

YACHT FISCAL

MONACO MANAGEMENT MEETING

Monday 6 October 2008 — Tuesday 7 October 2008

Day 2

TAXING TIMES

Ayuk Ntuiabane	Moore Stephens
Carlo Galli	Maisto e Associate
Adrian Jones	Fortis Intertrust UK

Chairman— Martin Redmayne

Good morning. After last night's Stock Exchange movements and yesterday's activity I think there are taxing times ahead and we can ignore what was said yesterday. This morning's session is going to look at the current tax position in the marketplace; some of the big issues that keep cropping up in our industry. There's incredible advice being given out there, most of it incorrect. We hear of a lot of structures being delivered that obviously don't assist owners with their ownership and the unravelling of that mess is probably part of the day to day activity of the three people on the panel this morning. The first speaker to start will be Ayuk who will give a little snapshot of the current state of affairs, Carlo will follow with an Italian perspective followed by Adrian who will give brief commercial advice on the state of Fortis as well, because it's been mentioned a few times in the last 24 hours. It's still here. Ayuk please?

Ayuk Ntuiabane Moore Stephens

Good morning. I'm Ayuk Nuiabane. I'm going to talk about yacht and aviation services. The Moore Stephens firm is a global network of international accountants and consultants present in 95 countries at the moment with over 700 offices around the world. We are currently involved to various degrees in the region of 170 odd yachts ranging from 27 metres to 140 metres, projects as well. Our involvement with yachts in general is quite profound. We are involved with yachts on a day to day basis advising various professionals in the industry on various VAT issues. And I think it's fair to say—I detect the words *wrong advice* on the screen—that VAT is a widely misunderstood tax. There's a lot of misapprehension in the industry and this is partly to do with the pace at which the yachting industry has grown. And a culture of informality by which I mean that in the last ten years or so we've moved from a situation where literally a broker for example could advise on anything from the charter contract which when we started some ten years ago used to be a one page document but today might be a contract which is silent on tax except that it says each party should be responsible for that. And so various ideas have been picked up along the way in this very very rapid growth. Quite often people get ideas that are recycled and handed down. I'd like to just deal with 5 themes which I think demonstrate the sort of general issues which the industry often discusses and which are leading to quite a lot of misunderstanding.

These 5 themes are the French commercial exemption—I'd like to look at that and how it's working since 2004. I'd like to talk to you on the private use of commercial yachts, sailing in Spain, temporary importation and as we mentioned in the last session yesterday I'm sort of looking ahead—the new EU directive on the place of supply of services and how that's likely to affect all of us.

French commercial exemption. After 4 years it's now very common knowledge that you have the 3-condition rule. First, a yacht should be registered as a commercial yacht with commercial mentioned on the registration certificate. Then it should have a permanent crew and it should have a charter contract. Now if it meets these conditions there are certain privileges that are typically VAT exemption on everything from the maintenance work on the yacht to fuelling and getting provisions. Now a very very common misunderstanding is that people run away with the idea that once you meet the 3 conditions every other thing follows. In other words you are automatically entitled to get provisions and fuelling free of tax. We tend to forget that there are people out there who wear the uniform every day and do the policing of these rules. And we actually underestimate their knowledge of the system as it works. I think there are particular areas in which in fact you may not be entitled to zero rating or to exemption. If a yacht is berthed for a length of time and sitting in Antibes it's obviously not being chartered. There's no entitlement to exemption even if you meet the 3 conditions. We speak to a lot of suppliers of fuel and provisions and there is a constant and common complaint that captains and other users of their services tend to forget for example that Excise products, oil, cigarettes, booze, you know alcohol, these are very tightly controlled items within the EU and for the supplier to actually deliver those items—I mean a few of those the authorities tend to take a liberal view on that. Alcohol in particular. To deliver those items to a yacht sitting somewhere around here the supplier has to clear those items through Customs before delivery. If a yacht arrives at a weekend when Customs are not at work it's very likely that a supplier would want to charge VAT on that delivery. The same applies after hours—by which I mean after work, when they can't get a clearance. So the right is not by any means automatic. We have another common mistake which is to assume that there is no longer a temporary importation regime. I've heard a number of people say there's no temporary importation in France at all. There is temporary importation for pleasure yachts. And people forget that all the time and it's leading to all sorts of issues. Another point that we tend to ignore—some advisers actually tell yacht owners not to bother about the VAT regime at all—you know, there's no VAT in France, you enter France, that gives you access to the rest of the EU. Wrong. For those of you who are involved with not just yachts but ships, you know that there are two directives which specifically regulate the maritime transport within the EU. There's one directive which allows access to all the EU countries' waters, so you are a British ship, because you're within the system you have access to Spain, to Greece and whatever. OK. So it regulates the provision of services in those waters even though you are not registered in that particular country. The same regime applies for cabotage services. But the same debate as to whether yachts belong to this particular regime—it was clearly stated in 2003 by the European Commission that yachts are excluded. Whatever yachts do there is no escaping the fact, at least in the legal sense as far as lawyers are concerned, that it's a pleasure craft and as such it's always subject to the individual regimes in EU countries. They are perfectly entitled to check any way they want when these yachts get into their territorial waters. The French regime we have to emphasise is a regime that is outside the VAT system. It is an exemption.

[From the floor] Chris

Sorry I have to disagree. The French system is not just the French system. It has been adopted by virtually every—paragraph 4 and 5 of the 6th directive have been adopted by virtually every country in the EU except the United Kingdom who specifically—because the EU does allow each country to define a commercial vessel—only the UK specifically excluded yachts from that. In fact as I understand it

originally the ruling was anything over about 8 metres that was built for pleasure purposes is a yacht. I did point out to the Dover office which was in place about 15 years ago that what about a cruise ship, that's built for pure pleasure, and funnily enough when the actual rules were passed the rules stated that anything over 8 metres built for pleasure is a yacht except a vessel built and run as a cruise ship. And it's only the United Kingdom that has that clause in. To my knowledge I think all the others accept the fact that if they have imported yachts that are in commercial use, commercially registered, and shown as a commercial vessel they are commercial vessels. And the importation of yachts through France where the EU importation document applies throughout the EU, just as the aircraft imported through UK over 8000 kilos are imported throughout the EU. There is no difference on those two importations.

