

Financing Aspects & Fiscal Incentives for Super yachts



GANADO
ADVOCATES

FINANCING OF SUPERYACHTS OVERVIEW

- ❑ Structuring a superyacht financing (Bank and Customer considerations)
- ❑ Taking security over superyachts
- ❑ Why the superyacht is different to other asset classes in the context of financing



Structuring a Superyacht Financing

BANK CONSIDERATIONS

- ❑ What are the main questions the Bank's commercial and credit teams will be asking themselves at the outset?
 - ❑ What is the size/value of the superyacht (also dependant on whether it is a newbuild or a second hand purchase)?
 - ❑ What does the resale market for superyachts in that size bracket look like in the short, medium and long term?
 - ❑ How much is the high net worth individual actually worth?
 - ❑ Is financing the superyacht the "end goal" or 'simply' the means to an end?

CUSTOMER REALITIES

- ❑ What is the financing bank looking for in a client?
 - ❑ A high net worth individual (preferably an ultra high net worth individual)
 - ❑ A net asset value which is a multiple of the value of the superyacht (Banks often talk about a ratio of 10:1)
 - ❑ A sizeable portfolio or assets/wealth for the Bank to manage
 - ❑ A long term (preferably loyal) client
- ❑ Of course there are specialist banks who focus on the vessel and not only on the client and these bring to the table their specific know how on dealing with such a project.
- ❑ The range of risk tolerance varies from bank to bank

THE MEANS TO AN END?

- ❑ The yacht is sometimes the hook (by Bank standards, although profitable, superyacht financing is very capital intensive for the amount of return it produces)
- ❑ The real prize is the ultra high net worth individual's portfolio
- ❑ In fact a number of banks active in superyacht financing host their superyacht teams within the private client arms of the bank



TAKING SECURITY OVER SUPERYACHTS

– how does the Bank protect its investment?



STRUCTURING THE DEAL - 1

- ❑ Although strictly speaking an asset play, the asset is not always the centre of the deal – why is that?
 - ❑ Many yachts are not used commercially and make ‘little’ or no actual income
 - ❑ The bank is not looking at the asset to sustain repayment of the loan

- ❑ Your ultimate beneficial owner is the main source of security, usually with a personal guarantee

STRUCTURING THE DEAL – 2

- ❑ Vessel security is still very important (therefore a mortgage over the super yacht and an assignment of the super yacht's insurances are a staple of every financing)
- ❑ BUT the value of a super yacht is difficult to predict and therefore enforcement on the vessel alone would not usually guarantee the bank a full recovery
- ❑ The Bank therefore relies on its ultimate customer and his/her personal guarantee
- ❑ Everyone should then considers the fiscal implications

HOW IS A SUPERYACHT FINANCING DIFFERENT?



DIFFERENT CONSIDERATIONS TO A COMMERCIAL VESSEL FINANCING

- ❑ Risk of loss is **less** (super yachts tend to be at sea in fairer weather than commercial vessels which need to be at sea come what may)
- ❑ Enforcement may be less streamlined
 - ❑ Marinas tend to be less familiar with enforcement than commercial vessel ports;
 - ❑ Bank usually would have less by way of leverage (it is less likely that the crew won't have been paid)

DIFFERENT CONSIDERATIONS TO A COMMERCIAL VESSEL FINANCING - 2

- ❑ Enforcement is also less likely than in respect of commercial vessels:
 - ❑ The reputation of the Owner is at stake in case of default;
 - ❑ The Owner tends to be more invested in the super yacht and is more emotional
 - ❑ On the other hand, the owner being a HNWI, would make more objective decisions in respect of his general business (e.g. not to continue throwing good money after bad)
 - ❑ Private sale powers of mortgagees are more likely to be beneficially used in the interest of all parties

DIFFERENT CONSIDERATIONS TO A COMMERCIAL VESSEL FINANCING - 3

- ❑ There is the issue of size and difficulty in tracing yachts as voyages tend not to be between commercial ports where information is more public
- ❑ Development of Automated Identification Systems (AIS) will make tracking easier if one really wanted to track a super yacht
- ❑ Difficulties can arise as one can switch it off quite easily, though installed (inaccessible) tracking systems are also available
- ❑ Size of Yacht does not always help

MALTA IN THE SUPERYACHT FINANCING ASPECT



MALTA – WHERE WE FIT IN

- ❑ A tried and tested jurisdiction -generally protective of Banks
- ❑ Maltese Security provides peace of mind
- ❑ A Maltese mortgage also extends over the insurance and sale proceeds
- ❑ We can prohibit sales of yachts in a mortgage by registering the usual “negative covenants”
- ❑ Efficient tax structures

