

YACHT FISCAL2007 — Finance, Legal & Tax Issues affecting Superyachts

Day 1 — 6th March 2007

VAT — The Tax Man Cometh

- **Valencia and Palma** — What's happening in Spain this season? Has anything changed?
- **Italy** — Post Sardinia, what's in store for Italian cruising grounds?
- **UK and EU** —
 - A year on: VAT and tax avoidance schemes
 - Has the clampdown been significant?
 - Lessons to be learnt — case studies
 - Temporary importation discussion
 - VAT treatment of second hand yachts
 - Crew taxation and NI payments

Ayuk Ntuiabane	Moore Stephens Yachting
Patricia Bullock	Network Group
Paddy Behan	Grant Thornton
Carlo Galli	Maisto e Associate
Steve Malley	Fortis Intertrust

Ayuk Ntuiabane

I'm Ayuk, I was here last year and I'm here again this year.

The topic is *The Tax Man Cometh*. I think the prize goes to the person who suggested this topic— it sounds very poetic and almost religious. But I think if I just take you through just thinking of the past 12 months of goings on in the area of VAT in terms of the things that are creating the atmosphere that the person who suggested this topic was inspired by.

So by way of introduction and context there are various things that have happened that affect the structures that own yachts and the operation of those yachts. In February 2006 the European Court of Justice, the ECJ, made a decision on the Halifax case that we covered last year —the essence of the Halifax case is that it introduced an area of uncertainty with respect to VAT planning. The question was whether or not transactions that are entered into purely for VAT mitigation purposes should be set aside on grounds that they did not constitute legitimate business activity. That was the question that was put to the court. The court said effectively there is a general principle that everyone is entitled to organise their activity to limit their tax liability and the fact that they do that should not cause any activity to be described purely on the basis of that as non business. You cannot set aside a transaction purely because it mitigates VAT. You cease to describe it as a business. However, there was a key point that the court also made which was that in the case of the fight that was presented by the Inland Revenue in the UK — now called HMRC—Her Majesty's Revenue & Customs. They basically agreed with HMRC that a business may not use VAT provisions to obtain an abusive result. So yes, you can do your planning, but if you end up with an abusive result that will be unacceptable. In the same month, February last year, it was revealed that the UK, German and

French authorities were together gathering information about the ownership of yachts and other pleasure craft as a first step to challenging some acquisition structures that are intended to minimise the amount of VAT incurred on the purchase and use of a craft. In March and April 2006 the French authorities successfully defeated Gill & Beech Ltd (a UK VAT registered company) which made a claim for refund of VAT it suffered in France in organising two boat shows in Nice. The ECJ agreed with the French authorities that Gill & Beech — the services provided by that company in terms of organising the show in France — were physically performed in France, the place of supply was France, so they could only reclaim the VAT under the normal rules if it was registered for VAT in France. Unfortunately for Gill & Beech they were not registered in France and that was a significant cost for them. Around May and June 2006 the reported gathering of information by the authorities that I mentioned before crystallised into a direct attack on the so called yacht export and lease back scheme. The Dutch authorities worked with the UK, French and German authorities on this matter. In July 2006 statistics were released claiming that the UK alone was losing around £10billion a year because of so called Missing Trader Intra Community VAT fraud. MTIC fraud for short. Across the EU losses were said to be around €50billion and Lazlo Kovacs who is the commissioner in charge of taxation described it as the no.1 tax fraud in Europe. Someone in the UK, Edward Leigh, who is the Chairman of the UK Public Accounts Committee, which is effectively the watch dog or the auditor of HMRC was more colourful in his wording. He said money was leaking from the system faster than water from London's antiquated pipes. If you live in London I don't aim at insulting you. Basically the claim—and it's only a claim—is that a lot of money was being lost, both in the UK and across Europe as a result of VAT fraud. In the latter half of 2006 France and Luxembourg expanded a pool of services eligible for reversed charge treatment in their territories, and the UK is seeking to do the same in a wider context. In essence, reversed charge reduces the instances where foreign suppliers to VAT registered domestic customers are required to register for VAT. The VAT is assessed on the recipient customer instead, who is easier to police, so the idea is that instead of getting non established entities in your territory to register and account for VAT there, it's better to pass the responsibility to the domestic customer that you have a hold on. This measure is again meant to reduce the alleged losses. Another trend in the past year is the adoption of joint and several liability measures across the EU making businesses that are involved in MTIC fraud supply chains jointly and severally liable with the actual fraudster for the VAT evaded. Anti avoidance measures are also being adopted in respect of the taxation of transactions between related parties and the private use of business assets. Yachts are affected in that sense. In February 2007 HMRC issued the now infamous Business Brief 1107 directly informing the yachting industry about their "serious concern" about the validity of the VAT treatment claimed for cross border leasing and artificial charging schemes. Those are their words. Now behind all of this in the UK the atmosphere created since August 2004 by the legal requirement imposed on clients and their advisers to disclose certain VAT avoidance schemes to HMRC— so called listed and hallmarked schemes— lease agreements so called scheme 4 and again so called offshore loops were affected. They're all listed schemes which have to be reported or disclosed. I'm not suggesting that these goings on gave cause for generalised panic within the industry—there is in fact more hostile activity as I mentioned in other centres, particularly suppliers of mobile phones and computers and things like that—and we in the industry have a lot to celebrate in terms of news—business is going fine, and so forth. But what to do to resolve this roundup reveals, the way I see it, is that there's a growing atmosphere that we should all be aware of. There's an increasing tendency on the part of the authorities to take an aggressive line on many issues that normally they would be much more forthcoming about. Possibly in part it is due to pressure from politicians to increase the tax take in the various territories. Yacht operators and their professional

advisers have to consider and decide their attitude to risk taking with respect to the operation of setting up yachting structures and VAT schedules. That compliance, I think, and risk management, are now more topical than ever because the authorities are taking a more involved interest in the industry. It is in this sense, I think, the person who was inspired to come up with the title. The Taxman Cometh, should be viewed. It's not meant to spread rumour or panic —I hope that the discussions that will follow will highlight most of the major issues and more importantly provide some pointers as to solutions.

Martin

Thank you. Pat?

Patricia Bullock

That was a rather nice lunch and an even nicer glass of wine so I'll try my best to be relatively coherent this afternoon. I'd like to take advantage actually to say thank you very much to Martin for inviting me here again for these sessions. Apart from the obviously informative content which I think is very useful to all of us, it's rather nice to be able to put a face to a voice on the telephone and an email message. I must say I think the organisation and hospitality is excellent. One of the main advantages of me being here at these conferences used to be that there was never a queue in the ladies rest rooms. That's changing slightly now and there are more ladies than there were before, so that's even better.

I think my part of this session is *Valencia and Palma and what's happening in Spain this season? Has anything changed?*

Basically, not a lot has changed. There are a few interesting points that I'll bring up later on. If I may, what I'd like to do again is just to go through some of the main topics that myself and my company get involved with on a daily basis. This is the basis of the enquiries I get mainly from most of the people that are here today. I'd like to point out I'm not a qualified maritime lawyer, I'm not a qualified fiscal adviser. I'm not a qualified Customs agent. My qualifications are simply having lived in Spain for almost 40 years and running my business for more than 25 years. So on a daily basis we do actually have contact with the owners, with the crew, with management companies and banks, but also on ground level with the Spanish authorities, with the Customs authorities, the tax and maritime authorities. I will tell you just a brief resume as I say of the points that will probably be of more interest to you. I'm not going to be able to include all points but afterwards we're going to have an open discussion so I'm more than happy to try to answer questions that you would like to put to me. If I can't answer them then I'll do my best to find out and to give an answer to you.