Ayuk

OK. By definition the French exemption—exemption means that the particular item that's exempt operates outside the VAT system in the sense that there's no requirement to register for VAT and operate within the system that allows charging and deduction of VAT. So French commercial exemption is outside the VAT system. A yacht that operates under the French commercial exemption is outside the VAT system. It is very clear that coming in through the French commercial exemption regime for commercial yachts doesn't give you an automatic right to operate throughout the EU. And it's also the case that if you bring a yacht say, you operate in France which is a regime that is applicable here, and you sail to Greece, to Spain or whatever there is a fair chance that the authorities in these countries are perfectly entitled to ask you basically whether you are operating within the VAT system or not. I'll give you some examples on part of how this is happening. There is a very — currently in the area of private use there's a popular misconception that if you're the beneficial owner of a yacht and you simply have a charter contract which has a market rate you sail around here then you're entitled to all the privileges. The fact that you are the beneficial owner, in other words the person behind the company that owns the yacht —that doesn't matter, you're operating commercially. And so you are entitled to all the exemptions. You don't need to study VAT to realise that that's an anomaly. No tax works that way. You wouldn't find a single aspect of EU legislation that says Mr A hides behind a—sets up a company, buys an asset, in some cases reclaims the VAT on that asset so effectively you don't suffer the VAT, and then proceeds happily to use that asset without paying any VAT on that use. It defies all instincts and it's factually incorrect. There is a little island around here called Corsica, the birthplace of Napoleon Bonaparte. It's becoming famous for making us think twice about how we use the French commercial regime. We have been involved during the summer in two situations where clients have asked us to assist where their yachts have been detained in Corsica region. In one case the owner, the beneficial owner that is, used a company which had his surname, so the company that owns his yacht is named after him—I'm Ayuk so it would be A. Limited—so he signed as a director of that company and chartering the yacht himself, so he signed twice, signed as the owner and also the charterer. And of course you're thinking what a stupid man. But isn't the French commercial regime supposed to allow, to ignore that fact—he had a market rate and so on, he had a market rate on the contract. If the system was working such that the authorities would ignore any beneficial ownership then that shouldn't be a problem at all. That's one example. But his yacht was detained and he was actually—the authorities calculated—they went back during the period of the contract, checked when they took fuel where, and they worked out all the back taxes on that particular use during that period and he had to pay there and then, plus a huge fine. The second case again around Corsica was one where the

principal, the client, was on the yacht with his family this time unfortunately, because the detention that happened was due to the fact that he'd signed the contract—first he hadn't counter-signed as a charterer. But that wasn't the issue. The issue was the authorities managed to link him to that yacht because the captain specifically said so when he was asked. And again, there was a fine and all the fuel that they had taken had to have the tax on it paid. And there was a huge fine. Last Thursday I was—we do some consultancy with local firms in the Isle of Man, helping them with their VAT affairs. I was at the clients and quite interestingly Corsica Customs are beginning to write to yacht owners in places as far away as the Isle of Man asking them to identify the beneficial owners of the company that owned the yachts and specifying the number of their shares—their proportion of their ownership of the companies. I've been ten years in yachting and that's unprecedented. I actually have a letter which the client didn't mind me reading out, but I don't have the time for that. It specifically says yacht X owned by Y Co. Ltd—we are the brigade that polices yachts in this part of France—can you first of all send us your regional registration document for the yacht, being the certificate of registry, secondly can you confirm the national person who owns the company and the proportion of the shares that they own. I think that confirms that there are moves within the sector to crack down so to speak on private use of the yachts around here.

It leads me naturally to the second point which I said was private use in general. For those of you who have UK clients you need to be particularly very careful. For two years now the tax system in the UK has been—it used to be the case that if you had an issue with Customs it was limited to Customs, and the Inland Revenue was a separate service, they dealt with direct taxes. A couple of years ago the systems have been united so it's one unitary authority. We shouldn't forget that yachts are only a small element of our clients' affairs. There is a very high risk that if there is an issue with a yacht, for the client, and the authorities put two and two together and say by the way, while we're checking the yachts let's look at your other tax affairs. And things can unravel. You need to be extremely careful. The UK has specifically now put into law a formula, an approach, to calculate the VAT that's payable on the private use of a yacht on which VAT had been reclaimed. So you buy your yacht, you register for VAT, you reclaim VAT, if that yacht is used for private purposes including use by the principal behind the structure, they should be charging themselves VAT. VAT should be charged on that use. And this is the Lennox accounting regulation which came into effect in November last year. Private use is a hot issue and we need to be extremely careful. There's nothing in EU regulations that says you can play this system and just use the asset without any VAT. Quite the contrary.

[From the floor] Chris

Ayuk would you agree that the Lennox ruling is highly knee jerk reaction by the Northern European countries that don't have a big yachting industry based on sailing dinghies and inflatables because they give the life expectancy of a yacht of 5 years. They then cease to recognise that in the winter months you don't use a yacht so basically as I understand the Lennox ruling they work out the VAT that should have been paid in total, divide it by 5, and then in the first quarter, if you use it half the time and it's chartered half the time, you pay half the VAT. And half is free. Then if you didn't use it for 6 months because it's winter, the fourth quarter they then add all three quarters' worth of VAT together and then divide it, if you're 50/50 again, they then divide it in half. So you're paying VAT on two quarters when you didn't even use the boat because no-one could use the boat. And also they haven't had any consideration of when the boat is taken out of EU waters. It's completely ill thought

up, typical of the UK Customs taxing something without understanding what they're taxing. Would you agree?

Ayuk

OK. I have no opinion and no quarrels with the UK authorities. I deal with the facts, and the facts are the law. Wrongly or rightly there is a piece of legislation in place—it used to be the case that the authorities would allow you to calculate VAT on private use on what they called a fair and reasonable approach. That in the opinion of the authorities hasn't worked over the years so specifically they have now put in place a piece of legislation that's called the Lennox accounting regulation which says we are no longer giving you the discretion to calculate it in the way you want. So whether it's knee-jerk or not, what I'm saying is that there is specific legislation on that and I am not concerned with why they did it.

Chris

But that's only applicable to yachts in British waters, not boats in other EU country waters. Because they're outside the scope.

Ayuk

The EU is one tax area.

Chris

No no the UK can only justify—sorry Ayuk—the UK can only tax people who are actually using the boats in UK waters. Any boat usage outside of UK waters is outside scope and therefore outside their remit. And thus subject to the rules that are applicable in the country in which the boat is actually worked.

Ayuk

Chris I'm not sure where you get that from—

Chris

It's in the law, it's the law Ayuk and I don't care what you say. That is the law of the EU.

Ayuk

OK. Let's take that as red and move on. If you are a UK resident and you—

Martin

Thank you Chris.

Ayuk

—and you own assets within the EU and you're operating within the EU VAT system your liabilities are not limited to the UK at all. That's the law of a single market and the movement of assets across that system.

