

Malta Yachting industry challenges Notice by EU Commissioner

The Malta Maritime Law Association, the Malta Maritime Forum, the Yachting Services Trade Section within the Malta Chamber of Commerce, Enterprise and Industry, the Institute of Financial Services Practitioners and the Super Yacht Industry Network Malta denounce the recent Notice sent to Malta by the EU Commissioner in connection with the Maltese VAT rules for pleasure yachts.

In light of the fact that the Maltese system is fully in line with EU law and no similar notice was sent to Member States which apply the same principle under the EU's VAT Directive the Maltese yachting industry questions why such a notice has been sent at all and why this discriminatory approach is being adopted by the Commissioner.

It is noted that the manner in which Malta has applied the option granted by Article 59a of the European Union's VAT Directive is exactly the same as that adopted by Italy. Indeed, Malta's rules on effective use and enjoyment of pleasure yachts within and outside EU territorial waters mirror those adopted by Italy through Circular No 49 of 7 June, 2002 issued by the Agenzia delle Entrate (Italian Revenue authorities).

The actual percentages of deemed use of yachts within EU territorial waters adopted by Malta are identical to those which Italy had drafted in the said Circular. Malta has certainly not re-invented the wheel, but has rather based itself on a similar interpretation given by Italy which the Italian tax authorities confirmed most recently in October 2010 through a "Vademecum del Leasing Nautico" issued with the collaboration of the Italian tax authorities.

Furthermore it is highlighted that France has been recognising since 2005 that it is difficult for lessors of yachts to establish how much a leased yacht is used within EU waters. Article 13 of the Administrative Instruction 3 A-1-05 published by the French tax authorities in Bulletin Officiel des Imports on 24 January, 2005 recognises such difficulty, and then allows yacht lessors to apply a **50% reduction** on the total lease amount, irrespective of the category of the yacht. In practice, this means that only 50% of French VAT would be payable as a result of this French rule.

Malta's system does not exempt yachts from payment of VAT but rather provides guidelines (as allowed for by the EU Directive) regarding deemed use outside and within EU territorial waters such that yachts using such guidelines will always pay VAT at varying degrees.

We believe that both the Italian and French systems do not infringe the EU vat laws. Therefore we cannot understand why Malta's system should be singled out.

We appeal to the President of the European Commission, Mr Jean Claude Juncker, to intervene in this matter so as to ensure that there is no discrimination against smaller EU States like Malta.

It is also the belief of the local Yachting Industry that it is in the European Union's collective interest that the Commission protects the European yachting sector in line with the EU's Integrated Maritime Policy thereby ensuring that Europe does not lose out to competition in the maritime sector by non-EU countries.

Finally, we appeal to all political parties and stakeholders in Malta in a situation where the Maltese system reflects a legitimate application of a principle of EU law which is supported by other EU Member States, to act as a united front in protecting Malta's yachting industry.