I'll start off with the simple side of the resume. We're talking about VAT and the situation in Spain. One of the things that we do get involved with now are intra community purchase of new means of transport—meaning that the supplier is an EU based company selling to an EU based individual and delivery of the yacht is within the EU. This is one of the simplest cases; in this case we simply pay in Spain; the VAT rate is 16% so we will pay 16% of the amount of the invoice. Again, it doesn't seem to be something that's unified throughout Europe — I can give you a case for instance in the UK. If the supplier supplies an EU resident on an invoice but doesn't put VAT on that invoice, that supplier is actually still liable for the VAT unless they can establish and supply a tangible why not to the UK VAT authorities. This in the UK for instance is implemented by using the 411 document and the supplier would issue

a 411 stating the amount on the invoice, the amount of VAT not charged on the invoice, the person to whom the invoice has been made out to, and the point of delivery. The supplier and the purchaser would sign that 411 form which is then deposited with the UK tax authorities and the supplier is then cleared of any responsibility. The responsibility is then passed over to the purchaser. The actual what they call in Spain the sentiment of the law is because this is an exception to the VAT legislation. It is the idea for instance that if that vessel were being delivered to Spain it would eventually be registered in Spain. It's not the case simply if we can prove that the vessel is being delivered into Spanish waters then we would pay 16% of the amount of the invoice, the advantage being that the Spanish rate is 16% so there is a saving on that. I don't think all member states have this 411 system. We occasionally have people coming to us saying I've just bought a new yacht, what kind of value can you give me? Basically you have to pay on the invoice value. Probably some of you are aware that the Spanish government do issue listings every year which is the equivalent—I think it's been mentioned before—to the Glass's Guide on yachts. These listings haven't been updated for years and years so on one side it's advantageous to us because the yachts still are issued in black and white with the value as they were 10 or 15 years ago. The disadvantage being of course that they've not been updated so they're relatively small yachts. If we're talking about a small Princess Sunseeker or whatever, then it is an advantage to use those listings, providing of course this document is not being deposited with the VAT authorities at the point of supply. We have had cases in Spain of the UK VAT office following through on these 411 forms and contacting the purchasers and asking for proof of purchase. So of course if we have the amount of the sales invoice declared on the 411 document and whatever VAT we pay in Spain, which is actually paid on a standard document the 309 form, the value that is declared obviously has to correspond with the amount of the invoice. We have had cases in the past of the UK VAT authorities following through. There was one particular famous point in my office when I actually had a queue of people standing with carrier bags full of cash wanting to come and pay the VAT as quickly as possible because they'd been given a week in which to pay it. So that is the simplest example I can give you of paying the VAT on intra community purchases. The advantage being in Spain of course that the VAT rate is 16% but it is valid providing the vessel is actually delivered and handed over in Spain.

The second situation is an import one where we have two possibles—one of them would be a sale from a non EU company, for instance the Channel Islands or one of the offshore companies to an EU individual. If this is the case, the EU individual simply has to pay, if it's a vessel of less than 12metres, it has to pay 1.7% import duty and then 16% VAT. If it's what they consider an ocean going vessel, which is over 12M then the import duty is zero and the VAT is 16%. How do we arrive at a value for these payments? There are several instructions that the Spanish Customs collectors have, one of them of course is based on the purchase contract which we can present, and the people will pay the 16% of the purchase contract. Another way which in fact in Majorca in particular the Customs authorities now feel more comfortable with, is that we provide them with a bill of sale which as you all know normally just figures £1 and other considerations or \$1 and other considerations, and then we get a Spanish naval architect to actually give us a value in writing on that vessel and that is the value on which import VAT is based. The Customs authorities actually feel happier with that; they've got something to protect them if there is ever an inspection on that import then they've got their backs covered because they can say that they have an official valuation in writing from the Spanish naval architect. The other situation that we have, if it's a sale from a non EU registered company to an EU VAT registered company, and of course this is the famous or infamous 4200 procedure, which actually Mr Malley on my right and I did the very first one ever done

in Europe, god knows how many years ago. We did do a few through Spain — which then became a little bit difficult because maybe we pushed it a little too much; we were doing quite a few through Spain. They were creating problems; there was a misinterpretation of the legislation because one of the requirements of completing this 4200 procedure was the vessel had to actually, which they thought at the time, was go through Spain, declare the import and then go to its country of domicile, which in most of these cases was then the Isle of Man, which just wasn't practical when we were doing an import through Majorca and the vessels had to go through the Isle of Man. But eventually it was proved that this actually was a misinterpretation of the law and they simply now accept that the vessel has to leave Spanish waters and go to another EU port. I have recently done probably 4 or 5 of these 4200 procedures through Palma and they are accepting them; their attitude has changed, they're not as suspicious as they used to be and simply what they require is for there to be a correct purchase and sales invoice from the non EU company to the EU VAT registered company. We supply Customs with a VAT registered document to prove that the purchasing company is VAT registered. They can, if they like, and they do, request a guarantee to cover the amount of import VAT that will be paid. We've done both systems; sometimes we can provide them with a bank guarantee but this quite honestly now is our main falling down point with the banks. The banks seem to drag their heels quite a lot on preparing these guarantees, and it's a problem. The last few we've actually deposited a cash guarantee with Customs, which they're quite happy with. The process has gone through quite well but we've had problems in the length of time to actually get the money back from Spanish Customs; they've dragged their heels and it's been taking a month or two. But I think we've got that problem sorted now. So the 4200 procedure is possible through Spain and we actually have done quite a few.

Another import situation of course is on an EU registered vessel but it's arriving into Spanish waters from outside the EU. Really that's exactly the same situation as I've just discussed. If an EU registered vessel comes into EU waters then we declare an import procedure, we obtain a valuation on the vessel and we pay 16% of the value. It really is quite a simple procedure. Again, the advantages are the 16% of the VAT and they are quite amenable to what we call the reasonable valuation done by a Spanish naval architect.

Another thing that I just wanted to mention quickly is we had quite a few cases of yachts being purchased on leasing agreements through Italian banks. I don't know if any of you are involved with Spanish clients but we have actually done quite a few Spanish registrations of vessels in Spain that have been purchased on an Italian leasing agreement. Strangely enough we haven't had any problems. They seem to be used to it, we present the documents and they accept them and all the registrations have gone through pretty well. The bank obviously is figured on the registration document and the lessee also figures. But we present all the documents and we haven't had any problems up to now so anything done on leasing situations through other banks seems to be working pretty well at the moment. So again they are being quite amenable as far as that's concerned.