I don't want to take too much of everyone's time. There are other people here to speak. I just want to mention very quickly sailing in Spain—there is a lot of folk law about sailing in Spain. Typically people are told that in order to go to Spain you need to change your flag to pleasure because if you go in as a commercial yacht you will be subject to matriculation tax. Again this is a very gross simplification. Spain approaches VAT from the point of view that there is a presumption in Spain that there are a lot of Spaniards who bought boats and in order to avoid matriculation tax have put those boats in the names of non residents who then bring these yachts to use around Spain. Rightly or wrongly that's what they think. Matriculation tax specifically—you have to have a link to Spain in terms of residence, in terms of using a Spanish port as a base, there is nothing in Spanish rules that says if you have a charter contract that begins and ends outside Spain you will be liable to tax it. And the belief in some quarters that you need to change from commercial to private can be counter productive in some respects because if you go to Spain as a pleasure yacht and you've come in through the French commercial exemption in fact you've shot yourself in the foot because the Spanish would very rightly say where is your temporary importation documentation that allows you access into Spain or into the EU and that can be an issue. It's perfectly OK to sail in Spain but the charter contract has to begin and end outside Spain. And if you're going to Spain and you start picking up Spanish residents then that's an invitation to trouble because there are strict controls and if the authorities suspect that you're in fact operating in Spain that's when the tax falls. And again, one quick word about temporary importation. It's not a question of sailing your yacht in and out. Temporary importation is a Customs regime which means that there has to be declaration. You have to have the paperwork for that. Each of the EU member states has forms that have to be completed—typically the idea is to identify who will be on the yacht when it's sailing within the EU, for how long it will be there, the purpose of coming into the EU and it's usually a two part form. You fill one in, one part when you come in, and the second part when you are going out. There is a control mechanism in place. In the UK it's form C108 and you have to have the paperwork. You're not allowed to charter if you're under temporary importation, you're not allowed to advertise a yacht for sale and you're not allowed to sell the yacht. There is a misconception that you can come in under a temporary importation and charter. I have heard advice and come across clients who say that. Another misconception in the industry.

Finally let me talk to you very briefly on the new EU directive changing the place of supply of services. If you think of the place of supply rules as the rules that determine which country actually taxes an asset that operates across borders. OK. The new directive which came out in August and which is effective from 1st January, but member states have to adopt this in phases, the date by which everyone is supposed to have adopted this is by the end of 2013, and different countries will implement this as it goes. But specifically as it relates to yachts they have now identified that a hire of a means of transport, particularly for yachts, pleasure vessels, and means of transport in general there's what they call a short term hire and a long term hire. A short term hire means that you have a yacht under concession to use for a period of one to ninety days. So typically a sort of charter contract that we have here—MYBA contracts and so on, the place of taxation is actually the place where you put your yacht at the disposal of the client. What does this mean in fact? It means that if you have a UK company owning a yacht that's operating in France the place of taxation would be France. Now I'll be very interested to see given this legal shift, whether the French will in fact resist the temptation to impose taxes on the industry. It will be worth watching. And I'll leave it at that for the time being.

Martin

Thank you. Carlo?

Carlo Galli Maisto e Associate

Yes. I'll pick from some of the points than Ayuk mentioned and put them into the Italian context. What you will hear about us at least of threats to the yachting industry in general—and those start from the purely private use of yachts that have often been channelled through Italian leasing schemes. And that is what we would normally have advised the client wishing to use their yachts for purely private purposes. Going into Italian leasing for a sizeable yacht you will be looking at 6% VAT no questions asked. End of story. Well questions are asked, indeed, now. And there is a lot of activity on Italian leasing schemes. These activities start from let's say a policy move by the former government on the entire yachting leasing industry and there has been a coordinated effort of auditing and inspecting all the leasing schemes that have been put in place by trying to find out whether there was any sign that the actual use and enjoyment of the yacht was more within EU waters than the reduced VAT rates were meant to imply. In other words there were audits trying to find signs that there was no sailing outside the EU waters. And those signs have been looked at the level of the users and at the level of the leasing companies. Leasing contracts have been re-characterised based on the fact that the down payment was close to 50% of the price of the yacht and on the basis of the fact that the option to buy was at no more than 1% of the price of the yacht. Both features I believe you know are fairly common in Italian leasing contracts. Those contracts have been deemed to be devoid of any financing purpose because the 50% down payment was a clear sign there was no finance needed and not having a finance purpose they were deemed to have only a tax purpose and as such have been re-characterised. So that VAT was assessed on the full value of the hull at full rate. Other agreements have been re-characterised on the basis that they refer to the building of the yacht and since the use and enjoyment rules are based on the assumption that the yacht is sailing outside the EU waters the concept behind the assessment was while it is being built it will not be sailing, so there will be use and enjoyment outside the EU. So full rate on the leasing fees. Thirdly, contracts were disqualified for the use rate whenever the yacht had an insurance policy that was limited to sailing within the EU. Fourthly, full rate has been charged whenever the yacht was owned by people having a yearly berth, on the assumption that if you have a berth for one year you're not sailing around too much. So—that's true. Whether it's the outcome of an old policy approach and whether they will continue is difficult to tell at this stage. Now we are at the stage where all the assessments have been issued and will be litigated in court. We have no sign that the activity is continuing but what we can see is that people are scared off and they are looking at alternatives to the Italian leasing. Needless to say, whenever you hit on the credibility of a system it will be very difficult to build this credibility again on the way forward.

If we look at the commercial use of yachts, Italy has prided itself for having introduced for the first time a complete set of rules giving a clear sign that yachts were meant to be used commercially and that it's an industry that deserved available tax treatment. And that was the end of it I'm afraid. Because when it came to the actual implementation of the Italian system for commercial yachts, there were a lot of clear inconsistencies with how the law was meant. Originally we got rulings saying that there was no question, charter fees on commercial yachts were exempt from VAT. Then that was withdrawn. These rulings were not public. But the same concepts were published in a leaflet that was jointly published by the Italian yacht builders' association and the tax authorities. Then that was withdrawn and VAT deemed to be chargeable on charter fees of the commercial yachts at the same rates

applicable to the Italian leasing scheme, so 6% for yachts over 24 metres. Now that is the current state of affairs but everything is policed very strictly in two directions. One direction is whether the yacht is an actual commercial yacht and the only meaning of commercial yacht that is going to be accepted by the Italian administration is Italian commercial yacht. So registered in the register of Italian commercial yachts. Because the belief is that is the only way we can have certainty that the yacht is being used solely for commercial purposes and we have several signs in that direction. One sign was on the construction of a yacht, VAT charged during work in progress was deemed to be applicable at full rate—and this is a published ruling—because the yacht was not registered yet, it was just a hull. And if the yacht is not registered there's no certainty that that is a commercial yacht used solely for commercial purposes. Another clear sign—and the fine point in these rulings is that when they talk about commercial yachts they only talk about Italian commercial yachts, so they seem to apply even though they do not openly state it that that is their only condition to obtain VAT relief. Secondly this was not published—on a ruling issued to a yard for works performed on a vessel under a non-Italian flag they refused the exemption from VAT on work because the commercial registration of the yacht was not clearly preventing any non commercial use. Whereas an Italian commercial yacht can under the law be used only for commercial purposes. And so VAT was charged at full rate on the work performed at the shipyard. Second point is—supplies to commercial yachts. In principle we use the same system as we have heard in France, because it is an EU system. So supplies to commercially operated vessels as long as that vessel is commercially operated should be exemption from VAT and excise. There's been a lot of abuse of that—the type of schemes that Ayuk described were very common in Italy although were very ill advised, registering a yacht commercially to devote it entirely to private use although that is what is allowed under VAT legislation by the book it is obviously abused and will be turned down by the courts and also by the European Court of Justice. The abuse of those schemes has led the authorities to police very very strictly the use of exempt supplies, so whenever a yacht was under inspection they had to justify every single mile of sailing after having purchased exempt fuel. If the captain was not able to justify every mile under commercial use there was tax and penalties were assessed on the fuel. This doesn't mean that the system doesn't work. This means that the system is very difficult to make work properly and requires a lot of administration and documentation which obviously in this industry is not what is perceived as a commercially sound system. So I'm afraid that we have seen—well, last but not least, having the Italian commercial register born as a section of the more general commercial shipping register has led the authorities to apply shipping procedures to commercial yachts whenever they were not expressly regulated for yachts only under the relevant legislation. Which means that yachts have been forced to adopt rules for ships when it comes to going into and out of harbour, which are very cumbersome procedures, and also for example Italian registered yachts have been obliged to have the name also on the bow, like ships, and this means ultimately that a few yachts that were under Italian flags have flown to other flags, because it was too much of a pain to be proud of your homeland flag. So the bottom line is that we are not normally advising the use of the Italian flag also because of the nightmare that you would encounter in terms of crewing and social security and we will not be advising on using Italian companies, not even for Italian owners to hold yachts. Because of the number of tax issues that are very typically Italian. So that's where we are now as far as Italy is concerned. I am afraid it is not a very encouraging picture. But you'd better know before you run into it yourself. I mean it's all about knowing, and being prepared to justify whatever the structure is of whatever you're doing. Just a last word on private use of commercial yacht—we have no guidance as to how much of the use of a certain yacht is allowed to the ultimate

