

CHARTERING IN ITALY AND FRANCE:

QUERY WHETHER VAT CAN BE AVOIDED

By John Curtis of Moore & Company, P.A.

A yacht chartering in either French or Italian waters potentially can incur liability for value added taxation ("VAT"), both on "hull value," i.e., the yacht itself, and on the charter fees. This article addresses yachts carrying non-EU flags like, for example, ones flagged in the Cayman Islands or the Marshall Islands (and 100% owned by non-EU registered and beneficial owners).

Non-EU yachts are permitted to cruise in EU waters on a tax-exempt basis known as temporary importation relief ("TI"). Under this special use regime, a non-EU owner may bring his yacht into EU waters for up to eighteen consecutive months without incurring VAT based on the "hull value." Strictly speaking, TI allows only recreational use. As such, one cannot charter while, at the same time, avoiding VAT exposure, unless the chartering begins or ends outside the waters of the EU.

Notwithstanding the TI regime, France and Italy both have historically permitted a non-EU yacht to charter in their waters without payment of VAT on "hull value" or charter fees, provided that the yacht carried a commercial registration, held valid commercial certificates, employed a permanent crew, used strictly for charter, and maintain on board the charter agreement and documentation. This informal, de facto regime has been referred to as the "old rules", and has no eighteen month limitation period akin to the TI regime. In Italy, fiscal authorities have recently seized several yachts chartering in Italian waters – both non-EU and EU-registered yachts. The treatment given non-EU yachts varies widely depending on which port is entered. Some officials choose to look the other way, while others do not. This uncertainty can prove costly. The consequences range from temporary seizure with VAT imposed on the hull value, to a full confiscation of the vessel. Thus, the most prudent action is to refrain from chartering in Italy. If this is not possible, it is smart to work closely with an experienced local yacht agent in each and every port of the yacht's itinerary. In France, the application of the "old rules" remains at present. However, French officials are very strict vis-à-vis yachts that improperly pose as commercial vessels in order to obtain VAT free exemptions. There is one other way around the TI restriction, but onerously includes re-flagging and importation of the yacht into the EU.

Thus, owners who wish to use their vessels in Italy and France are smart to choose to either run a full-time charter operation, or use their yacht themselves. Dual use in Italy and France – whereby owners use their boat primarily themselves and charter occasionally - is not easy to effectuate while simultaneously avoiding VAT.

**The information offered in this column is summary in nature and should not be considered a legal opinion.*

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