Next item is *charter requirements*, so we get back down to the infamous matriculation tax. The Spanish authorities are quite black and white in their requirements for charter. They consider that if a vessel picks up or drops off a client within Spanish waters that vessel has actually created a business base within Spain. And so that vessel has to comply with Spanish fiscal legislation. If the vessel comes into Spain from outside Spanish waters, cruises in Spain and then leaves Spanish waters there's no problem. But the moment that vessel actually picks up or drops off a client within Spanish waters then it has to comply with Spanish fiscal legislation. Basically

the main problem is that there exists this infamous matriculation tax which they're insisting on charging at 12% of the market value at the time of the vessel. It's a serious problem, it's a huge income for the Spanish government and they are very seriously policing this situation right now. We've even had cases — in fact I've got here — Ayuk was telling us about the actual notice by the British Customs and Excise tax office — we have a similar thing here. The Spanish tax authorities don't actually issue official notices. They're very averse to putting anything formal in black and white in their name. But what they do is issue Press releases through the major financial Press in Spain and this one was issued January 31st. It's a photograph of the Spanish Minister of Economy and he's actually stating that it has been brought to their attention the fraudulent purchase of yachts and private aircraft by the major fortunes of Spain. So they're actually going for the Spanish residents, but of course other yachts that are chartering in Spain are getting caught up in the net. They're making it quite clear that they are aware of what they call — they're not calling it fraud any more, they're calling it abuse of the law — back to back charter agreements, these leasing agreements — the leasing agreements at the moment seem to be OK but the back to back charter agreements, they've made it quite clear in this article — if anyone wants a copy you're more than welcome — that they've now actually employed an extra 30 teams of tax inspectors to inspect the books of charter vessels just to make sure that the beneficial owner is not the person using the charter vessel. They are quite clear and adamant that a charter vessel has to be used exclusively for charter; there's no allowance made for the owner using his own vessel. Absolutely no allowance at all. They've even gone as far as saying that in a lot of the cases the charter vessels are chartered to charter management companies and they've also gone as far as saying that the beneficial owner or user of that vessel can not charter his own vessel but neither can he charter a vessel from the same charter management company. They are going to inspect all charter companies in Spain. Obviously the vessels which really don't concern us, the ones of less than 15 metres who have applied for exemption from matriculation tax — if it can be proved that the owner has used that vessel for half an hour then — we've had cases of this happening recently — they will force those people to pay matriculation tax because they don't feel that it is a genuine charter if the owner charts his own yacht. The basis of exemption from matriculation tax is only given on exclusive charter use. If the vessel — of which we're getting quite a few now — is over 15 metres they are actually giving in and paying this 12% tax. If it's proved again that the Spaniards are using this obviously to pay the 12% matriculation tax but they are refunded the VAT then they will be charged as well of VAT fraud. So this article clearly states that they have 30 teams of tax inspectors actually dedicating their time to charter companies. So as Ayuk says, it's not just a British problem, I think it's going to be throughout the EU. If anybody wants to ask me any questions afterwards I'll do my best to answer them.

Another point that's been brought up recently is VAT that's chargeable on works carried out on vessels owned by VAT registered companies. Again, I can only quote the case of Majorca but a lot of for instance Isle of Man registered yachts that are owned by Isle of Man VAT registered companies are actually having repair work and maintenance work, refit work, carried out in Spain. It's very unclear as to whether the supplier should be charging VAT. We have actually had meetings with the tax office and quite a few tax advisers in Spain and I'm quite happy with the answer we've got from them. What they're saying is that a supplier can invoice out works carried out on the vessel provided, first of all, that they can present proof that the owning company is VAT registered, secondly that the vessel has to be leaving Spanish waters within I think it's the following 4 to 6 weeks of the work being completed. So we've developed a system that the supplier actually will issue an invoice that will be signed by the manager or the captain confirming that the company is VAT registered and

confirming that the vessel is leaving Spanish waters which actually means that the work was carried out, then supply to the supplier tangible proof of evidence that it has arrived at another non Spanish port. Berthing receipts would do or some kind of notarised document. Something that looks official to prove that it has arrived at a port outside Spanish waters. This has been a question quite recently and this is one of the solutions which I personally feel quite happy about.

Valencia. There's not an awful lot I can say about Valencia at the moment. There is an exemption on matriculation for what they call spectator boats during the dates of the America's Cup events. The conditions are, first of all, that this exemption has to be applied for to the Valencian authorities and it has to be applied for by the port or marina where the yacht is going to be based during the events. Originally there was a legislation brought out a couple of years ago that they would apply the exemption from matriculation tax to all vessels involved in the America's Cup so then we came back and said what does it mean being involved in the America's Cup. They've now come back saying it has to be vessels which are exclusively berthed within the America's Cup port confines. Which basically means the superyacht berthing which takes vessels up to 30metres. Both of the authorities who run those port areas will actually process the applications for the charter permit and for the exemption of the matriculation tax. But the requirement is that the vessel has to be in port every night, that it actually has to be within the confines of the America's Cup Regatta and it has to return to the port every night, so it has to be used exclusively as a spectator vessel. But the ports themselves can organise that on behalf of the yachts. I know and I suspect Steve knows more than I do on this, there have been rumours that the AMC have been claiming some percentage of the charter income of the vessels that are moored within the America's Cup confines. I know Steve has direct experience of this — I've been speaking to god knows how many people the last 2 days trying to clarify it and quite frankly I'm just getting closed doors. No-one wants to talk about it. I have a feeling it was a mistake and is a bit of an embarrassment and they're having to backtrack on it. But I haven't got anything concrete. If I do actually find out anything definite I'll let you know, probably through Martin. That is the situation at Valencia at the moment. All the authorities have said quite clearly please make sure that this exemption from any kind of charter regulations and any kind of taxation is only exclusively for yachts berthed within the America's Cup confines within the actual port. Some of the yachts which have berths out in the Club Nautica is not applicable. They will come under the Spanish fiscal legislation and the requirement for charter licences. So that is quite important.

The only one little thing I have of interest afterwards that I would really like to make a point of. We have just now set up the Spanish Association for Superyachts — it's a Spanish business association and we're going to work in conjunction with MYBA and with the Superyacht UK Society and any other associations in Europe that are involved in the superyacht business. It's a Spanish business association which admits Spanish registered businesses who are involved directly with the superyacht business. It also does make allowances for associate members which is the members who are not actually registered as businesses within Spain. We developed this — for years now I've been fighting this matriculation tax; it is a very senseless, negative tax in general — but I've been carrying this on my shoulders on my own for years and in Spain quite honestly being a foreigner and a woman doesn't actually help when you're dealing with the government. But the President of the Balearic government actually approached a group of superyacht companies in Spain, in Majorca, probably about a year ago and quite rightly said that he was aware of the problems with the superyacht industry in general in Spain but we actually had to join together to form an association. He couldn't possibly listen to 30 or 35 of us all going with our individual problems and complaints, but if we got together as a body then he