beneficial owner without jeopardising the exemption. We would normally advise on a commercial structure only when the use by the beneficial owner is reasonably below 50% otherwise we would not advise a commercial structure. Last but not least I'm afraid that more than in other jurisdictions there is a lot of misconception on the possibility to use TA for commercial purposes and the misconception is also with the authorities. So there's no way you can use TA for commercial purposes. Although in Italy ETA would normally be applied on a no documentation basis. All you need to prove is the date of arrival within an EU harbour and the date of arrival on a non EU harbour. So you will see a lot of yachts sailing to Tunisia close to the expiration of the 18 month period. Tunisia now is the closest non EU harbour for Italian shores. It used to be Malta but now you have to sail a little bit more. And that's it for Italy, and I'm obviously open to whatever questions you have.

Martin

Carlo thank you. So what flag are you recommending?

Carlo

Red Ensign? That would be the most respectable—it's a serious flag, I would say. We will strongly advise against flags of convenience, also because there are a number of hurdles—last Thursday we were discussing the importation of a commercially operated yacht sailing under the flag of St Vincent and the EU—it's owned by a non EU person and is going to be sold while on charter in Italian waters—the Customs authorities refused to accept the zero rated import of the yacht even though it was commercially operated because they say that with a non EU flag they don't feel comfortable in assessing the true commercial nature of the yacht. Whereas with an EU flag commercial yacht can go in, get VAT clearance very quickly in one day, and then you are fully able to sail within EU waters.

Tork

So when you say Red Ensign that also obviously includes non EU owners?

Carlo

Yes but we would normally advise wherever possible to obtain UK mainland flag because it's very practical—less attention on that and also when you have London as port of registration it attracts much less attention. It's very practical and it does away with a lot of insane behaviour by the tax authorities.

Martin

OK. Adrian, thank you?

Adrian Jones Fortis Intertrust UK

I thought I'd just start by thinking back to yesterday. I think Chris mentioned Mark Twain. A banker lends you an umbrella when the sun shines but takes it back at the first sign of rain. Or words to that effect. And another thing that occurred to me that I believe is attributable to Mr Twain. *The reports of my death are greatly exaggerated.* Just so that we can pre-empt any questions relating to Fortis—Fortis is still around in new ownership but there aren't that I'm aware of any parts of Fortis that have ceased to act in the same way as they did before. The messages that Steve and I are getting

are OK, change of ownership, BNP Paribas, Dutch Government, but the main message is, it's business as usual and that's why these things have happened. Anyway, on to tax.

Tax doesn't have to be taxing. I think that was the tax authorities' advert in the UK for a while. It doesn't apply to VAT. There's clearly a lot of misunderstanding, a lot of confusion out there. Captains, owners, I can sit here and disagree with Ayuk on a number of points that he raised—we could both be part right—but it doesn't help you guys a lot. The Italian authorities are disagreeing with themselves, and that doesn't help anyone.

Tork

So are the French.

Adrian

Yes, and you can add to that list. I think it doesn't help that these are toys. I mean you get captains of industry who sit down to buy an hotel, they sit down with their Board and their advisers and they'll call in the big 4 and talk about contracts but when it comes to a yacht, well, they've got a captain, and the captain has a brother who's heard a rumour that maybe if you have a BVI flag that you can do this—and so on. I think what I'll do if I may is run through some of the themes that Ayuk has raised and give you my perspective.

The French commercial. Does commercial mean commercial? Yes, I think so. I don't think you can reasonably take a boat and charter it to yourself.

Tork

Can I just interject on that one? Because there is something very strange going on here. Yes, granted, the problems occurred in Corsica, but I've had a direct conversation with the head of Customs which says you can do this, this and this, and *you can charter the yacht to yourself provided you pay market rate, provided you don't take the mick, you've got to do it properly*. There are restrictions on where you can take supply and what type of supplies, but that's in direct contradiction to what they're doing in Corsica which is utterly bizarre?

Adrian

Yes, I've got a story about that. But you've got the two strands, in terms of law, and the French commercial exemption. Yes, if you look at the issue 2003, clarification 2005 document it does specifically say that if you meet these conditions there can be charter to the beneficial owner. That's perfectly acceptable. Subsequent to that there were rumours that perhaps abuse of law could apply. We've recently had a European Court of Justice case, the Halifax case, which deals with abuse in this area, and that's where you take a perfectly valid law, turn it on its head, and get completely the wrong result from what was intended, in a nutshell. It's obviously a tad more complicated than that. And this means that you have tension if you like between the possibility of chartering to the beneficial owner and the court case which says well, if you do it too much 100% of the time perhaps, that's an abuse. So it's difficult to know where you stand. But if you push it to 100% then that does look and feel like abuse.

Tork

Sorry—was that the case, Ayuk, in the Corsican one, were they not chartering at all? Were they just taking the mick?

Ayuk

They were chartering in the sense that they had commercial charters—

Tork

No I mean overall, during the year, were they a serious charter boat with some owner use?

Ayuk

No they chartered to third parties, absolutely. Not just to themselves.

Tork

Significantly?

Ayuk

Significantly. I asked exactly on this particular consultancy job—the first question I checked was to see how much third party chartering there was on this yacht and indeed there was. It was only the question that the beneficial owner to that yacht invalidated the charter contract on the basis that he was abusing the law.

Carlo

The challenge was on that particular charter only.

Tork

OK.

