

FACT SHEET 8 – YACHT REGISTRATION & SHIPPING

Advantages of Malta Yacht Registration generally

- Complete tax exemption to owners, charterers and financiers of Maltese vessels of 1,000 NRT and over. This exemption is also administratively extended to most vessels of under 1,000 NRT.
- No trade restrictions.
- Low Company formation and Registration costs.
- No restrictions on the nationality of the shareholders and directors of Maltese companies
- No restrictions on the nationality of the Master, officers and crew carried on board Maltese vessels.
- No taxation or restrictions on the sale or transfer of shares of a Company owning a Maltese-registered vessel.
- Straightforward and quick company and vessel registration procedures
- The Shipping Registry offers a 24-hour service, seven days a week in respect of urgent matters.
- Eligibility of Non-Maltese Shipping Company to own and operate Malta flagged vessels.

Commercially registered Yachts

With the introduction of major fiscal (VAT) incentives to Maltese yacht registration contained in the Commercial Yacht Code.

The operation of commercially registered yachts for chartering purposes using a Maltese company (via an International Trading Company) is very tax advantageous. Profits from chartering are effectively taxed in Malta at 5%, there would be no VAT on chartering contracts and the input VAT on the purchases by the Maltese company can be recovered.

Registering of the yacht under the Maltese flag for private use would also be effected via an International Trading Company.

Maltese Maritime Law therefore now distinguishes between private and commercial yacht registration.

In fact, there are 3 classes of 'commercial yachts' contained in the Code namely:

- Class 1 - Yachts in commercial use of not less than 10 metres in length overall and not more than 24 metres in length;

- Class 2 - Yachts in commercial use of more than 24 metres in length and less than 500 GT;
- Class 3 - Yachts in commercial use of more than 24 metres in length and 500 GT and over but less than 3000GT.

Although the registration process of the 3 classes differs between them, the following guidelines outline the important requirements in the generality of cases.

Registration Procedure of a Yacht under the Maltese flag

(A) Requirements for Provisional Registration:

- Application form, listing particulars of the vessel.
- Proof of qualification to own a Maltese Ship. In the case of body corporate, the Memorandum & Articles of Association of the company.
- Payment of initial registration fees.

Immediately upon registration of the vessel under the Malta Flag, the Registrar will release:

- A Provisional Certificate of Malta Registry valid for 6 months.
- A Provisional Radio Licence.
- A Carving & Marking Note.

(B) Requirements for Permanent Registration:

The following documents are to be submitted to our offices for further filing with the Registrar within one month from Provisional Registration:

- i Original Bill of Sale.
- ii Original Deletion Certificate from the previous Registry. It is important that the deletion certificate itself bears a declaration that the yacht was deleted free from encumbrances. The free from encumbrances declaration should bear the **same date** as the deletion certificate.
- iii Return of the Carving & Marking Note duly signed, stamped and dated by an authorised surveyor of a recognised Classification Society.

- iv Certificate of Survey which is to be drawn up either by a Classification society or by a local surveyor at a probably cheaper cost.

Return of the Provisional Certificate of Malta Registry.

Favourable VAT treatment in Yacht Leasing

The second major incentive introduced in 2006 in respect of yacht-registration field relates to the VAT finance leasing rules.

A financial leasing agreement of a vessel is an agreement whereby, rather than an outright purchase, a yacht is leased to the third party by the lessor - a finance leasing company - normally a Maltese Shipping Company. In addition, at the end of the lease period, the third party may opt to purchase the vessel at a percentage of the original price.

If the third party already owns the yacht purchased from a non-EU country then he would transfer it to the Maltese Shipping Company, of which he would be the beneficial owner or alternatively, the Shipping Company could be used to purchase the vessel itself. There would be no tax or VAT implications on these transactions both in the case where the third party is selling his vessel to the Shipping Company (private sale) or in the case where the Shipping Company purchases the vessel directly from the EU or non-EU supplier of the third party.