was more than willing to help. We've done that, it is now officially formed, constituted, registered — we've had the initial annual general meeting, we've named all the Board and the main sponsors of the association. We have been back to have a meeting with the President of the Balearic Islands, who received us very well and he has actually committed himself — admittedly there are elections next month — but he has committed himself to finance an in depth report of the superyacht industry in general in Spain. And his words also about the ports and berthing arrangements in Spain in general because he feels it goes hand in hand with the superyacht industry. So the Association is in the process right now of preparing this in depth report regarding, as I say, both fiscal problems and legal problems of the superyachts and problems that people are having with ports and marinas and concessions of the same. What we do need is actually both help legally and physically with reports from yourselves and of course financially, because it's costing a lot of money. We need help as well from the associate members. I'd be absolutely delighted if any of you would be interested in joining up or any information — we have got a basic website up and running; I can give you information but it is absolutely essential that anybody who has now or will have in future any interest in the superyacht industry in Spain please we do need you to join up with this, because we're really getting places. We're breaking ground, and we need your momentum now behind us to actually help us. That is most important please for all of you to show your support. The two main items that the Association is dealing with now — there is an actual maritime legislation that, quite honestly unbeknown to most of us, has actually been developed and approved by the Spanish Parliament and is about to be put into practice. It's 360 odd articles of which about half a paragraph vaguely relates to the superyacht industry — in Spain we still have a problem that they only accept pleasure yachts used for commercial purposes or from that it goes immediately up to merchant shipping status. Even probably later on we'll probably talk about manning requirements and qualifications — we just can't get anywhere in Spain at the moment with that section; it's a big vacuum from 24metres up to merchant ships there's no legislation that actually covers that type of yacht. So the Association now is going to sponsor and have meetings at a government level to try and develop a specific Registry for this type of yachts so we don't have to depend on the merchant marine navy to apply their laws to us. So that is what they're doing at the moment. We're also dealing with this anti fraud legislation which I've mentioned a little bit before, regarding the charter vessels and regarding the matriculation tax. The Association's doing a lot, I'm absolutely delighted because it's about time we all got together with all the companies. What we're simply trying to do is promote and protect the superyacht industry in Spain. It's our only hope in the future and there's definitely light at the end of the tunnel. So I'd be delighted if anyone would like to receive information from us.

I've tried to cover as much as I can — there must be loads of things I haven't covered, but I'm more than happy to answer questions afterwards. Thank you very much.

Martin

Thank you. Carlo?

Carlo Galli

About the Sardinia Tax. My subject. Well, that was certainly one of the hottest topics in the charter season that went by and it's still a big question mark even though the legislation has been meant to be extremely simple. As all of you are aware by now Sardinia has rightfully or not introduced an own taxation that among other things hits on yachts above a certain size that come to ports, mooring points and harbours

within Sardinia, and that tax can be very nasty in the case of the charter industry because it is a tax that is applied once yearly upon the first time that a given yacht fulfils the taxable event. The problem has been that the tax was introduced but the relevant administration was not properly designed and employed on the territory so that for many months, although the tax was in place there was no-one seriously willing to collect it. Also because the people in charge of collecting the tax were also the people in charge of making sure that the Sardinian marinas were making good business, and the two things do not necessarily go together. So this uncertainty has played to the advantage in theory of the yachtsmen but as things we read in the papers recently Sardinia might try to enforce the tax that was not paid timely, because there is apparently a significant level of evasion of this tax and we hear that there might be changes made for the 2007 edition of the tax. I remember in discussions in the business that I made my point that the tax was so badly designed that in theory any yacht staying at anchor was not subject to tax even though I'm aware that certain yachts have been charged with the tax even though they never went into the port or never went onto the points that are designed by the law as triggering the tax liability. So also in that respect there might be interesting developments. Because again, as I see it, the way the law is written is not applicable if you stay at anchor.

But that was not the only bad news of the season that went by. Last year from this desk we discussed the very interesting news that the Italian fiscal environment was bringing about. We had since a long time already developed a system under which pleasure yachts could be used commercially within the framework of VAT. As an EU member state we have an EU compliant VAT system which is obviously based on the dualism between private and business use and everything that is business use may actually be without the burden of VAT. And this was interestingly extended also to pleasure yachts subject to certain registration requirements, the compliance with which automatically entitled the yacht to be regarded as being used commercially and so be treated the same way as a commercial seagoing vessel thus being eligible for the VAT regime applicable to this type of goods, which is typically zero rated across the board. This is a regime that derives directly from Article 15 of the Six Directive. Even though the Italian tax authorities have never openly taken the position that this regime applied actually across the board, by confirming that it also applied to charter fees, applied to charterers and what happened when the relevant yacht was used by the ultimate beneficial owner even though under a commercial agreement, it was common understanding that by applying the basic principles of European VAT the conclusion was that also those cases were to be zero rated. And this was also confirmed in a joint publication by the Italian Association and regional tax authorities of Liguria. Then on 20 March 2006 the regional tax authorities of Liguria or better the central tax authorities issued a ruling that said exactly the opposite. The ruling said that charter fees paid on a pleasure yacht which is being used commercially by a charterer who is using the yacht for leisure which is normally the case, would not be eligible for zero rating but would rather be subject to full taxation but with the use and enjoyment presumption that is applicable to leasing, so depending on the length of the vessel, there could be a reduction in the actual VAT charged. There was a feeling in the industry that this position was just the first of a long series of identical rulings that would be issued by all the regional authorities that had in the meanwhile been asked the same question but luckily apparently this is not happening, at least so far. And the situation is that currently that ruling is unpublished and has not been followed by other rulings. So my understanding is that it is now business as usual so there are strong arguments to conclude that charter fees are zero rateable if the yacht complies with the commercial requirements under Italian legislation. The same commercial requirement might in principle be applicable to consider also non EU yachts as commercial, because the issue also arises when a non VAT paid yacht

enters European waters, namely Italian waters which is what matters to me, under a charter contract, and the question arises what is the VAT regime. Now based under general principles the VAT regime should be again that of a commercial vessel so it should be no tax applied on import and no tax applied on services in connection with the yacht. I understand from quick conversations that it is not always the case in all Italian harbours where certain authorities have challenged this conclusion, based on the fact that the relevant yachts were not classified as commercial yachts under their flag rules. So for example, the Red Ensign yachts without MCA were not regarded as commercial, even though they were used commercially. Leaving aside that that might constitute a violation under non Italian law, I have seen that being done. So again, that is in principle not correct in the sense that there are arguments to say that a commercial yacht should be regarded as such when it is actually used for commercial purposes but there's a fine line between what is the substance and what is the proof. And we as a formal country normally expect those two to coincide and expect to see some documentation that we can understand, proving that the yacht is undeniably being used for commercial purposes. So although this commercial qualification under foreign legislation is not necessary, I understand that certain authorities might expect it and it would be difficult to say that they are completely wrong, because that's what they expect to see as the proof of the commercial use.

What else has happened that may be of interest? Well, on the commercial side I would say that what was advertised as a big innovation, the Italian International Register for commercial pleasure yachts is not really taking off for two reasons, basically. Because it is not enough pleasure and it is not enough commercial or it's too much commercial and not enough pleasure. It depends on the angle from which you look at it. Just to give you some examples. The legislation extending the applicability of the regime of the International Register to pleasure yachts did just that. It didn't provide any specific legislation for commercial yachts that in the interpretation of certain port authorities had become similar to commercial ships, which means that in several circumstances they were subject to the same formalities and compliance in going in and going out of ports as commercial ships. Which on a daily basis obviously makes no sense. So this has made a lot of people worried about the qualification as commercial yacht. Another not so interesting development is that yachts under Italian flag registered in the International Register have been subject to a degree of attention by the authorities that was unheard of. A client of mine who has had a 40metre yacht regularly chartered first under UK flag then under Italian flag for several years was never checked by the tax authorities. Last season was the first season under the International Register Italian flag — 18 times he has been checked. And that's quite annoying. Everything was in order obviously otherwise it would have been my fault but it is annoying nevertheless. So the experience is this season that the yacht will fly the Red Ensign again. And I'm afraid that that is what a number of the very few applicants that successfully made it in to the Italian International Register are considering for this season, if not going to foreign flags at least going back to the let's say non commercial Italian or to the National Register for pleasure yachts because that is regarded as attracting much less disturbance and at the same time the benefits that could be available under commercial International Register are not perceived as decisive while at the same time leaving the International Register for commercial yachts does not jeopardise to any extent the VAT excise duties regime, which is what most matters in terms of money in the pocket.

