

# THE YACHT

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management, ownership & operation of luxury yachts

# report

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# Spanish VAT issues

*VAT is a topical and worrying subject as Flavio Briatore discovered when Force Blue was recently seized for alleged TVA irregularities in La Spezia. However, as the ISYBA (the Italian Ship and Yacht Brokers Association) correctly pointed out, extra scrutiny by fiscal authorities of TVA or VAT schemes is a European wide phenomenon. Here Alex Chumillas of Iuris Marine describes some of the potential problems that may arise in Spanish waters. He also looks at the liability or not of paying Immatriculation Tax.*

VAT treatment of yacht's chartering or leasing activities came to recent prominence after the UK Revenue issued their notice number 56/09. It brought about questions, such as: not only can private owners but can commercial yacht owners use their yachts personally? Owners saw the yacht operator's zero-VAT dream blow up.

Here we will explore and find answers to some key questions about tax and pleasure craft in Spain. The Spanish tax system is one of the most difficult in the EU in regards to yachts. The two main taxes to consider when you own or charter a vessel in Spain are VAT and the ISDMT (*Impuesto Sobre Determinados Medios de Transporte* aka the Matriculation tax).

The actions taken by the Spanish Customs towards the enforcement of the ISDMT in the past months have certainly caused alarm among the users of foreign flag yachts moored along the Spanish coasts. However, these actions haven't been focused only on that tax. The information collected on these inspections is currently shared with other European tax agencies as part of a common campaign of all EU tax agencies against VAT evasion.

## PLEASURE CRAFT LOCATED IN SPAIN – TAX TREATMENT OF THEIR PRIVATE USE

### VAT & ISDMT

A yacht owned in Spain by a Spanish tax resident, to be used as a private vessel, must be registered under the Spanish jurisdiction and pay full VAT & ISDMT – Pleasure craft registration RD 1027/1989. Non-Spanish tax residents are entitled to keep their yachts in Spain as long as they want (subject to caveats below). The only limitations for non residents with regards to not becoming liable for the ISDMT are basically:

- The owner must not spend more than 183 days in the country. The pleasure craft would be liable for matriculation tax if the owner were in Spain for say 184 days.
- Not to lend the use of a pleasure craft to a tax resident in Spain.

ISDMT works in a similar way to how VAT is applied to EU citizens based on EU residency and in the EU jurisdiction. The same criteria apply but for the Spanish territory simply substitute the word "Spanish" for "EU".



Images: istock.com

## INSIDE ANGLE

Private yachts owned by non-EU residents and registered outside the EU are entitled to tax free temporary importation into the EU for a total period of 18 months. The EU Common Customs Tariff provides for relief from VAT liability for up to 18 months (Article 562(e) as referenced above) when the yacht is owned by non-EU residents and where the boat will subsequently be removed from EU waters (Article 561). This also applies to yachts owned and registered outside the EU when brought into Spain.

*The charter supplier will have the right to reclaim 100% VAT on the charter expenses as far as he is liable to account for VAT.*

In Spain there is a special register option called Touristic matriculation regulated in RD 1571/1993. This allows non-EU and EU owners (but not Spanish owners) to register under Spanish flag. They are VAT + ISDMT free if a non-EU citizen owner. Within the same scheme the yacht is ISDMT tax free for a non-Spanish EU citizen. This is a special system that allows the non-Spanish resident to use the yacht in the Spanish territory no longer than 183 days per year, but bearing a Spanish flag. The only limitation is 183 days per year, otherwise the owner will become a Spanish tax resident and therefore tax will be enforced. Leasing schemes are not compatible with this touristic matriculation option.

### TAX TREATMENT OF BUSINESS PLEASURE CRAFT

In Spain when an individual arranges for legal ownership to be held by a company (or other entity), these types of structures might have different tax consequences according to the final type of use of the vessel: a business activity or private use.

Pleasure craft to be used privately and owned privately held in a Spanish company have no right to any VAT deduction. Full payment of VAT and ISDMT is required.

### VAT & ISDMT ON CHARTERING IN SPANISH WATERS

Chartering of a yacht in EU waters is treated as supply of services and is therefore a taxable supply for VAT purposes. If the owner is established in an EU member state the owner will be liable to account for VAT but if he is not, no VAT will be payable on any charter hire. The charter supplier will have the right to reclaim 100% VAT on the charter expenses as far as he is liable to account for VAT.



A non EU flagged yacht brought into the EU by its non EU resident owner (or such an owner's charterer, if they are not established in the EU) will be entitled to a temporary importation certificate and no VAT will be payable on the capital value of the yacht nor on the charter, provided no chartering activity commences within EU territory. Spanish charter regulations are found in the Internal Instruction DGMM 6/1998.

