

Legal and Tax implications of Med yachting

Navigating Red Tape



Along with dreams of lazy days in St. Tropez, parties in Monaco and swimming on the Costa Smeralda, yacht owners including Europe in their 2015 passage plan should consider the tax and legal implications of operating their yacht in Mediterranean waters. Our legal expert, Prof. Dr. Christoph Schliessmann, puts together the jigsaw of basic liabilities and implications.

J

Just as the USA has less institutional Federal Law over its 50 States and the capital federal district, despite the supranational regulations of the EU, Europe has relatively less institutional regulations. Around the Mediterranean there are States with long traditions and culture and their own Legal and tax structures. Each State not only has its own tax system, but the States are in competition with each other. Many of the States are searching for new fiscal income sources, resulting in them lying in wait for the unprepared and unsuspecting yacht owner. So what happens if a US-citizen arrived in a EU-Country with a yacht flagged in Florida?

Let us assume that the yacht does not belong to a legal person or association of individuals with a statutory Head Office in the customs area of EU, is not registered to a EU-Flag and also is not piloted by any EU-Citizen. If a traditional import takes place in an EU-Member State, this obviously results in a turnover tax on imports, and customs liability. According to the customs regulations however, non-community goods like yachts—which are used within the EU Community for a limited time and after temporary use are re-exported—these can enter with a waiver of import charges.

TAX LIABILITIES, BE ADVISED!

EU-wide there is therefore regulation that yacht owners who are not EU-citizens, with yachts that do not fly EU-Flags, can stay in EU-waters for a maximum period of 18-months, otherwise they must pay the EU-turnover tax on imports for the yacht. If this 18-month period is exceeded, turnover tax on imports and duty must be paid for the value of the yacht in the country where the yacht is at the time of tax due date. Depending upon country that can be up to 25 percent in States around the Mediterranean. The 18-month exemption however assumes that everyone who cruises a EU-Country with their yacht clears inward at the nearest custom harbor and thus brings the yacht in status of temporary import. The yacht in this special temporarily import procedure must—with regard to the normal decrease in value on the basis of use—remain in an unchanged

status, thus must not be comprehensively structured in the EU. Repairs and maintenance, including maintenances and setup work and measures for preservation—refit and such works that ensure the observance of technical specification valid for the yacht in view of its use—are permissible. Otherwise immediately the corresponding tax and duties are payable. In the customs area of the community resident persons basically cannot claim the complete exemption from import charges. This situation is of vital interest for non-EU yacht owners who wish to keep their vessels in EU-waters for a period exceeding 18-months, or those who have a long term berthing agreement in the EU. Purely theoretically, they can of course clear outward from the EU just prior to the lapse of their 18-months grace period, and again return with a temporarily import status that allows the period to restart. In case of fixed

berthing agreements however I would urge caution, because there are cases, where the Authorities have included the berths and have classified the formal inward and outward clearing as bypassing. As a result the turnover tax on imports is levied. The situation in Spain is particularly interesting as that country levies a so-called 'Matriculation-Tax'. Essentially, if an owner has a so-called "Residencia", then this vessel must be placed under the Spanish flag, regardless of whether it is new or used. The term 'resident' in this case however does not only apply to a person registered in Spain as resident and officially registered, one can also be a "tax resident" through various 'qualifiers': i.e. by residing for more than 180-days a year in the country, or having an employment contract in Spain, or being registered as independent with the Financial Authorities... even if Residencia is never been applied for. Also, simply participating in a company in Spain is also



sufficient to qualify for the unfortunate 'tax resident' status, and thus be liable for the duty of payment of the matriculation tax. With matriculation, or registration in the Spanish Ship register, the 12-percent special tax is due at the time of evaluation. In quick order an easement is valid to the effect that a yacht can save the 12 percent special tax with foreign flag, but only if it is used as a) full Charter yacht and b) for this use a corresponding exception application—Tax Exempt in Spanish waters—has been filed in IN ADVANCE with the appropriate Spanish Financial Authorities. A short anecdote, indeed a true story, will illustrate an extreme case of how the authorities are attempting to collect tax using these regulations... A foreign owner was in Palma with his superyacht and wanted to use the opportunity to undertake some exterior paintwork that was required on his yacht. He engaged a Spanish resident, who lived on the