Having said that, has anything changed in the ownership structure for yachts by Italians? Not really. In terms of ownership structures if you are looking at private yachts no matter what the size is, the Italian leasing while it lasts is still very popular and will continue to be very popular and for commercially used yachts it very much

depends on the requirements of the specific owner, whether the yacht is new or used, with or without crew, what's the nationality of the crew, because flying the Italian flag also has so many requirements that may be very difficult to comply with, especially because they have recently been tightened and finding people with the right qualifications is apparently very difficult, or at least so I'm told. So I will say that's about it for Italy as an overview and I'm obviously open to any questions you may have.

Martin

Paddy and Steve — we've only got 35 minutes left, can you keep it short and sharp.

Paddy Behan

Well I'll try, but I'd have to change the habits of a lifetime. But seriously folks, Dorothy Parker famously knew two things about the horse, and one of them was rather coarse. I've got four themes from the year gone by and true to form I'll begin by being coarse about Halifax and tax avoidance and the dog that didn't bark. One of my roles at Grant Thornton is to act as Press spokesman on VAT. Coming up to Halifax the arbiters of taste at Grant Thornton prevented me from telling one of the broadsheets that tax avoidance is a bit like teenage sex. There's undoubtedly pleasure, speaking from memory there's frequently a lot more talk than real action but it does get the older generation more than usually worked up. And thus it was with tax avoidance. But to mix my metaphors in mid stream as it were the Revenue are now suffering the apophysis of the Chinese curse, because they got or thought they got what they wanted with Halifax. And Halifax is probably a busted flush. It's a very crude instrument which is very useful for threatening big banks but it hasn't actually been nearly so significant for the yachting industry as actual old fashioned anti avoidance activity based on the existing legislation and settled principles so that for instance the most effective way of attacking the old colloquially called Dutch lease was to look at one of the apparent sales and say that wasn't a supply because the leasing company didn't acquire the right to dispose of the vessel as owner. So at Halifax there was much talk and much less action and indeed it is possible to see in the VAT tribunal in the UK a slight reaction against Halifax and undisciplined anti avoidance activity by the Revenue. I can return to that if needs be.

That being said, and it's probably wrong to personalise it, but accurate if wrong — there is a constituency of anti tax — almost anti avoidance zealotry on the bench in the UK probably most notably associated with Lady Justice Arden. But the jury is out. If you do something aggressive the most likely effective attack is based on settled principles and Halifax as predicted last year by two of your panellists hasn't really been the threat it might have been. That discussion, and I see a gentleman to my right here last year, then moved on to the French, Italian and Maltese leases, yes because they're based on a specific discretion granted to member states by the convention looks like a good robust way to go. Now the Revenue brought out their statement to the Revenue & Customs Brief 1107 in February to which people have referred — I'm not going to read it out but it ends with — it has various bullet points describing elements of VAT planning that they don't like and it's possible to read them as including French, Italian leases and so forth. But they end by saying "*where there is evidence to suggest that a vessel has been supplied through one of these schemes we shall carry out a full investigation*" — oh how we tremble— "*of the facts surrounding the supply and take any necessary action*". Now that's as meaningful as to say that good is to be done and evil avoided. Some of us who've got the experience will say well they've always been carrying out overfull investigations of everything to do with yachts so I think that's a study in bathos, frankly.

Moving on to my third theme, and this isn't one of the big themes, it's a very basic thing, because what I think has most annoyed my clients in the UK and I think I can mention it because it's pretty well in public record because of all the documents that they circulate with my name on them, my involvement with the British Marine Federation, and it's this. The problem of proving VAT paid status in sales of yachts is probably the most perplexing problem, it's an obvious, everyday problem, it's affecting the market and of course if you can't sell the used and perhaps more humble boats you may well ultimately end up having an impact on the upper end of the market which is doing so well, as we heard earlier, because the dynamics of the yacht market I think are very like the dynamics of the car market. If you can't move used units, you can't create the capacity — well maybe at the upper end there are enough new entrants — but if you can't keep moving units you're going to kill the market. Bear in mind you don't have to be an anthropologist to know about people. They buy yachts. This is absolutely the pinnacle of my desires, I will never want another boat. That lasts for three years, and then three years later it's sold and they're onto the next one. Now the people I think who are sniggering are probably brokers or include brokers because the effect of this VAT paid yacht status is putting an insupportable burden on brokers in the UK who are left holding money, not knowing what to do with it and not getting any guidance out of the Revenue Customs. It's most unfortunate for the broking fraternity who get the opprobrium and criticism of estate agents but actually have some professionalism, PI cover and some standards. That's my third theme.

My fourth theme is a variation on that. And that is what is happening to the basic dialogue between the industry and the Revenue. And something bad is happening in my view. It's never been entirely healthful because there's never been an appreciation of the importance of the industry in the Revenue, partly because it suffered from the rather facile big boys' toys criticism, and the other thing about the industry is that if you add up all the marine industries together you certainly get something that's worth in excess of £1 billion of activity. Because it's so diverse it's not appreciated. The other thing is because it's geographically concentrated, if anything happens to the industry there is a capacity for regional dislocation that's never been addressed by the Revenue. To make it worse, just at the moment in the generally hostile and strident environment there is no-one in the Revenue who understands the industry — the last person who was a useful contact at policy level has moved on, and she was only a useful contact because she took it upon herself. She was that old fashioned thing, a public servant who thought her job was to serve the public. There is now at the upper echelons a degree of incomprehension which is a euphemism actually for ignorance. Now if you take it down to the coal face it gets even worse, because we come to one of Ayuk's themes — this MTIC fraud. Well, the thing about the MTIC fraud is that because it is a haemorrhage of Revenue, because it is a systemic fault in VAT, in other words if you're going to have a VAT system like this you're going to be prey to this sort of fraud, so the system is very vulnerable and it is sucking up hordes of VAT officers. This is a theme I don't think enough people have commented on, because the distortion of taking all these officers away from basic work and putting them into this fraud work and those who are left are being concentrated into regional centres, or in effect call centres, unless you happen to be one of the biggest 900 companies in the country, then when you add to it the general demoralisation caused by offices being closed and changed management not being managed all that well, it's very hard for a normal yard or a broker to find someone in the Revenue & Customs to talk to, even if they're going to say something unwelcome. So the educational effect of the old fashioned contact you had, like having an office you can speak to, periodic visits and so forth, means that the general level of compliance, the compliance system, the assurance system is being

neglected, practices are growing up and of course in this sort of environment the sharper will get temporary advantages which will coarsen the compliance generally and I think we're going to have more and more problems with the old hard annual, the Sailaway boat scheme. So effectively those are my four points, and that's uncharacteristically terse I think.

Martin

Fantastic, Paddy, thank you. Steve, the floor is yours.

