

THE SHIPPING INDUSTRY IN MALTA

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MALTA - THE JURISDICTION FOR YACHT REGISTRATION AND YACHT CHARTERING

Introduction

Malta's tradition with the shipping industry goes a long way given the location of the Maltese islands, our natural harbour and the seafaring culture of the Maltese. Over the years Malta developed a strong legal and regulatory platform that enabled the Maltese Flag to become an established reputable international Ship Register which is now one of the largest in Europe and possibly even worldwide. Fiscal considerations play a crucial part to manage to build such a successful flag, and Malta, like most EU member states undertook measures to do away with traditional methods of taxation and introduce fiscal systems whereby the tax paid is dependent on the tonnage of the vessel or fleet belonging to a ship owner. Such fiscal system was endorsed by the EU in 2017. However, Malta did not just lay out a strong fiscal regime, but it also invested in state-of-the-art super yacht marinas and encouraged the creation of a number of onshore service providers such as refitting yachts and yacht management companies of the highest standard.

General Tax considerations – the Malta Tonnage Tax System

The standard flat rate of tax for limited liability companies that are both tax resident and domiciled in Malta is 35%, payable on their chargeable income. By default, therefore, a company incorporated in Malta, including a shipping company, is considered to be resident and domiciled in Malta for Maltese income tax purposes and accordingly, all income and capital gains, whether arising in Malta or otherwise, are subject to tax in Malta. However, if eligible, a shipping company may apply for the Tonnage Tax Regime. Under this regime, they are taxed on the basis of the net tonnage of the ship/s. In fact, Regulation 5 of the “Merchant Shipping (Taxation and other matter relating to shipping organizations) Regulations states that:

“No further tax under the Income Tax Act shall be charged or payable on the income of that shipping organization, to the extent that such income is derived from shipping activities”

It is important here to list the definition given by the law to what is a tonnage tax ship, shipping organization and also shipping activities:

- (i) Tonnage tax ship – a ship of any net tonnage which is engaged in shipping activity
- (ii) Shipping activities – international carriage of goods or passengers by sea and any other such activities that have been approved as eligible for tonnage tax purposes by the EU (better known as ancillary services)
- (iii) Shipping organization - an organization duly organized and existing under the laws of a Union State which has ownership, operation of (under charter or otherwise), or administers and manages vessels or holds shares in shipping companies.

The main benefits of the Malta Tonnage Tax Regime can be summarized as follows:

- (i) Exempt from paying income tax on income derived from shipping activities
- (ii) Option of filing a simple tax declaration instead of the regular corporate income tax return
- (iii) Profits derived from shipping activities that are exempt from tax are also tax exempt in the hands of the shareholders received from a dividend distribution to them.
- (iv) Exemption from CGT on the sale or transfer of a tonnage tax ship.

An important concept under the Malta Tonnage Tax System is that of the Ship Manager whose activity should be the provision of competent personnel to supervise the management and general efficiency of a ship; and/or the provision of other technical management services usually performed by the ship manager as defined by the Baltic and International Maritime Council (BIMCO) Standard Ship Management Agreement. Reg. 6 of this regime provides that any income derived by a ship manager from ship management activities and any distribution of these profits shall be tax exempt.

The Yachting Industry and the Malta Tonnage Tax System

Following the approval of the Malta Tonnage Tax System by the EU, Malta extended the right to be taxed under this regime also to entities undertaking their activities through the operation of commercial yachts.

Immediately, here it is important to highlight that private yachts and ships used primarily for sport or recreation are excluded from benefitting under this regime as stipulated under Article 3 of S.L. 234.43.

The Commercial Yacht Code defines a commercial yacht if:

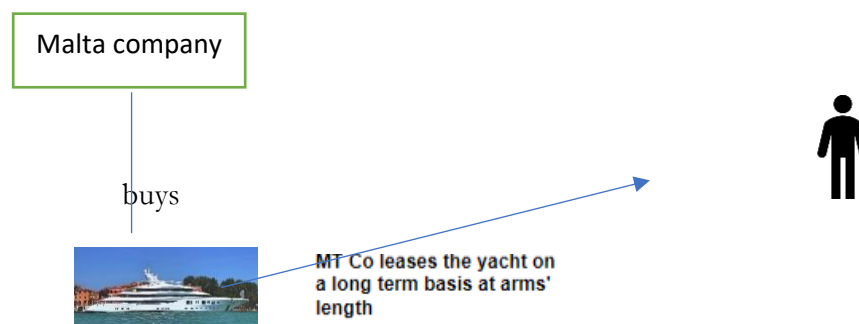
- (i) It is engaged in lawful trade in commercial operations
- (ii) It can be any of the types of yachts, be it historical, training or racing yacht
- (iii) It has a minimum of overall length of 15 meters
- (iv) It does not carry cargo or more than 12 passengers.