Despite its political union and single currency, not all states within the EU share uniform tax and administration policies... and they can differ wildly!

other end of the island, near Alcudia. After the Spanish painter had made the return trip from Alcudia to Palma for several days, the owner requested he stay aboard overnight in order to save on the commute and finishing the job quicker. The financial authorities caught wind, checked the boat and determined that the Spanish person used the yacht for private overnight stay. An immediate payment demand was levied for the 12 percent Matriculation tax. The Spanish Courts have already recognized this tax collection as a right in two cases. The Spanish painter has effectively 'infected' the boat as "resident" in a tax sense. Quite an expensive paint job!

NAVIGATING, LEGAL OBSTACLES

Every foreign yacht owner is therefore advised to be properly informed about the specific legal and tax regulations before sailing in EU-Country. But precau-

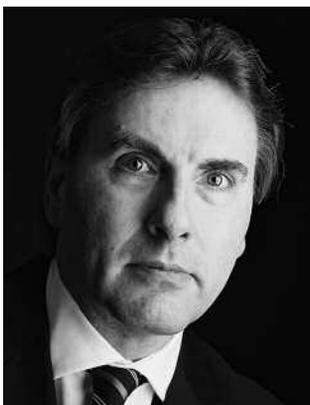




tion is also recommended in the case of captain's licenses. Some yacht owners themselves act as Skipper on their private yacht, but the requirements for licenses for EU-foreigners are different in parts of the EU—here are just three examples in Spain, Italy and Croatia: In Spain special certification is required of non-EU citizens for the use of a foreign yacht-driving license, which must be applied for in the respective Consulate. For the piloting of yachts of non-EU-Citizens under a EU-Flag, the appropriate license for the vessel concerned by the country of origin is sufficient however. EU-foreigners who live in Spain and sail their boat under a Spanish flag require a Spanish boat license, however one can gain approval of the license of the country of origin from the Shipping Authority.

This certificate however is only valid for three months. In Italy there is no differentiation between Sea and Interior licenses, or between motor and sailing yachts. Furthermore, one discerns in Italy independent of the mode of sailing three various types of boat licenses: A license authorizes for taxes of craft over 78' (24m) in length; it qualifies the sailing within the 12-miles coastal zone; and a license is valid unrestricted. In Italy foreign boat documents are recognized. It is sufficient that captains carry their national Shipping papers and security certificates. A General Liability Insurance is required with minimum coverage of 5-million Euro for damages to persons and 1-million for damage to property. In Croatia, EU-Member since 1st July 2013, a license is required for all boats, irrespective of the size,

from tenders to inflatable craft, even the jet skis in the tender garage. Depending upon the size of the yacht licenses are issued and a radio certificate is also supplied. This means that sailing in Croatian coastal waters is generally liable to charges. A "Permit" must be applied for and paid at the time of entry into the country via a responsible port authority at the time of entry. The permit is valid for a year from the date of issue. In conclusion, there is no doubt that yachting in Europe is a wonderful experience, but prior to arriving one must ensure yourself, your management company or captain is well-prepared and all legal and tax liabilities are carefully studied. Proper preparation will ensure your trip is full of unexpected surprises... of the positive kind!



ABOUT THE AUTHOR

Prof. Dr. Christoph Ph. Schliessmann

Confessing a passion for this 'fascinating' sector, Prof. Dr. Christoph Ph. Schliessmann heads up The Yacht Attorney, a specialist law firm for international business and yacht law. Schliessmann, who studied law and corporate management in Nürnberg-Erlangen, Munich, St. Gallen/Swiss, Stanford and London founded this highly specialized law firm in 1994 in Frankfurt. He is regarded as a leading yacht attorney for all legal, economic and fiscal issues surrounding yachts. Christoph is also one of the first and only bar approved lawyers for international business law in Germany... and now a regular INVICTUS contributor!