Steve Malley

Thanks very much. I knew I was going to end up doing a washup of the whole thing. But I think I can probably say quite honestly that two of the main subjects that were going to be talked about were quite clearly Halifax and cross border leasing. I knew that was going to come up at some stage. So I might as well update you on exactly what's going on. But before I do that I just want to pick up on what Paddy said, and Ayuk said, earlier on. The carousel fraud, the €50billion, that is quite clearly a calculated fraud and that's a lot different to cross border leasing and the French lease, the Italian lease and the Maltese lease. These are quite clearly taking advantage of existing legislation — whether it's flawed or not, it doesn't make any difference. But there is a big difference between what I see as real out and out fraud which is nasty and horrible and if I ever wanted a change of career or to go back to what I did before that's what I'd probably do, go back and stop these bastards stealing the taxpayers' money. Are rich people who have yachts stealing the taxpayers' money? that's the other attitude and again Ayuk mentioned Germany, UK and France. Now France have got a vested interest but Germany and the UK — who's going to keep a boat of any decent size in UK or German waters? In effect this business brief, that the UK Customs have issued recently, is a little bit about nothing. Quite clearly if all the rules and regulations are operated properly the boats are not going to be in UK waters, most of the clients are probably not UK clients in any case and as usual HMRC in the UK are sticking their nose in where it's not legally wanted in any case. So if a boat is built by Sunseeker or Fairline or Princess and delivered to France, that's France's problem, not the UK's problem, and they can't expect to police the whole of Europe despite the fact that they want to. So I see in this business brief Batman and Batwoman — I think everyone knows who we're talking about — and I think they're on a little crusade but quite frankly, as Paddy just said, they have no clue about the industry, they have no clue about why the French lease was set up in the first place, or why the Italian lease was set up, or the Maltese. This is all about countries generating through legal means a method by which they can make their tax regime slightly more attractive and draw in business, keep in employment thousands and thousands of people. Again, as Paddy said, the UK yacht building industry is a major industry and quite frankly what Batman and Batwoman are doing is terrible. We're not saying the cross border lease isn't a bit cheeky, a bit aggressive, of course it is. But it is legal. And even the most recent legal advice still confirms that the French can't do what they're trying to do, the UK can't do what they're trying to do, and so on. They will continue to try, but as far as I know not one single case involving cross border leasing has got to a court and actually been dealt with. It is also interesting to point out that the UK who are having a go at it and the French who are having a go at it are having a go at it on completely different tax. Halifax was completely avoided with the UK, they're looking at Customs legislation to try and break it at the moment; the French have gone with the *abus des droites*, which is a serious serious attempt. I know for a fact this is going through the French courts at the moment and it's going to be a long long time before it's dealt with, and if in the end it's found in favour of the lessees, whatever it is, that again will be a major

stumbling block to taxation throughout Europe. It's just a little bit unfortunate that this industry has taken a bit of a pasting but I can tell you that as an ex Customs and VAT man myself rich people were seen to be there to be taxed. Irrespective of how hard they'd worked to make their fortune, they were there to be taxed. And a yacht is a symbol of that success and that's why the tax authorities go for it, fairly obviously. So my view of the UK's business brief is forget about it, it's irrelevant. Let's worry about much greater things. When the French and Italians and Spanish start talking nasty that's when we start to worry, because that's where all the boats are. That's my view of that.

I noticed on the list there was a section about temporary importation; we didn't actually look at that in any great detail. I'm quite happy to take any questions on that in the questions and answers session rather than dealing with it now, but my view of these things is that in due course the cross border lease is effectively dead. All the yachts still in the leases will stay in the leases because we contend as we hope that this is a proper leasing construction and it's there and available, or the French, Italian and Maltese leases are available, government sponsored, using a piece of VAT legislation that's workable. If the UK don't like that then I suggest they go and talk to the Italian government and the French government. This is the old story that we've seen so many times before; I was probably just as guilty when I was a Customs man myself of entrenchment, and ever since I left — and it's been a long time since I've been out — every day something comes out that convinces me more that what we're doing is right. Yes we have to have taxation, clearly that's the case. But when you have overly high taxation you're always going to get methods of avoidance. Taxation will evolve in the same way as tax avoidance will evolve. So we're stuck with it, it just happens that this particular industry is getting a hard time at the moment and probably undeservedly so.

Martin

Steve, thank you very much. Hands please for any questions.

[from the floor]

I had a specific question but I think it's apropos of quite a few yachts and that's about the Mediterranean charter season where you have a lot of Cayman Island yachts — probably 70% of the market there — they come in for the Summer and they buy a lot of goods in France and to get around the VAT they have to show an onward charter and a commercial register, and I just wonder if you could talk of the issues involved in the avoidance of that tax.

Steve

Well, the fact that the boat's got a Cayman flag on it is not really related to its ownership structure. If a boat with a non EU owner comes in commercially registered, obviously that's MCA compliant and flying under a Red Ensign — if it comes into France during the Summer under charter (we'll cover this in a second) then under the French exemption it can come in VAT free. And effectively be imported and used under the French commercial exemption. This is a relaxation of European Customs law. In fact temporary importation, in theory under that Customs regime you're not allowed to charter, but quite clearly the French have got round that by putting it into the legislation to allow it. So for a temporary period that commercially registered yacht takes advantage of the French exemption, and all those advantages. Now the main point of this — and we have seen this with the French Douane, is not only does the yacht have to be commercially registered but it

has to be operating commercially. We've heard these figures of 30% or 40% beneficial owner use bandied about for the last couple of years — I'm pretty sure it's still not written down anywhere. So if a French Douane officer says I don't think this charter is commercial under whatever decision he likes to take on that, he will then determine whether those supplies that were received, including duty free, VAT free fuel, were actually obtained for a commercial charter. We had a situation last year where the officer, who was a Monegasque officer, said I don't think this charter rate for this week for this boat is enough, therefore the fuel you have just bought should not be duty and VAT free. He assessed the VAT on the fuel. Not on the charters, not on the hull, but the VAT on the fuel. It was a fairly insignificant amount so we didn't test it, but when you have individual officers in individual Douane areas making decisions on a piece of unwritten law, you're always going to have a problem and this year I'm sure — again, this is all part of what we're talking about — they're going to be looking very closely at proper charters. My view to my clients is, if you don't want to play the game by the rules, don't play the game. If they say yes, I want to do it properly, I want to have the boat registered with a proper Mediterranean broker and I want to charter to third parties etc and when I charter I'll pay the full going rate, and as long as they don't get near the 30 to 40% beneficial owner use then in theory we carry on. Now again, it's like the UK, I said they can only have certain jurisdiction in certain places. As soon as that boat sails out of French waters the French have no jurisdiction. So what happens to the boat when it's outside French waters in international waters is a completely different thing. But while you're in France play the French game. And if you do it properly then you shouldn't have any problems.

[from the floor] Paul

Sorry, can I just respond on this particular question, wearing a hat as a director of the ECPY which is the European Committee for Professional Yachting — last year the ECPY in conjunction with the Chambre d' Commerce and meetings with the Douane have actually come up with a paper that a captain can bring in, lodge with the harbour, and this is particularly answering the question, such that the moorings, duty free fuel, all that sort of thing, is actually taken care of with one piece of paper. So it actually is addressing, very physically, very correctly, for the first time and again like Pat's association in Spain it's a very positive benefit that the ECPY has brought to the owners and operators of these boats. And if anyone wants to talk to me later, please do. It has actually come out, if you look on the website of the ECPY — there's reference to it and just get in touch with us, and we'll figure it out.