Adrian

There's an interesting tie up there with the situation in Spain. I was at a meeting at a competitor magazine that I won't name in Spain and the national association of Spanish nautical enterprises and it was a small meeting but there was a senior delegate from Palma Customs. And in Spain now they do take the view that if you have a charter licence and you're chartering officially, you've paid matriculation tax, you're doing everything by the book—in Spain now they're saying in certain places you shouldn't charter to the beneficial owner. Because that is abuse. And that mirrors the situation that we've got here in Corsica.

Tork

Is the key part of what you just said—in certain places?

Adrian

Well certainly Palma.

Tork

What I mean is, it's an internal inconsistency within the way the State is actually behaving?

Adrian

But it is the way the wind is blowing. If you look at the other feedback from the Spanish Customs delegate, he was saying that yes, they did look at Spanish yachts, and they did look to see who the owners were, whether they were resident in Spain, were they avoiding matriculation tax by flagging out of Spain, owning outside of Spain, and the answer was yes, a lot were. And he said this is fraud. And we all looked around at each other thinking that's a very strong thing to say. But that's the view that they took. It's outright tax fraud in their minds. And we said well, we've got these yacht owners whose brains turn to jelly when it comes to buying yachts, and maybe they're not getting it quite right, they're listening to the wrong people, is it intentionally fraud? And he said well that's what we've reported back to Madrid. And then when you have yacht valuations for imports, for example, in Spain as well, typically you can get a low valuation on a yacht in Spain, they use a series of governmental tables. But then Madrid started ringing up Palma Customs and saying you've just accepted a VAT payment on this yacht, we've just checked and it's on the market now for double that on the Web. Explain that one. So the pressures—oh some people say Palma Customs—they're terrible. But they're getting pressure from Madrid. If you add this to what's happening in Corsica, you add this to a very much more joined up approach that all the EU authorities now in terms of the yachting business are talking to each other. The Dutch are speaking to the French, the French are speaking to the Spanish, the EU Commission is I believe driving this along. And if you're looking at an extra theme to add on to the themes that Ayuk presented, a future theme, then yes, you've got benign states for yachting, like France, you've got very tough states for yachting like Spain, Italy is somewhere in between—

Carlo

Depending on the days of the week!

Adrian

But you are going to see a toughening of the rules and a more joined up approach throughout Europe. Whether the rules are good or bad, I think there's going to be more focus. So you're going to have to be careful to abide by the rules.

Tork

But I'm just thinking, if you're trying to advise an owner, just to crank on again about France and Corsica, what the hell are you going to tell them? You literally have the Customs saying this is OK, I'm the head of Customs in Paris and this is what you can do. And then at the same time if you go to Corsica then you're in deep trouble. What do you advise the yacht owner? That's the key question, because to me it would seem that if this is what is written down that you can do, you can do it. But that would be bad advice in the case of the gentleman who went to Corsica.

Adrian

I think our advice, not that we formally give advice, but the way we would run a structure is that we would say if it's commercial, then it's commercial. Fully commercial. There's no *let's look at percentages*—it goes out to a charter broker, the charter broker runs the charters, if the beneficial owner wants to charter he goes and sees the charter broker. But full on commercial.

Tork

But that would appear to be the case of the yacht in Corsica. So what do you advise the owner when you have clearly two different interpretations in two different Customs areas. I mean it has to be said that—I'm sure you all know—that Corsica is particularly aggressive in their approach to yachts and people of wealth. It's just like Sardinia.

Martin

Witness Tiara.

Tork

Tiara, yes. That was just wealth redistribution! Jay?

[From the floor] Jay

I don't think you can advise clients that they will be watertight and 100% protected in any scenario. But I don't see that many instances of yachts getting stopped, not nearly as many as the guys on the panel, I'm sure. But when it has happened to clients of mine it's often come a little bit out of the left field in the sense that it started off as something else and turned into a VAT investigation.

Martin

What did it start as, then?

Jay

Well I mean I had a case where the owners had hired a cook who was unsatisfactory so they sacked her, she was Spanish, the yacht was in Spain privately, she went to the authorities and they came on board and started going through everything. We got the whole thing cleared up within 3 or 4 days and the boat left without any problem at all in the end. But it started off as something quite different—and because of its uncertainty VAT became something they could seize upon and give everyone a hard time over.

Ayuk

Can I just say in response to the question as to how you advise a client, I think it's fairly easy actually. If you approach it purely from the legal position within the EU article 6 of the 6th Directive specifically says that there's absolutely nothing wrong in a private individual who is trading with an asset, a yacht in this case, to use that privately, there's nothing wrong. In fact it actually says that for VAT purposes it's perfectly legitimate for them to reclaim their VAT on the purchase of that VAT, reclaim all of it, even though they know that they will be using it privately. So that's on the one hand. However it says though you are entitled to buy the yacht, reclaim the

VAT and use it privately, when you use it privately you have to charge VAT on that use. You suffer VAT on that private use.

Tork

But if you try to do that in France they won't take the VAT because they view it that you don't charge VAT on charters so how do you comply?

Ayuk

If you registered for VAT in the UK or the Isle of Man in this case you can take a defensive position which means that specifically under the Lennox regulations you end up—it specifies that in order to use the market rate, you use the rate that strips out a number of things is the specific approach. You charge VAT on the private use, the French authorities specify that we have the market rate on the contract. But given that you're defending the client in the tax regime where they are actually resident, if they're UK tax payers you charge them the VAT if they're investigated in the UK it can be clearly seen that they've paid VAT on that asset.

Tork

But who do you remit that VAT to?

Ayuk

To the UK authorities.

Tork

Even though it's in France?

Ayuk

Correct. Because you're hiring out a means of transport.

[From the floor] Chris

I'm sorry to argue again with you Ayuk, it's nothing personal, I hope you appreciate. But I have been specifically told by the Isle of Man VAT office that I can't pay tax on vessels based in France. It's outside their scope, they won't accept it. That was told me only three weeks ago.

Ayuk

Right. I live in the Isle of Man, as you know. And we charge tax and we pay tax. Unfortunately we have Grant sitting over there, 15 years as Customs Officer until November last year when he joined us. Again, this is part of I suppose different points of view in the industry. Grant has seen things from the other side, he's seen things from this side. Clients who register for VAT in the Isle of Man using the Lennox approach can legitimately defend their position by paying VAT on the private use of that yacht. That VAT is accepted by Isle of Man Customs.

[From the floor] Steve

I think we have to clarify here, because I think I can detect people getting confused. I know what Chris is saying, and I know what you're saying. If we're talking about a bare hull charter, a bare boat charter, from the Isle of Man, then I accept your position. If we're talking about a fully crewed charter, passenger transport, I accept Chris' position. So I just think you need to clarify which bit you're talking about, when you're paying VAT in the Isle of Man.

Tork

Certainly I'm talking about fully crewed charter.

[From the floor] Steve

Well I thought Ayuk was talking about that and I agree with Chris' position. That the place of supply is in France and therefore you can't pay UK or Isle of Man VAT on those charters.

