

Yachting VAT Note

Non-EU flagged yachts can charter in the EU

The arrest in Livorno in February 2010 of a well-known Superyacht owned by an Isle of Man company but flying the Cayman (non-EU) flag over alleged violation of EU customs regulations caused a lot of concern and panic in the industry. We were inundated with requests to comment and advise on the matter.

In our advice and comment we have maintained all along our belief that any arrest of a yacht in the EU on the sole pretext that it was flying a non-EU flag would have no basis in EU VAT or customs law. This is because the concept of 'Community goods' is firmly established in the law to mean not just goods wholly obtained in the Community but also goods imported from countries or territories not forming part of the customs territory of the EU which have been released for free circulation. It was therefore perverse in this particular case that an Isle of Man taxable person under the VAT rules, owning a yacht in free circulation in accordance with the EU VAT and Customs Code, should be facing tax infringements proceedings simply because the yacht happened to be flying the Cayman flag.

This "Stop the Press" note is to advise that Italy's Supreme Court of Cassation has now ruled that the arrest of the said yacht was indeed unlawful; and that the yacht has been unconditionally released to pursue its trade.

The landmark ruling states that the flag of a superyacht chartering in Italy has no relevance to its operation and that it is perfectly possible for a non-EU flagged vessel, no matter how it is owned, to legitimately operate a charter business in European waters. The key stipulation is that the owning company must have a business establishment in the EU and must account for tax on the yacht and its transactions in accordance with the VAT rules. It is

the owning company that is after all obliged to pay tax, subject to the EU territory it is based in, and not the State of the vessel's flag.

We will cover the key aspects of this important case in a future Yachting VAT Note soon, when the full judgement of the Court is published. In the meantime, it is essential that you consider the underlying structural and operational arrangements of your yacht from an EU tax perspective, rather than the fact that it flies a non-EU flag.

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