Patricia

Martin, can I just mention one more point on that? Sorry. I'm just getting back to the TI requirements on duty free supplies for non EU registered vessels. There's just a point that's occurred to me that I'd like to bring up. Again, in Spain and all of Europe there are many layers of government and many layers of officialdom, and what we find in Spain is that each different Customs area has a different way of interpreting the same legislation. With regard to tax free supplies for non EU registered vessels, as far as everyday supplies are concerned, then basically they would rather you go away and leave them alone. There are documents in Spain — as Steve was saying, if you're a TI registered vessel you're not supposed to be chartering there anyway; if you are an EU VAT registered company that owns the vessel then there are two ways — there are documents in Spain that can be completed and the actual VAT paid on the supplies can be reclaimed. That's just on everyday supplies. When we're talking about major refits in yards then each individual yard or commercial area has its own individual agreement with the Spanish Customs & Excise office. So basically that area becomes a Customs bonded area.

All supplies, all work and all subcontracting work has to go through the yard because they are actually responsible for that vessel. One point I'd like to bring up which I think we've dealt with in the last couple of months with some people here — that they do not consider the Channel Islands as non EU registered vessels. The Channel Islands are as far as the Spanish authorities are concerned, Customs territory. They're not fiscal, they're not VAT territory. They are Customs territory of the EU so thereby in the yards on non EU vessels they have to be totally non EU. We've just had a case now of a Guernsey owned vessel flagged in the Cayman Islands I think or BVI and we've actually had to change the ownership to a Cayman Islands or BVI company. Spanish Customs wouldn't accept a Channel Island company as the owner as they considered that doesn't comply with the TI legislation and the tax free goods couldn't be supplied. It's just a point that I think a lot of people aren't aware of as far as the Channel Islands are concerned. Do you agree with that Ayuk?

Ayuk

Certainly. When you're talking Customs, the Channel Islands are part of the EU — they're not part for VAT purposes, so it's absolutely right.

[from the floor]

I think I agree with comments that have been made about the UK Revenue's pronouncements and they don't really have a great deal of effect on yachts that are operating in French or Italian waters but there's been talk in the past couple of years of changing the place of supply rules which of course would have quite a big impact if you suddenly had to account for VAT on charter hire, the traditional crewed charter, or passenger services — if you had to account for that in the place where you belonged then what the UK were saying would start to become much more relevant. I'm not sure where that would leave yachts that are currently operating under the French and the Italian rules.

Steve

I don't know if Ayuk knows what's happening with the place of supply rules — it's kind of died — it's gone very quiet.

Ayuk

Not quite. What's happening is that the EU like many countries have different layers of authority — one of the layers is the Economic and Social Committee, I think it's called. The legislation got bogged down at that stage because they think that the rules should be much more surgical, they should be harder than proposed. And also the suggestion is that it should be brought at the same time as the one stop shop. So for that reason the series of negotiations is still happening as we speak. I think it's a question of when, rather than if — the legislation is not dead. But I'm sure the year 2008 is the date being mentioned now. So yes, the place of supply rules, the amendment to that to ensure that territories actually benefit from the VAT where the activity is taking place has been delayed but it's definitely still on the agenda.

Paddy

Yes, but I mean obviously that's the sort of bookies perspective, but bear in mind that the related package, the amendment to Article 92E as it was, was delayed 3 times, the third time at very short notice. I think it is going to come because it's bound up

with the fundamental change in the place of supply, which is historically inevitable to deal with telecoms and e services; but I wouldn't hold my breath for it. But some time after 31 December 2008 is a likely time to start worrying.

Steve

What I would also add is that if the place of supply did change back to the UK or the Isle of Man we would probably still have the zero rating for commerciality in some form or another, so it might actually be a change that doesn't really affect the major big boat market.

[from the floor] David

Ayuk. One question. Whenever they do get to change the place of supply concept are they going to look at the beneficial owner as you would assume, or is it going to be sufficient to set up a special purpose vehicle in the EU country where you want VAT to be attracted? I know it sounds a bit too simple, but how would that work? What if a Spaniard, say, wanted to have Italian VAT on his boat and he sets up an Italian leasing scheme, he sets up an SPV in Milan or in Genoa, are the tax authorities going to look at the tax residency of the beneficial owner or of the special purpose company?

Ayuk

The proposal as it stands at the moment is that they are going to consider leasing — they've divided the so called short term lease which would be one to thirty days, that would be taxable where the charterer is. Anything above 30 days is considered a long term lease and the place of supply will be where the provider of the yacht is, in other words the yacht owner. So that's purely to do with how that's been proposed at the moment. The relationship between the beneficial owner and his yacht or his company is, as a matter of law — and I think the law is absolutely clear on this — if a beneficial owner is using his own asset where he has recovered the VAT on that asset and this tends to be the case with many yachts that VAT has been deducted, then the obligation is on the company to charge VAT to the beneficial owner at the cost (and that's emphasised) the cost to the company of using that asset. So it's not a market rate, but it's a rate that effectively amounts to the cost to the company of using that asset. Now the so called zero rated scheme where structures are put in place so that the beneficial owner doesn't pay any VAT at all, after VAT has been reclaimed on the yacht, that's where the problem is, to my mind. So you know the reform will not affect that relationship, the rule that the beneficial owner should pay VAT if VAT has been recovered on the purchase of that yacht. Does that answer your question, David?

[from the floor] David

Well, yes. I was pretty much sticking to the private registration anyway so in case of a non charter boat, a private registration, and this guy from Madrid sets up an Italian leasing scheme for 7 years and he's buying a boat in excess of 24metres so under the Italian legislation he would be entitled to 6% VAT and it's privately registered so there'd be no zero rating. He sets up a special purpose company in Rome for instance, and I'm wondering — is that leasing structure going to be subject to the 6% Italian VAT or to the VAT of the beneficial owner, in this case 16%?

Steve

Well, can I just add that in the French and Italian lease — those two schemes, the Maltese is slightly different — the boat is owned by the leasing company so if you lease a boat from an Italian leasing company you pay Italian VAT.

David

OK. But if we go back to the idea of the change of place of supply, if the lessor is an Italian bank and they're providing a leasing service to a lessee which is Spanish and they change the place of supply principle, by the means of which they say that the supply is delivered in the country of residence of this beneficial owner, is it going to be sufficient for him to have the contract in the name of a special purpose company incorporated in Italy, for instance?

Steve

I think I understand the question now. What I would say is that, if Ayuk will correct me, if this is a long term lease, this is the over 30day long term lease, the place of supply is where the leasing company belongs, in effect. Now even if it wasn't that case, and VAT would be due in Spain, that would mean the leasing companies would have to register in 25 different countries, which is why they brought in the one stop shop VAT registration, to try and avoid that. It would be an utter administrative nightmare. So I think that, whatever happens in the future, you will still be able to shop around for the best VAT scheme for the simple reason that, until we have a single harmonised rate of VAT across Europe which won't happen in my lifetime then we're always going to have the ability to cross border shop.