Ayuk

OK. The point is that where the beneficial owner is using the yacht you cannot reasonably and successfully under the law argue that they're providing passenger transport. No way. You wouldn't get away with that. The beneficial owner is using a means of transport on which VAT has been reclaimed, so the question as to whether it's passenger transport or hire for means transport is overridden by the fact that person using the yacht has a connection with that yacht and they should be suffering VAT on that use.

Martin

Right. Jay please?

Jay

I think Ayuk is right but I'm not sure it can ever be justified when you look at the regulations. I think this is one of those cases where Customs kind of make up the law as they go along. There is a clear distinction between means of transport and passenger transport. And I think if you're hiring a boat out with master and crew then it's passenger transport and place of supply is where it happens. But if you read the Customs notice, which of course isn't the law, it's just what Customs think the law is, or pretend that's what the law is, it doesn't say that, it doesn't acknowledge that distinction, and I think in the Customs notice they reserve the right to charge VAT on any charter wherever it's performed, or they make some other distinction that has no basis in the regulations itself. So I think Ayuk is right, they will accept the VAT on any charter but they won't accept it on a sail that takes place outside the UK because the place of supply is outside the Isle of Man. But on a charter I think they'll accept whatever you offer them.

Tork

I'm inclined to say that there's only one thing worse than being taxed and that's that they won't let you give them the tax.

Carlo

If I may add one thing, and I'm not UK qualified so I will not be commenting on any UK specificity, but I think one key thing is the meaning of the word private. And private use should not be meant as personal use. Because I believe that whenever it's used by the beneficial owner for a full market rate under the EU VAT system, that is not for something other than commercial use. It's only when this private use becomes the purpose of the structure, the essential purpose of the structure, to use the wording of the part service ECJ decision following the Halifax decision, that that becomes an abuse. And in that respect should be turned down. So if the use by the beneficial owner for nothing less than the market fee is not the essential purpose of the structure that should be respected by reading the law and ECJ decision. Whether that is in the case in each and every harbour across the EU, is a totally different story. But I think that should be the right legal interpretation of the EU system.

Martin

Adrian?

Adrian

I had a case—this was getting on for a year ago but it might give an indication of the way the French authorities are thinking. A client of ours was operating the French commercial exemption, he was chartering commercially, he had a permanent crew, he had commercial registration, and he was stopped in Monaco. And Customs said that they wanted VAT on his fuel. Very quickly I got a phone call and the client on the other end on his mobile just handed the mobile across to the Customs' officer, which was nice. And in my best French I said I would like to help you, I would like to understand the situation and resolve this for my client and for you, to everyone's satisfaction. And the Customs officer said, I've travelled widely, I've travelled to the UK, I've travelled to the US. Never in any of my travels has anyone spoken slowly to me in English. So it started badly! But to be fair, this particular client was shall we say arrogant and he had set up his own little charter arrangement and the idea was that he had reduced the value quite considerably. And the Customs officer's point was—we give you 3 simple rules. All you have to do is abide by those rules. When we say it's commercial, it's commercial. You need these three things. What you have is in no way commercial because the value is too low. We're not stupid, we understand about the Isle of Man, we understand the ownership arrangements, and I'm not after the VAT on the boat. I just want the VAT on the fuel because that's what you've abused in this situation. I don't know if that helps any, it's a nice little story.

Martin

How much was the VAT?

Adrian

Do you know I can't really remember.

[From the floor]

€5,000 plus a 100% penalty.

Adrian

But the guy could have applied 400% penalty. And so it wasn't a bad deal under the circumstances. It shows that they are enforcing these rules. If you've been given these three simple rules, well stick to them. Commercial means commercial.

[From the floor] Chris

One of the things we heard yesterday was about how the yachting industry is sort of following the aviation industry 5, 10 or 15 years behind. A few years ago we acquired an aircraft importation company and our director there is probably the guru of aviation VAT. Name of Martin Fiddler. Now with a surname like Fiddler and he's a VAT guru that's—and even the French will listen to him occasionally. It's pretty good going. The things that he's doing with the aviation I'm seeing coming more and more into yachting. And I strongly believe that in the next 5 years or so the yachting industry will be mirroring the aviation industry on the VAT. And the rules will be a lot clearer because as we all see, Italy varies between the ports. Spain doesn't know what they're talking about yet because they haven't quite decided what the VAT is, all they know is they collect it from somebody. France is variable—everywhere seems to be a little confused. And I suspect the Customs officers themselves are as confused as the industry.

Tork

Yes, it certainly behoves us to try and do our best to fix the situation because from an owner's perspective nothing is going to put them off yacht ownership quicker than the scenario like Ayuk explained.

Adrian

Indeed, the French commercial exemption, when you talk to some of the supplying companies they tend to defer to the French commercial exemption and ignore the basic VAT rules. There are basic VAT rules about supplying goods intra-community, from one member state to another which have been around since 1993. And now we have a French commercial exemption—the yacht chandlers and other suppliers out there, they look at that. And if you don't fit that mould well that's it. You pay VAT. Which is wrong.

Tork

But isn't that a safer strategy for the supplier anyway? Because if they do charge VAT and it turns out it can be reclaimed, the yacht can always reclaim the VAT. Otherwise they're going to end up being hammered for it when their inspection comes round.

[From the floor]

Are we talking about Italy?

Carlo

Reclaiming VAT? Never.

Tork

The world except Italy!

Adrian

Ironically, we had the same client I was discussing earlier when he arranged for some work in Spain. And again didn't talk to us, just went ahead and said 'right, there's my yacht, I want this work done and sort out the paperwork afterwards'. So we were playing catch up with this guy not for the first time. And he got charged VAT. So he said to us 'you can reclaim the VAT for me'. And we said 'well, we don't think it should have been charged'. And he said 'no, no, reclaim the VAT'. We tried to reclaim the VAT. 12 months, no, 14 months later, we got the answer back from the Spanish government—VAT shouldn't have been charged. And we said 'well, hang on a minute, if it shouldn't have been charged, just pay it back. Honours even, we'll forget anything ever happened. Just pay the VAT back'. And they said 'no, you've got to talk to the supplier'. And of course, 14 months later, he's closed his books, the yacht has sailed, there's nothing you can do. The best bit of VAT advice I can give you on that score is, talk about the VAT up front. Do it before you contract anything with anyone. Get it clear.

Ayuk

The way to avoid suffering the VAT in the first place is to have the yacht within the VAT system. If you have a VAT registration number, you are negotiating from a position of strength because you're operating under the rules that allow that zero rating within the system. Because if in the example you gave, I presume your client was registered for VAT in the Isle of Man or something? Which would mean that you could rightly say 'this is my VAT number in another EU country, I should have been entitled to zero rating'. If you're not in the VAT system in the first place and just operating under the French commercial exemption, there's no entitlement to be repaid that VAT. It's a point worth emphasising.

Adrian

If you've been charged and you haven't got a VAT registration, yes.

Martin

OK. Any questions from the floor? You all look confused still.

[From the floor] Jay

Can I make just one simple proposition and see if everyone on the panel agrees with it. If you've got a yacht and you're contemplating any commercial activity with it, however much commercial activity you're contemplating, even if it's a small percentage of the total use, would you say it's a good idea to pay and recover VAT somewhere?