The Yachting Industry and VAT implications

The payment of VAT has always played an important part in the yachting industry and has a big influence on the decision of where to register a yacht. In the past Malta, had a regime whereby the VAT on acquisition of a yacht was reduced considerably through a leasing arrangement. However, in March 2020, Malta issued new guidelines on the application of the new concept “Use and Enjoyment” and these new provisions replaced entirely the old ones issued in the past. These new guidelines reflect the recent new EU developments and best market practices.

MALTA Typical Structure

- An individual sets up a Maltese Company.
- MT Co purchases the yacht through financing from the individual.
- MT Co leases the yacht to the individual therefore carrying out an economic activity in scope for VAT.
- MT Co enters into a long-term lease agreement with the individual (‘Lessee’) at arm’s length.
- The Lessee shall be responsible for all expenditure relating to the use and general maintenance of the yacht.



(a) VAT on the lease payments

A Maltese VAT registration for the Malta company is typically required in case of LT leases to non-business clients. In such cases, the Malta company can claim input VAT on its expenses/purchases and is obliged to charge VAT at 18% on the lease. However, based on the use and enjoyment principles, the Malta company can make an adjustment as follows and is based on the well-established partial attribution method, i.e.

$$\frac{\text{Actual Effective U\&E (Non-EU)}}{\text{Total Effective U\&E (EU \& Non-EU)}} = \text{Actual Ratio}$$

An 'Excess of Output Tax' adjustment shall be calculated as the difference between:

- (i) The VAT charged/ paid (during the first or first/ second tax periods); and
- (ii) The 'Actual Ratio' multiplied by the taxable value of the lease for that period multiplied by the standard rate of VAT

The Malta company shall procure from the lessee such reasonable documentary and/ or technological data to determine the effective use and enjoyment by the lessee of the boat. In this manner. An excess of output VAT payable adjustment is made in favour of the Malta company and thereby the VAT payable is reduced.

The above was further improved upon through the issue of new guidelines by the Maltese fiscal authorities in January 2024. These introduced, with effect from 1 January 2024, the new VAT rate applicable on a charter of 12% rather than the 18% subject to compliance with a number of conditions, namely:

- (i) The place of hiring in line with the place of supply rules must be Malta.
- (ii) The charter must be conducted in accordance with a charterparty agreement concluded for a specified term.
- (iii) The total charter period with respect to a particular pleasure boat or boats of the same kind does not exceed 5 weeks (35 days) during the previous twelve (12) months ending on the date of the beginning of the existing charter period.

(b) VAT deferment and temporary importation on an acquisition of a yacht

The VAT treatment of the purchase of a yacht by the lessor is generally of extreme importance given the high cost of such yachts. This treatment will depend whether the yacht is procured locally, acquired from another EU member state or imported into Malta from a third country.

Firstly, it is important to state that the importation of a yacht by a Malta company who would be leasing commercially the boat will result in a VAT neutral position since the import VAT can be claimed back by the Maltese company through standard claim procedures. However, since this import VAT would generally result in high values, this does create cashflow issues. However, Malta has introduced an attractive VAT deferment procedure as follows:

An authorization may be given by the Commissioner under Article 60(1) upon a request for a VAT deferment is made in writing by the Maltese company to the Commissioner. This VAT deferment will give a substantial cashflow benefit to the importer since no VAT will be paid in the first place. This procedure is open to owners of yachts not resident in EU and have a non-EU flag who plan to use the yacht temporarily in the territory of the European Union. Such procedure can be done via Malta, in which case, the yacht in question would have to enter the EU through Malta, subject to certain conditions. Such temporary importation will result in the yacht to be exempt from VAT, if the yacht stays up to a maximum of 18 months in EU territorial waters. The Commissioner would even consider to give this deferment without asking for any bank guarantee etc in cases where the Revenue can trace the Maltese importing company with relative ease.

Besides the obvious cashflow advantage of such a provision, there is also the advantage of obtaining an interim comfort letter from the VAT department. In fact, whilst upon a yacht leasing arrangement, a 'VAT Paid Certificate' cannot be issued by the VAT authorities since VAT has not been duly paid in full and therefore the yacht in question is not technically 'VAT Paid', the VAT authorities may issue an 'Interim Comfort Letter' which confirms that VAT is being accounted for in Malta during the leasing arrangement. This comfort letter entitles the yacht the same treatment in EU harbours as those with a VAT Paid Certificate.

Conclusion

The aim of this paper is to lay out a number of fiscal incentives which are all endorsed by the EU that Malta has introduced to remain competitive in this industry. There are other advantages and incentives that do not fall in the ambit of this paper such as those relating to taxation of seafarers, shipping groups and also non fiscal advantages. There is also other concepts and data which are not included such the rate of tonnage tax applicable, compliance obligations, requirements by Transport Malta/Shipping Registry in terms of ship registration etc. When all of these considerations are taken holistically, one can conclude that Malta is very well placed for the foreseeable future to be successful as it has been in the past.