Paddy

Yes, but with respect, I think we're separated by a common language here. Because most of these rules of VAT are not driven by residence, not driven by the corporation tax concept of residence, they're driven by a concept of establishment. So the question — I can give a very definitive answer to your question — is it enough to set up an SPV —the answer is maybe. Because —and it's definitely maybe— because we have very crude sort of jurisdiction rules on VAT — if it's the only establishment, then yes. But then we have authority that there must be sufficient human and technical infrastructure available to something in order for it to be an establishment, not necessarily employees, but services brought in. If there's more than one, the test is with which is the transaction most closely connected? So the answer to your question is, maybe, but if you're trying to shop for jurisdictions it's a real cool thing to do something more than just incorporate there. Do something that is regular, methodical and essential to your business, even if you're subcontracting it.

Carlo

Also because having an Italian company just to do that would have other ramifications that you may want to be aware of before doing it. If I'm not mistaken though, the new rules should also preserve the user enjoyment exception which is what the Italian lease and the French lease are based on.

Paddy

After all, the Italian lease is not based on a jurisdiction issue, it's just based on a formula to arrive at the taxable amount. It's an alternative way permitted to the Italians to calculate the taxable amount. It probably won't last, because you know all these tax rules currently can only be changed by unanimity and since there's such an

animus against these things in certain ways there is a possibility that these facilities may have to be bargained away in the overall scheme of things which is the sort of practical politics that may actually delay the change so we've got a circular calculation to do here.

[from the floor] David

I have another quick question for Patricia. Very quick. We are doing a number of financial leases in Spain and we've actually worked on a case together and happily enough with you in Majorca we were able not to have the Italian company register for a VAT number to pay the luxury tax. But we're now having a client that wishes to have his Gestoria Nautica managing the registration on his behalf and this Gestoria Nautica in Barcelona is telling us that the Italian leasing company is obliged to pay the luxury tax in her name by having a VAT number there, which is a bit of a nightmare because, as Steve was saying, if that were the case in every country then you'd have to register in every country in the EU.

Patricia

Are we talking about the matriculation tax here, David? Well, as far as I'm concerned, matriculation tax is liable to be paid by the actual final user of the vessel which has happened frequently in Spain. We've even had cases of British, French and German registered yachts being used by Spanish nationals even though they're quite obviously not the beneficial owners. But because they're actually on board they've become liable to pay matriculation tax. So the person who is first in the line of fire, is the actual user, which in this case and in the case that we had previously, is the Spanish company.

The problem is if the authorities go for the user and he can't pay, which is usually the case, they seize the boat in any case.

[from the floor]

If I could stay with Patricia and come back to her point on the Spanish situation — as I understand it, VAT is applicable to charters in Spanish waters and looking closer — and that's separate from matriculation — coming back to the exemption in Valencia having looked through the documentation issued on it it does obviously confirm an exemption to matriculation tax but there's no mention at all of exemption to VAT on chartering. Are we likely to have any confirmation on that or is it an issue?

Patricia

Yes. Well I think you and I have discussed this subject before and I was actually yesterday just trying to collect as much up to date information as possible on the Valencia situation, and I must have spoken to 12 different people, all managers of something, and all very important people. Eventually I did speak to the financial manager of the Valencia Consortium, who confirmed that arrangements are in place for the exemption matriculation tax and I casually mentioned to him at the end of the conversation if that was also inclusive of blanket exemption of VAT, and I'm afraid I got a very long silence back from him. I don't know whether I put the cat amongst the pigeons; I don't know whether I should have kept quiet, but I just casually mentioned it. My logic is that if they are formally allowing exemption on vessels within the America's Cup confines, that actually means that they are coming under Spanish fiscal legislation — the very fact that they are giving them an exemption. So if they're giving them an exemption matriculation tax it is to be assumed they're not giving

them exemption of VAT. Then he did actually admit that he didn't know. And that I should call him back today. I've been calling this morning and his line's busy, so I suppose he's on the hotline to someone in the VAT office. He sort of vaguely said of course VAT's due on charters and I'm saying well providing that these companies can prove to you that they are VAT registered companies and that VAT is being allowed for in the domicile of the actual company and he said yes, I suppose so, but I'm not too sure. So you know as much as I do right now. I'll try and call this person back again — it may be a huge can of worms, it may be better just to leave it alone. At the moment nothing has been mentioned about VAT at all. Watch this space.

All this situation is only allowed for during the events of the America's Cup and all the dates are quite clearly stated. The Don Cup and the America's Cup are all stated. And this is only applicable between the dates that are publicly published in the America's Cup websites and information. Anything outside those dates is not applicable.

Martin

I've been asked to ask the panel an anonymous question.

.....what do the panel think*the time required to carry out a transport operation* actually means — is it the time required to allow a charter commenced outside the EU to finish or the time required to allow a charter commencing outside the EU at the start of the season, and do multiple charters..... ?

Steve no wonder it was anonymous!!

Well as I mentioned earlier on yes, I think so. If a Cayman Islands or BVI owned yacht came in and it was commercially registered effective when it comes into France, it doesn't come in under temporary importation it comes in under effectively a code 40, which is an import regime (I don't think it is a code 40 but it's an import regime) and it's actually physically imported and a Customs document is done and that stays with the boat. Alright, there's no VAT on it because of the French exemption, but as far as I'm concerned at that point the TI — but only in French waters — is effectively suspended, so it can stay in charter for as long as it likes. When it goes into other member states then we're in a different situation altogether. The Spanish don't like chartering under TI and in other member states it will probably stick by the rigidity of the legislation so I'm not sure it's a valid question in any other country than France, and if we're talking about France then I don't think there is any timescale at all, because TI is suspended. So if TI is suspended then there's no timescale. Unless anyone disagrees with me?

Ayuk

I'm not disagreeing, just to add if your client is bringing the yacht into the EU under TI (Temporary Importation) with the intention to charter, I don't think it's a viable solution if you're going to carry out genuine charters to limit the yacht to France only. Practically, all you're saying is that the charterer would have to not go outside France, which defeats the pleasure purpose. The simple solution I think for non EU yachts that want to charter within the EU, get yourself a VAT registration and then you have the benefit of both the local laws in France and the ability to ply your trade across the EU. And I offer the Isle of Man for that.

Carlo

TI in Italy has been used to do whatever. You see yachts being seized under regular commercial conditions whereas the neighbouring yacht would be chartered under TI and then totally in breach of the law. So I will say that from my perspective even though the practice may say something different, that practice is against the law and of the two alternatives that the anonymous applicant proposed I would say that the spirit of the law is such —and I'm talking about EU Customs code implementing regulations — it should be that specific charter, the time to allow the specific charter to finish, so you cannot just come in under one charter contract at the beginning of the season and then continue to charter within EU waters and then leave on final charter, even though also that is done. In my view that is against the law.

Martin

Considering a commercial yacht, under EU flag, on a promotional sailingcan the VAT be recuperated in full or only partly?

Ayuk

In order to recover VAT — when you opt to recover value, effectively opting to operate within the VAT system that means that, forgetting promotional reasons, it means you want to use the yacht to carry out the business, so I think the short answer is if the purpose is purely to use it for private pleasure then no, the VAT is not recoverable.

Martin

OK. A short break for tea then a final session with the lawyers.