical or legal residing anywhere in the world.
Further, it is not necessary that the yacht is registered under the Maltese flag.

D. CONDITIONS AND PROCEDURE

In order for the aforementioned VAT treatment to be applicable, ALL the following conditions and procedure are applicable:-

1. The Commissioner of VAT must pre-approve the VAT scheme in writing. For this reason, the Commissioner must be provided with details regarding the value and the size of the yacht;

2. The Maltese Company that shall be the owner/ lessor of the yacht must register with the Maltese VAT authorities, it must be authorised by its memorandum to operate and manage yacht leasing activities;

3. The lease agreement must be submitted to the Commissioner of VAT and should provide the following: –

   (a) The Lessee must pay to the Lessor at the beginning of the lease, a minimum of 50% of the yacht's value as well the VAT applicable on the amount in accordance with table 1 or 2;

   (b) The remaining amount of the vessel's value is to be paid in monthly instalments plus VAT in accordance with table 1or 2 shall be paid on each instalment accordingly;

   (c) The lease duration shall be between a minimum of 12 and a maximum of 36 months;

   (d) The lease agreement will grant the lessee the option to buy the yacht at the end of the lease period at a price which must be at least 1% of the value of the lease. The option price is subject to VAT at 18%.

4. The yacht must come to Malta possibly at the beginning of the lease period whilst as from January 2013, due to amendments to the EU VAT rules, the yacht must be in Malta at the date of commencement of the lease agreement.

5. The Commissioner shall issue a written confirmation letter with the approved applicable VAT rate.

The VAT Commissioner may issue upon request a certificate confirming that VAT for the yacht is payable in Malta.

It must be noted that the lessor is expected to make a profit from the lease, over and above the value of the vessel.

E. COMPUTATION OF THE PERCENTAGE OF THE LEASE TAKING PLACE IN EU WATERS

The following tables determine the percentage of lease which is subject to VAT as well as the Effective VAT rates for Motor and Sailing Boats:-

TABLE I- MOTOR BOATS

Motor Boat Length	% of lease taking place in the EU	Effective VAT rate
Motor boats over 24m	30%	5.4%
Motor boats between 16,01m to 24m	40%	7.2%
Motor boats between 12,01m to 16m	50%	9%
Motor boats between 7,51m and 12m (provided they are registered in the commercial register)	60%	10.8%
Motor boats up to 7,5m (provided they are registered in the commercial register)	90%	16.2%
Crafts allowed to sail in protected waters only	100%	18%

TABLE 2- SAILING BOATS

Sailing Boat Length	% of lease taking place in the EU	Effective VAT rate
Sailing boats over 24m	30%	5.4%
Sailing boats between 20,1m and 24m	40%	7.2%
Sailing boats between 10,01m to 20m	50%	9%
Sailing boats up to 10m	60%	10.8%
Vessels allowed to sail in protected waters only	100%	18%

F. VAT PAID CERTIFICATE

Once the lessee becomes the owner of the yacht and VAT thereon has been paid in full, the VAT Department will issue a Yacht VAT paid certificate in the name of the lessee indicating that VAT has been paid in full.

G. HOW THE SCHEME CAN WORK

Below is an example of the application of the scheme where a person wants to buy a 35 meter motor boat for EUR 10.000.000,00:-

1. A Maltese company is incorporated by the person wishing to acquire the yacht;

2. A loan for the purchase price of the yacht i.e. Euro 10.000.000,00 is granted to the Maltese VAT registered Company by its shareholder;

3. The Maltese Company then enters into a lease agreement for a period up to 36 months with the shareholder. The shareholder is given the option to buy the yacht for EUR100.000,00 which represents 1% of initial purchase price;

4. The lessee pays 50% of the boat's value (i.e. EUR 5.000.000,00) on the date of the contract. The remaining balance (EUR 5.000.000,00) plus a profit of 1% on the value of the boat (EUR100.000,00) is the paid in 36 monthly instalments. In effect, the instalments are offset by the shareholder's loan and consequently, the only cash outflow is the applicable VAT;

5. The VAT to be paid by the Maltese Company shall be as follows:-

(a) **VAT on the initial contribution** is calculated at the rate of 5,4% since the boat exceeds 24 meters in length. Hence the VAT is calculated on EUR 5.000.000,00 X 5,4% and amounts to EUR 270.000,00.

(b) **VAT on monthly payments** is calculated by dividing the rest of the lease payments (EUR 5.100.000,00) by the duration of the lease (36 months), i.e. the instalment is EUR 141.666.67,00 per month. The applicable VAT paid for every monthly instalment is at EUR 141.666.67,00 X 5.4% which amounts to EUR 7.650,00

In total, the VAT paid throughout the 36 months amounts to EUR 275.400,00.

(c) **VAT at the end of the lease** if and when the lessee exercises the option to purchase the yacht and is calculated at the standard rate of 18% on the purchase value, in this case EUR 100.000,00 (see above). The applicable VAT rate is 18% and the VAT due amounts to EUR 18.000,00.

The total VAT payable would be of **EUR 590.400,00** on the EUR 10.000.000,00 yacht, render-ing the total VAT savings in the above example amount to EUR 1.209.600,00 (calculated at 18% on EUR 10.000.000,00).

6. At the end of the scheme, the Maltese VAT Department shall issue a VAT paid certificate showing that all VAT due has been paid.

H. OTHER TAXES

- **Income Tax**

The Maltese Company (the lessor) must obtain benefit from the lease agreement and shall be taxed in Malta the profit made, which in the above example was EUR100.000,00. The corporate tax rate in Malta is at 35% but capital allowances and deductions are available to the Lessor as well as refunds are available to the shareholder, leaving the effective taxation at below 5% of the profit.

I. SERVICES

We are ready to discuss all the aforementioned with you, and provide support for the implementation of the scheme by:-

- Incorporating and administrating the Maltese legal entity which will acquire the boat;
- Drafting the relevant lease agreement;
- Completing and submitting the relevant application with the VAT Department along with the necessary documentation;
- Completing and submitting the subsequent VAT Reporting;
- Arranging for the relevant VAT payments;
- Communicating with the VAT Department for any further requirements it may have;
- Arranging for yacht registration under the Maltese flag if requested.

J. CONCLUSION

The VAT scheme has had an extremely good response since being launched in 2005 as it reduces the VAT liability to rates as low as 5,4%. Coupled with the highly-acclaimed tax refund system, the Maltese yacht scheme has been instrumental to render Malta one of the top jurisdictions for yacht registration.

Malta's geographical location at the very centre of the Mediterranean makes the island an ideal jurisdiction for such a scheme to operate, particularly since the yacht has to enter the Maltese ports at least once during the lease duration.

K. DISCLAIMER

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

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