

THE ITALIAN VAT REGIME ON THE LEASING AND CHARTERING OF PLEASURE VESSELS

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The Italian government (the “government”) has made several changes in recent years to the territorial scope of VAT rules on the supply of services relating to leasing and chartering of yachts (the “VAT Territoriality Rules”), in order to make them user-friendly and compliant with EU law.

"The new amendments have been acted to address objections from the European Commission which had commenced legal proceedings claiming that Italy had been incorrectly applying VAT Territoriality Rules."

OVERVIEW AND BACKGROUND

The legislative changes to the VAT Rules are as follows:

- Article 1, paragraphs 725 and 726, of Law no. 160/2019 (the “2020 Budget Law”);
- Article 48, paragraph 7, of Decree-Law no. 76/2020 (the “Simplification Decree”); and
- Law no. 178/2021 (the “Budget Law 2021”).

These changes have primarily been enacted to address objections from the European Commission (the “Commission”), which had commenced legal proceedings claiming that Italy had been incorrectly applying the territorial scope criteria of Directive 2006/112/EC (the “VAT Directive”). The VAT Directive states that, for short-term hired transport, the place of supply is the place where the transport is

actually used by the customer, whereas Italy had been using a flat-rate criteria (based on percentages of presumed use according to the length and propulsion of a yacht) to assess whether a leased or chartered yacht fell within the territorial scope of Italian VAT. As a result, the Commission alleged that Italy was failing to comply with Article 56 (which establishes the deemed place of supply and the definition of “short-term hiring”) and Article 59 (which establishes the deemed place of supply for a number of activities) of the VAT Directive.

THE BUDGET LAW 2020

From 1 April 2020, the 2020 Budget Law replaced the flat-rate calculation method (described above) with a criteria similar to the VAT Directive and based on where the chartered or leased yacht was actually being used by the customer.

THE SIMPLIFICATION DECREE

The Simplification Decree postponed the application of the provisions in the 2020 Budget Law to transactions carried out from 1 November 2020.

The Simplification Decree also extended the scope of application of the provisions in the 2020 Budget Law – which had originally applied only to B2B short-term services – to B2C long-term services (i.e. services lasting more than 90 days).

"The Italian Revenue Agency has provided clarity on how to demonstrate that a leased or chartered yacht's place of actual use by the customer is outside the EU."

IMPLEMENTATION

The Italian Revenue Agency has provided, by Measure no. 341339 of 29 October 2020, clarity on how to demonstrate that a leased or chartered yacht's place of actual use by the customer is outside the EU.

For short-term and long-term services, at least one of the following pieces of evidence must be provided:

- i. data and information obtained from the satellite navigation or transponder systems (e.g. an Automatic Identification System);
- ii. digital photographs of the yacht's point for each week of navigation as detected by any device and taken at a frequency of at least two per week of navigation;
- iii. documentation (e.g. invoices, contracts, fiscal receipts and related means of payment) proving that the yacht is moored in ports located outside the EU; or
- iv. documentation (e.g. invoices, contracts, fiscal receipts and related means of payment) proving that goods and/or services were purchased from commercial establishments located outside the EU for use outside the EU.

For long-term services only, evidence of actual use outside the EU is provided through the following:

- i. the leasing, financial or charter contract, or a similar document; and
- ii. the hard copy of the digital data from the yacht's navigation journal, the yacht's official logbook or the yacht's fully certified logbook.

THE BUDGET LAW 2021

The Budget Law 2021 further addressed the subject of the VAT Rules by establishing that actual use of a pleasure boat outside the EU must be supported by evidence and a declaration made by the user of the boat .

To this end, as of 14 August 2021, the Revenue Agency has introduced a requirement for a declaration issued by a purchaser that allows a supplier to issue invoices for payment on account with partial exclusion of tax (the "preliminary declaration"). The preliminary declaration is only required if advance payment invoices are issued and the supplier has no certain references regarding the actual use of the yacht in EU member state territorial waters.

At the end of each calendar year, and by 31 January of the following year, users must submit a new declaration (the “final declaration”). In the final declaration, the user certifies the actual use of the yacht in EU territorial waters, on the basis of which the supplier shall, if necessary, issue a variation note (pursuant to Article 26 of Presidential Decree no. 633/1972), without application of interest and penalties.

CONCLUSION

The legislative changes discussed above have been welcomed in Italy and form part of a broader international drive to standardise and clarify global tax regimes to aid transparency and anti-avoidance measures.

"The Budget Law 2021 established that actual use of a pleasure boat outside the EU must be supported by evidence and a declaration made by the user of the boat."

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