Adrian

I would say it's an obvious thing to do, because if you are carrying out any business in the EU you would need to be VAT-registered somewhere. It's unthinkable that you could operate a business of any size without having a VAT registration. And if you are going about it in a fully commercial way, then it would be a missed opportunity not to recover that VAT, frankly. Well, what I think you have to do is, instead of thinking about these things as ownership structures to recover VAT, you have to think about them as being 'this is what I want to do with my yacht commercially, I

want to charter it'. Now, let's see about which is the best ownership route to go down. But don't start with the tax structure. You can't now, I think, in this day and age, think 'I'm going to go out and there and make a huge tax saving as my initial premise'. I think you can build it into a commercial arrangement, but I think you have to have that real commercial drive there. Otherwise you are going to end up in trouble.

Jay

I agree with that. Just to rephrase the question slightly, to get it where I was really going. You will definitely have some commercial activity, you genuinely want to do that. You think that, in some shape or form, you'll be able to qualify for the French rules. So do you think that's good enough, or do you think on any analysis, in that scenario, you should find somewhere to register and pay and recover your VAT?

Adrian

I think if you're thinking about it, and you might charter for some of the time, that's not good enough. I think, to my mind, you're either commercial or you're not. If you're going to go at it in a commercial way, you do that 100% across the board, everyone pays full charter market rate, no one has any particular privileges, including the beneficial owner. You should have good directors, say, in the Isle of Man, who know the yachting business, who will run the company properly, they will look after the best interests of the company. As a commercial company.

Tork

Just one commercial point though, is that if some of you are charging VAT on your supply of your charter and some of you aren't, you've got a 20% difference in price maybe. Which is not going to make you competitive in the charter market, so the question of actually charging VAT on the supply, which the French actually don't want you to do, but if you suddenly start doing it, you become completely uncompetitive, you probably won't get any charters!

Adrian

And fortunately, that whole issue will go away in 2013. At the moment, you have a discrepancy between the way the Isle of Man looks at place of supply rules and the way some of the other member states look at them, and you can escape paying VAT on your charters. Now, that's been going on for a while. That will be shut down as of 2013 with the changes to the rules. Interestingly, while we're on the changes to the rules, there, if I may—Ayuk did half the story in the sense, that if you have a short term charter—say you have a commercial company in the Isle of Man, it's chartering out of the South of France, that's where the charter starts, that's where you're subject to rules on whether you pay VAT or not. If it's fully commercial at the moment, my reading of that is it should be exempt charter, if it starts in France. Because, up to 90 days, you have to look at where it starts. Over 90 days, then the rule is, and I will come on to the exception for those here in Malta—the rule is that the charter is taxed where the charter party resides. So if you have someone who lives in Germany, it's subject to German tax on the charter over 90 days, or lease over 90 days. It's defined as use. So you can't think about it in terms of 'is it charter or is it lease?' It's *use*. Which is a very broad concept. So you have to look at where the person resides. Now, fortunately, in 2010 there should be mechanism in place to allow you to account for German VAT in the Isle of Man. Or French VAT in Italy. Now—wait, wait. [Laughter] The Maltese government argued strongly that, in fact, where you have a

lease company, for example, and the lease starts in the jurisdiction where the lease company is, so in the case of Malta the yacht goes to Malta, in the case of France the yacht goes to France, and then the lease starts—then the place of taxation is the country where the company is based. So that moves it to France, in the case of a French lease, as long as the lease starts in French waters. Or in Malta as long as you have a Maltese lease company and the thing starts in Maltese waters. And that's interesting because there were comments yesterday about 'oh, the leasing arrangements, they're coming under scrutiny'. Yes, they are. But the place of supply rules, based on the arguments of the Maltese government, are looking to preserve those kinds of arrangements and reduced rates of VAT that you can get through the lease usage. Now that, to my mind, is a positive note. Yes, OK, don't abuse the rules. Don't take huge deposits. Don't give miniscule residual values, fine. Make it a real financial lease, take real financial risk. Some companies out there are saying 'oh I'll tell you what. We'll lease you a boat, 50% finance, and tell you what, you give a 50% deposit into my private bank and pledge it against the other 50%—and there's no risk'. Well, that's not a financial lease. It's a lease of some kind but it's not financial. So you have to be more and more—the future thing is check the rules. Make sure that, even where the rules are pretty benign, like France, make sure you stay within those confines.

Ayuk

My answer to Jay's question is that it helps to operate, again emphasising, to operate within the rules. I would say VAT registration is the right thing to do because when you operate within the system—the French commercial exemption just falls into place. It's in fact a subset of the whole, so you have different situations where you need to avoid, when you're in countries like Spain or Greece or whatever, you need to have zero rating on the basis of your VAT number. Very useful for when you're operating outside France. Which many charterers would like to—the last thing you want is for a charterer to charter your yacht in France, and they want to go to Italy or to Spain and you say 'sorry, you can't with my yacht because I'm not sure about how safe the yacht is there because I'm operating under French commercial exemption'. If you're registered for VAT, you get the best of both worlds. Both the French commercial exemption and for situations that arise outside France. So I would say, yes, it's worth registering for VAT and operating within that system.

I want to say a quick word on—I know you laughed about the new system which is being introduced, which is effectively the one stop which would allow German VAT to be collected in the Isle of Man in the single return across the—it's not pie in the sky stuff, because it's already happening in electronically supplied services. One return and the authorities share the VAT among themselves. And it would resolve a lot of issues, at the moment where you suffer VAT in Italy, wait for 12 months, or never, to reclaim it, the same with Spain and so on. If you can collect the VAT, you know, charge it for this country's returns, complete a return, and the authorities distribute the tax the way they want because it's a single market with these people talking to each other, that should resolve quite a few things.

Adrian

I've got a quick last point on matriculation tax. Just to echo Ayuk's views on the charter through Spain. I could never recommend starting or stopping a charter in Spain, or picking up or putting down clients in Spanish waters. Charters can start in France and charter through Spain, but if you find yourself in Malaga and you're on a week's charter, they're not going to think you started in France. So you have to watch

that sort of aspect. They get very tough about it. I think we've all got stories about matriculation tax. The one I like most is the guy who was repairing one of our yachts, I think he was painting it. So he was living on board because that was more practical than travelling down the coast every day to start work. And to cut a long story short, they said he was a Spanish resident and using the boat in Spain. In the Spanish excise, law 92, there's the first additional disposition which bases it on use. When is use use? So we went to tribunal, and of course we won. It's a crazy concept. The really funny thing was, of course, that the Spanish government appealed and took it to the next court. And we had to win again. But that is how tough they look at matriculation tax. Curiously, the guy at this meeting, a couple of weeks ago, from Spanish Customs, he was saying 'you know, if you want to put pressure on the Spanish government, don't ask for the abolition of matriculation tax. Ask for something reasonable, ask for something they can understand, link it to carbon dioxide emissions, because there's precedent for that. Link it to length of use or length of time in Spain. But don't just keep banging on about having it abolished'.

