

## **HMRC Adoption of Regulations following the Facet Trading BV Judgement Revenue & Customs Brief 20/11 by Chris Allix**

There has been considerable speculation following the recent publication of the Brief 20/11 by HMRC. I have spoken at length with the VAT office in the Isle of Man to determine how they will interpret these new rules.

Please note these rules, as described below, only apply to the Isle of Man end of the transaction. Other member states, such as France and Italy, may interpret the importation rules differently and require the yacht or supplies to be brought to the UK/Isle of Man before allowing their side of the transaction.

### **Importation of Yachts**

#### **➤ French exempt importation under article 262 of the French tax codes**

Any yacht imported through France, zero rated under article 262, is not affected by the HMRC brief. This is because it complies with the laws of the EU Member State where the yacht was moored at the time of acquisition and is outside scope of the Isle of Man and UK VAT authorities. Provided the yacht complies, and continues to comply, with the commercial requirements of the French authorities, then the yacht is considered VAT paid and has free circulation within EU waters.

These rules may change in the near future, but once the yacht is imported the VAT status can only change if there is a change of use or the yacht is exported.

#### **➤ 42 00 00 Importation**

The 42 00 00 importation is usually done through Malta or Portugal. If it can be shown that plans were in place before 01 June 2011 for a 42 00 00 importation, there is no need for prior approval from Isle of Man Customs & Excise nor any need for the yacht to visit the UK/Isle of Man. If these plans were not already in place, there can be no claim for the input side of the transaction from the Isle of Man authorities until the yacht arrives in the UK/Isle of Man.

### **Acquisition of a yacht through an intra community acquisition invoice**

If the build contract and VAT registration were completed before 1<sup>st</sup> June 2011, the Isle of Man VAT office will allow us to use intra community invoicing as before and will allow a claim for the input side of the transaction without a visit to the UK or Isle of Man by the yacht.

If the above does not apply and the documentation was put in place after 1<sup>st</sup> June 2011, the VAT cannot be reclaimed unless the yacht visits the UK or Isle of Man. There can be no claim for the input side of the transaction on the Isle of Man. This claim must be made to the supplying jurisdiction.

### **Acquisition of supplies to the yacht**

All supplies purchased for the yacht after 1<sup>st</sup> June 2011 using intra community invoicing must come to the UK or Isle of Man or the tax must be included on the Manx VAT return as acquisition tax. There can be no claim for the input side of the transaction on the Isle of Man. Once again, this tax can only be recovered from the authority governing the supplier.

There is no change if the supplies are purchased from a UK or Isle of Man VAT registered supplier. The tax will continue to be paid to the supplier and reclaimed as an input on the following Manx VAT return.

If the goods are purchased and tax is paid in the jurisdiction of the supplier (other than the UK or Isle of Man), it can be reclaimed from that jurisdiction using the 8<sup>th</sup> Directive Claims procedure. However, if the supplier and the commercial charter yacht are both in France, at present the invoice should be zero rated under art. 262 of the French tax code.

### **Supplies linked to a refit of the yacht**

This area is unknown at present because the UK authorities have not considered the matter. However, the Isle of Man VAT office believes that the tax should be accounted for in the EU jurisdiction in which the refit takes place (under their interpretation of the regulations) and a reclaim made using the 8<sup>th</sup> Directive Claims procedure. The Isle of Man VAT office is due to have a meeting with HMRC in the near future and will try to get a more specific ruling on this issue at that time. I will of course pass this on as soon as I have more information.

### **Supply of a super yacht to a landlocked EU jurisdiction**

I doubt this has even been considered by the EU Authorities and will cause many problems in the future. It will probably only be sorted out following a case being referred to the European Court of Justice.

### **Summary**

This is not only an Isle of Man issue. The EU is considering a new directive (Council Implementing Regulation (EU) No 282/2011 of 15 March 2011) and this will relate to almost all of the above. France and Italy have already implemented the rules on the supply of the yacht, although I have been unable to ascertain the rules relating to supplies to the yacht (although French suppliers should invoice zero rated under the current art. 262 regulation). Therefore, changing from the Isle of Man to another jurisdiction, such as Malta, is not by itself the answer, unless the yacht stays in that jurisdiction. This is due to the rules applicable to the supply being determined not by the jurisdiction of VAT registration but by the jurisdiction in which the supply takes place. We are currently looking at a structure to mitigate the effects of this change and will contact everyone once we are happy it will be effective.

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