FISCAL INCENTIVES OVERVIEW

- ❑ Short term chartering – place of supply rules
- ❑ Fiscal incentives for short term chartering in Malta
- ❑ Long term chartering – place of supply rules
- ❑ Fiscal incentives for long term chartering in Malta

DURATION OF HIRE OF YACHTS

- ❑ Short term versus Long term hire
- ❑ Short term hire for vessels : not more than 90 days
- ❑ Generally, determined on basis of contract (but rebuttable)
- ❑ If hiring of same yacht is covered by consecutive contracts between same parties, duration is the period of “continuous possession or use” provided for under the contracts as a whole
- ❑ Duration of short-term hire preceding long-term contract : should not be questioned provided no abusive practice
- ❑ Consecutive contracts between same parties but for different yachts: not counted as “ continuous possession or use”

SHORT TERM CHARTERING



SHORT-TERM HIRING OF YACHTS

- ❑ General Rules for supply of services

- ❑ Introduced in 2010 as part of VAT Package

- ❑ B2B

Place of Supply : where the CUSTOMER is established

Customer accounts for VAT through Reverse Charge Mechanism

- ❑ B2C

Place of Supply : where the SUPPLIER is established

SHORT-TERM HIRING OF YACHTS

- ❑ Exception to the General Rules of 2010
- ❑ Both B2B and B2C short-term hires are taxable in the place where the yacht is actually put at the disposal of the customer
- ❑ “*Put at the disposal of customer*” : where the customer takes physical possession of yacht (Art 40 of IR)

SHORT TERM CHARTERING

- FISCAL INCENTIVES IN MALTA

- ❑ The Malta VAT department issued Guidelines on 29 July 2013 with respect to short term chartering by persons registered in Malta
- ❑ Guidelines take into account EU VAT Directives for determination of place of supply where effective use and enjoyment partially outside the EU
- ❑ Guidelines apply where yacht put at the disposal of customer in Malta
- ❑ Assumption of Guidelines with respect to size and type of yacht
- ❑ Yacht whose length exceeds 24 metres will derive highest benefits – only 30% of charter fees subject to Maltese VAT

SHORT TERM CHARTERING

- FISCAL INCENTIVES IN MALTA

Main features :

- ☐ The supplier of yacht charter must be a person who is registered for VAT in Malta
- ☐ The yacht charter must indicate Malta as the place where commencement of the charter occurs and indication that yacht sailing outside EU
- ☐ An application submitted to the Director General of VAT for approval
- ☐ Supplier of charter must produce sufficient information with respect to identification, type and size of yacht

SHORT TERM CHARTERING

- FISCAL INCENTIVES IN MALTA

- ☐ Evidence of payment of charter fees must also be provided to the Malta VAT department
- ☐ Deemed applicable percentage of charter fees on which VAT is chargeable is determined
- ☐ Malta VAT department may perform checks to verify that the yacht was actually outside EU waters. Such checks may be done after granting approval and after charter is completed

LONG TERM CHARTERING



LONG-TERM HIRE OF YACHTS

- ❑ B2B : general rule where customer is established
- ❑ B2C : Up to 31 December, 2012, normal rule applied : where supplier was established
- ❑ From 1 January 2013, the place of supply for a long-term hire of ANY means of transport to a non-taxable person is the place where the customer :
 - ❑ is established, or
 - ❑ has his permanent address, or
 - ❑ resides

LONG-TERM HIRE OF YACHTS

- ❑ EXCEPTION to B to C Place of Supply rule in case of pleasure yachts
- ❑ The place of supply is :
 - ❑ where the yacht is actually “put at disposal of” the customer, namely where customer takes physical possession, AND
 - ❑ as long as the service is actually provided by the supplier from his place of business or a fixed establishment
- ❑ Importance of supplier’s “place of business” or “fixed establishment” in the relevant Member State

LONG-TERM HIRE OF YACHTS

Example 1

Pleasure yacht hired by Austrian resident from Spanish supplier for 100 days, and client takes possession of it in Italy



**AUSTRIAN VAT MUST BE
CHARGED**

LONG-TERM HIRE OF YACHTS

Example 2

Pleasure yacht hired by Austrian resident from Maltese supplier for 100 days, and client takes possession of it in Malta



**MALTESE VAT MUST BE
CHARGED**

LONG TERM HIRE OF YACHTS IN MALTA

- ❑ Malta deems :
 - ❑ Effective use and enjoyment outside EU depending on length
 - ❑ Malta Yacht Leasing Guidelines: significant VAT savings
- ❑ Yacht should be in Malta at commencement of lease
- ❑ Benefits of having :
 - ❑ Sole or majority of Malta-resident directors for Lessor
 - ❑ Board approval of lease structure whilst yacht is in Malta
 - ❑ Lease agreement signed in Malta whilst yacht is in Malta
 - ❑ Registered office of Lessor in Malta
 - ❑ Board meetings of Lessor in Malta

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