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MARINE



The Advantages of Onshore Jurisdictions for Yacht Registration (Financial & Tax Implications)



Question:

Which are the more important factors which any consultant/owner should consider when faced with a decision as to the choice of jurisdiction and flag?



Premises:

- The choice of flag is inextricably and intimately linked with any fiscal and/or financial consideration
- Super yachts are described as yachts in excess of 24m
- Corporate structures for holding yachts
- Distinguish between pleasure and commercial yachts
- Onshore jurisdiction



What do we understand by “Onshore Jurisdiction”?

The Onshore Jurisdictions we have considered as “Yacht Friendly” jurisdictions:

- Great Britain
- The Netherlands
- Malta
- Cyprus



The factors we identified:

- Taxation
- Company registration
- Accounting obligations
- Financing
- Flag registration
- Crewing



Taxation:

- Income tax
- Value added tax (VAT)
- Stamp duty
- National insurance contributions



Income Tax

- Taxable income: in the event of the sale of a yacht or in the form of profits from the commercial use of a yacht
- “Yacht friendly” jurisdictions have introduced specific provisions for the yachting industry. ex. Tonnage Tax System (Great Britain, The Netherlands & Malta), or specific provisions for shipping companies (Cyprus & Malta)
- “Yacht friendly’ jurisdictions have introduced specific exemptions on capital gains derived from proceeds from the sale of a yacht, ex. Cyprus & Malta



VAT

- 6th VAT EC Council Directive
- Non EU residents or companies can benefit from specific exemptions or arrangements. These exemptions are scrutinised closely and conditions are imposed, ex. impossibility to charter whilst under a temporary importation regime and a maximum limit of 18 months.



VAT

- The laws and regulations seen as a benefit to superyacht owners.
- Exemption for yachts used for the carriage of passengers for a reward over the high seas.
- The interpretation of provisions in the 6th VAT EC Council Directive allows “yacht friendly” jurisdictions to provide advantageous solutions for private yachts, ex. leasing structures in France, Italy & Malta.



Other

- Exemption from stamp duty in the event of a sale of a yacht, or the sale of shares in a company owning a yacht.
- Exemption from payment of national insurance contributions for crew employed onboard a yacht when such crew is not resident in the flag state.



Company Registration

- A further distinction should be made between “yacht friendly” jurisdictions which promote financial services and those which do not.
- Company registration processes will result in a due diligence exercise being performed, and respect for international standards.



Company Registration

- Company registration requirements will avoid unwanted doubts and hesitation for authorities vetting company documents, ex. In the case of a Bank providing financing for the purchase of a yacht, or for the purpose of opening an account in the name of the company used to administer the charter activity of a yacht.
- Positive discrimination in favour of EU resident companies when compared to companies registered in dubious jurisdictions.



Accounting Obligations

- Most onshore jurisdictions impose accounting obligations, annual audits and reporting obligations.
- “Yacht friendly” jurisdictions introduced and apply provisions to benefit the industry, ex. SMEs are authorised to file abridged accounts and have less onerous reporting obligations (do not require to report the name of charterers)



Accounting Obligations

- The holding and filing of accounts is an exercise in transparency and a good working practice.
- Preparing, auditing and filing accounts is to the benefit of any company having a charter business – this is all the more so if and when said company is faced by questions from an authority contesting the veracity of the charter business.



Financing

Any bank or financial institution considering a request for finance will want to ensure:

- The company is duly registered
- The identity of the shareholders and legal representatives of the company
- The guarantees required as security can be enforced



Financing

Any bank or financial institution considering a request for finance will want to ensure:

- The yacht is registered in an acceptable jurisdiction with clear laws for yacht registration
- The yacht is registered in an acceptable jurisdiction with clear laws for the registration of mortgages
- Advantageous and clear ranking for creditors



Financing

Any bank or financial institution considering a request for finance will want to ensure:

- Efficient and cost effective procedures for yacht arrest
- Efficient procedures for the enforcement of mortgages and the judicial sale of yachts

Only clear and specific laws will provide the certainty and confidence required by banks and financial institutions.



Flag Registration

- A due diligence process at the time of registration and deregistration of a yacht will ensure the rights of any owner or creditor
- The good reputation of the flag state will mean a lower likelihood of inspections on a yacht entering foreign ports
- Codification of safety and security standards imposed by international conventions is an advantage and a comfort



Crewing

- “Yacht friendly” jurisdictions will require safe manning certificates and the endorsement of the certificates for the crew
- “Yacht friendly” jurisdictions impose labor laws with clear provisions for the respect of contracts, wages, dismissals and other requirements such as the need for medical insurances for the crew



Final remarks

- Well structured holdings are a *sine qua non* in the present circumstances and for the future of the yachting industry
- “Yacht friendly” onshore jurisdictions provide the possibility to create functional and tax efficient structures which, when combined to a sound regulatory regime, tilt the balance in favour of such jurisdictions, especially for yachts navigating EU territorial waters