Tork

You mean, like a cruising tax or something?

Adrian

Yes, maybe, according to the size of the yacht perhaps, or the emissions. The size of the engines. That's happening.

Tork

There's a lot of states where that would be a very nice, simple fix, to be able to pay a strict fee for being able to charter in the waters. It would bring revenue to the state, and it would also legitimise the whole thing, make it painless.

[From the floor]

Tork, funnily enough, the matriculation tax rules, when they calculating it, they look at the size of the yacht, find—the latest set of rules that I saw, there were no yachts over, like 65 feet, so there was this sort of horse trading above that to pay matriculation tax, but it did include the size of the engines. So, in other words, if you had a Sunseeker 62, and you had engine choices, the matriculation tax took into account the size of the engines when the yacht was new. So they're getting there, certainly.

Ayuk

Can I just—I mentioned a letter that we received from Corsican Customs. This is written in very elegant 'Franglais'. So, if I just read it to you as a sign of where we're going really in terms of the attitude of the French. We take a lot of liberties with French commercial exemption, and I think this indicates the approach that they're taking. This comes from the 'Direction Interrégionale Douanes' etc, etc. It's addressing this to the owner of the yacht, which is an Isle of Man company. It says United Kingdom—the Isle of Man is not part of the United Kingdom. But anyway.

Tork

But Corsica isn't part of France either!

Ayuk

And it says the subject is motor ship [the name of the yacht], property of [name of the owner], *'According to an enquiry about the situation of ships in the area of [La Ciotat], please contact our office of coastguards, French Customs, as soon as possible to transmit by mail or by email a copy or the original of the following documents:*

Certificate of British Registry for the yacht.

Certificate of Incorporation of the Society [the company], including (and that's underlined) the names of shareholders and the number of parts [shares] he/they hold'. As I said, this is unprecedented in my experience. They're not going to get this information! It would be stupid for an Isle of Man service provider to do this.

Adrian

Unless they've chained up the yacht, in which case it's—

Ayuk

But it's an indication—we all know that if a yacht is detained, this is gold ticking away. You could not start an argument with the authorities when they have your yacht. Well, yes, you can start it, but the client who is on a charter, or who values that particular yacht, would rather that detention didn't happen at all. It's important to bear in mind that the whole notion of using the exemption for private purposes and claiming the fuel, avoiding the tax on the fuel and so on, it goes against every instinct, forget the law, tax doesn't work that way. It just doesn't. So it's happening, and we should always bear in mind that, yes, there will be various views about the interpretation of particular aspects of the tax, but it's something that you go to school to train for. There are things you need to do to protect the client. And it's always good to have that advice.

Tork

I think that may be the quote of the session. *'Forget the law, tax doesn't work that way'.*

Martin

Chris? No, no, not Chris. Sorry, I called you Chris. That's horrible. Steve?

[From the floor] Steve

Can I just ask the panel something that came up earlier this year, which has probably been bubbling around for a long time, and that's the position of the Channel Islands in respect of temporary importation?

Ayuk

Can I respond to that?

Martin

Very quickly then.

Ayuk

OK. The Channel Islands is part of the Customs territory of the EU but is not part of the fiscal territory. There is an important difference. The Channel Islands, because it's not part of the fiscal territory, any yacht owned under Channel Islands structures, when they come into the EU, they are treated as third party countries, so temporary importation will work because it's Channel Islands, it's outside the EU, so think of them as any other country. There are particular regulations for movements from the UK to the Channel Islands but it doesn't cover aspects of temporary importation.

[From the floor] Steve

Adrian, do you have a different view to that?

Adrian

Yes, well, thank you for setting me up. My reading of the legislation is that it doesn't work for yachts coming in from the Channel Islands, if you've got a Jersey or Guernsey flagged or owned boat, I don't think technically temporary importation works, and that's not the intention of the law, it's the way it's been drafted. I've been hearing a number of comments now that the Spanish authorities have taken that point, and they are either refusing VAT free supplies onto temporary imported yachts in Spain, or indeed looking at the VAT on the yacht itself. Which is a whole different kettle of worms, and quite scary. But yes, I don't think the way the legislation is drafted works particularly.

Ayuk

It was never the intention to have free supplies for temporary importation. It's not the case.

Adrian

But to actually chase down the VAT on the yacht itself is—

Ayuk

Well, temporary importation is temporary importation. You're not meant to benefit from VAT free supplies under temporary importation.

Carlo

You're not consuming.

[From the floor]

I'm interested in Carlo's view on that question of the Italian attitude to yachts, Jersey flagged and Jersey owned, and claiming TI in Italy.

Carlo

There's a lot of confusion on that. There's a very old concept of TI, that TI was only—look at the flag and the time goes by, that's it. The only two conditions are those ones. Even though, in the old EU rules, there was an explicit prohibition to charter and to land, and to sell the yacht, that's always been the way that yachts were coming into Italian waters in the last 20 years, I would say. That has stayed in

the minds of a number of more senior officers but that's not the way it works. To pick from what Tork asked before—what would you advise—we would never advise to use TI unless it is used for exactly what it is designed for. Meaning private use by a genuine non-EU beneficial owner, full disclosed, no matter the flag, no way it's used commercially. That will be our approach to TI. And whilst my first file on yachting was in Capri with a yacht that was under exactly these conditions and was detained, it started from something else, I agree, there was a weapon issue, but there were 40 yachts moored in Capri. They were all under charter and under TI, and the Customs authorities had no idea—and they asked 'why didn't you do like those yachts?' Because I didn't study for that, and it's not the way it works. So my advice would be—play it by the book, and get the best captain you can get on the market. Because that will have to be the manager of this whole file. When Adrian said the owner handed the telephone—I mean my advice would be—the owner should never get in the way. Never. It's the captain who's managing all the paperwork for the yacht. Being private or commercial.

Tork

That causes more problems than any other.

[From the floor]

Can I just follow up on what Jay said about Italy's attitude? Adrian mentioned the Spanish attitude to Channel Islands. We had a boat boarded in Italian waters this summer by an elderly Italian Customs guy, and his view was that the boat could not achieve temporary importation under a Jersey flag and a Jersey company. And the only way we managed to get the boat released—and it took us about 4 or 5 days—was actually to declare the name and the passport, and the residence, of the beneficial owner, who happened to be Turkish, and as soon as he saw that, he let it go. But up to that point, the Jersey ownership flag were the things that were causing him the problem. So it is an issue, and I think Adrian and I have tried to clarify this during the summer, to find out where we stand on this particular point with Jersey or Guernsey owned and flagged yachts. It's certainly not clear, not in my mind anyway. But that's not unusual.

Martin

Steve, thank you very much. OK, I'm going to end it there and take a ½ hour break for tea. One final question to the panel before you walk out—is there a matrix that exists that will clarify this? Has anyone tried to write one?

Adrian

I have tried to write one in the past. It was more of a table, but it's a nightmare.

Ayuk

We do a matrix, but we sell it.

Martin

Thank you.