Pleasure craft over 24m owned and held in a company, or managed by a permanent establishment (branch of a non-Spanish company), located in Spain, will be liable to account to the VAT and ISDMT. While VAT is deductible, ISDMT is not, and its cost is added to the value of the asset.

All those cases where the yacht operator is managing a yacht from a Spanish port base involve the registration of the pleasure craft

under Spanish flag and payment of Matriculation tax. Those cases where the yacht is not managed from Spain and where the yacht departs from Spain at the end of the charter matriculation is not applicable. However, if only one of the guests were Spanish when the journey took place in Spanish waters, the tax would be due as is established in the D.A.1 of the 38/1992 act.

Therefore the way charter is carried out is very important in order to determine if the charter might be liable to ISDMT tax or not. In any case it is clear in all circumstances when a Spanish guest is on board, the owner will be liable for ISDMT.

### MIXED BUSINESS & PRIVATE USE

The Spanish VAT act 37/1992 establishes in its article 95 that business, corporations or professionals can't take the VAT off the acquisition or imports, of goods or services, if those are not 100% directly and exclusively related to the professional or commercial activity carried on board.

As a commercial yacht, there shouldn't be private use.

Notwithstanding when the asset is not completely used in the business activity VAT is payable in proportion to that private use. In Spain, the asset is treated as a business and as a non-business one. On the other hand, and according to the Article 12 37/1992 Act, the private use of a business asset involves that VAT must be accounted when there is private use. That is when the yacht is used privately by a shareholder or company's director, there will be a VAT price to pay for that private or non-business use. The VAT price payable for such use is assessable by reference to the market charter rate of that use to the legal owner, as it is established in the 36/2006 act). ISDMT is applicable to all situations when the pleasure craft is over 24m, there is no place for any discussion in this respect. In any case yachts <15 are ISDMT exempt and for these cases there is a complete prohibition of mixed use (Fraud prevention act 36/2006).

## INSIDE ANGLE

### INSPECTIONS & RECORD KEEPING

The guideline of the Spanish Tax Authorities with regard to the yacht industry is focused in two main areas:

- Tax fraud against Matriculation Tax avoidance;
- Tax fraud against VAT, as part of EU campaign.

Inspections start in several ways. Usually they begin from a routine meeting with a Spanish Police Marine patrol (SVM) or by the visit of a public officer from the Spanish Tax Agency (AEAT) to the yacht when moored or even in a shipyard. In both cases officers are entitled to ask for information concerning the yacht, guests and crew on board.

If there is a suspicion about the law being broken then the information collected at this first stage is reported to the Customs agents who will be responsible for the full inspection process. If the Spanish authorities find out that a yacht has been used commercially in Spain with Spanish residents on board (even if it departs or ends outside of Spain), then the authorities might enforce the payment of the ISDMT tax. With regard to VAT, if private use of a non Spanish yacht is found the Spanish authorities only act as information collectors who will later transfer that to the authorities of the place where the yacht is established for VAT, since Spanish authorities have no competence on foreign VAT.

### APPLICATION OF THE PRINCIPLE OF PROHIBITING ABUSIVE PRACTICES

The LGT 58/2003 act establishes the principles for interpretation and application of the Spanish tax laws. In its article 16 it says that any situation will be regarded with reference to the real nature of the business hidden behind the structure. The Spanish interpretation is that even if a corporation structure or a tax strategy is 100% correct from a legal point of view, it still may not be accepted if the authorities

consider that the only reason for a structure was to obtain a tax benefit.

The Spanish authorities use several possible indicators to detect abusive practices, such as:

**A. Company's activity:** *a real connection between the company's activity and the asset acquired (for example it is not accepted that the acquisition of a yacht as an asset is used for corporate public relations).*

**B. Accountancy books.**

**C. Ship's log:** *this will normally record where the yacht is on any given day, where it is sailing to and details of the number of people on board.*

**D. Witnesses from clients, suppliers:** *information cross-reference in order to verify the reality of the services provided.*

**E. Advertisement:** *customs will normally expect to see evidence that despite not attracting charters, the yacht has being actively marketed via advertising.*

**F. Turnover:** *see sufficient continuity and*

*substance to compromise an economic activity.*

**G. Crew:** *existence or not of a contracted crew.*

The consequence for the Spanish industry is clear. The fleet of chartered pleasure crafts in Spain over 24m, fully licensed to develop legal charters in Spain, is as follows: eight yachts between 24 and 35m and one over 35m. The current situation of >24m yachts is dramatic. The main consequence is that the abusive tax policy doesn't attract this activity to Spain. The benefits by having such a strong policy compared with the economic loss is clearly negative for the Spanish economy performance.

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