These financial transactions are however book entries and no real transfers of cash need take place.

- How is the leasing agreement treated for VAT purposes?

For the purpose of VAT, the lease of the vessel is a supply of services with the right of deduction of input VAT by the Company, where such right applies. This supply of services is taxable according to the use of the vessel, attributed within the territorial waters of the European Union (EU), provided that the lessor is a Maltese company (including a commercial bank) which is leasing the vessel to any Maltese or non-Maltese person or company.

In this way, the third party would, upon termination of the lease, be the owner of an EU VAT registered vessel having paid a fraction of the VAT rates due. The staggered VAT payments would also alleviate any cash flow difficulties.

- How is the use of vessels within EU territorial waters calculated?

It is very difficult to trail the movements of pleasure vessels in order to determine the period that the vessel spends within the territorial waters of the EU and the time it spends outside the EU.

In this regard, these guidelines establish the estimated percentage portion of the lease based on the time that the vessel is used within the territorial waters of the EU. These percentages are set according to the length of the vessel and its means of propulsion (power or sailing).

The standard rate of VAT of 18% is only applied on the established percentage of the lease, deemed to be related to the use of the vessel in EU territorial waters. The table below indicates the established percentage portions according to the type of vessel:

Table 1: “Presumed” Length of Stay Percentages

Type of vessel	% of lease subject to VAT	Effective rate of VAT
Sailing boats or motor boats over 24 metres in length	30%	5.4%
Sailing boats between 20.01 to 24 metres in length	40%	7.2%
Motor boats between 16.01 to 24 metres in length	40%	7.2%
Sailing boats between 10.01 to 20 metres in length	50%	9%
Motor boats between 12.01 to 16 metres in length	50%	9%
Sailing boats up to 10 metres in length	60%	10.8%
Motor boats between 7.51 to 12 metres in length (if registered in the commercial register)	60%	10.8%
Motor boats up to 7.5 metres in length (if registered in the commercial register)	90%	16.2%
Craft permitted to sail in protected waters only	100%	18%

In order to apply these guidelines the following conditions shall apply:

- The boat must come to Malta, possibly at the beginning of the lease agreement.
- The financial leasing agreement shall be between a Maltese company and any Maltese or foreign person or company.
- Prior approval shall be sought in writing from the Commissioner of VAT who is to confirm the rate applicable according to the use in EU territorial waters (depending on the size and propulsion of the vessel), as well as the acceptability of the value of the vessel as declared. For this purpose a valuation certificate of the vessel shall be submitted with the application for approval.

- An initial contribution shall be paid by the *lessee* to the *lessor* amounting to 50% of the value of the vessel.
- The Lease instalments shall be payable every month and the lease agreement shall not exceed 36 months
- The *lessor* shall be expected to make a profit from the leasing agreement over and above the value of the boat
- Any purchase value at the end of the lease agreement shall not be less than 1% of the original value of the vessel, and this will be subject to the standard rate of VAT at 18%.

If the *lessee* opts to purchase the vessel at the end of the lease, a VAT paid certificate will be issued to the *lessee* provided that all VAT due has been paid.

Worked Example:

Vessel with a length of 25 metres	
Value	€ 1,000,000
Est.Profit @ 10%	€ 100,000
<i>Total Value incl. profit</i>	€ 1,100,000
<i>Down payment:</i>	<i>Total VAT Payments:</i>
€ 500,000 x 30% = 150,000	
VAT = 150,000 @ 18% = 27,000	€ 27,000
<i>Instalments:</i>	
Balance of € 600,000 - 36 monthly instalments of 16,667 x 30% = 5,000	
VAT = 5,000 @ 18% = 900	€ 32,400
<i>Redemption:</i>	
1% of value = 10,000	
VAT = 10,000 @ 18% = 1,800	€ 1,800
	€ 61,200
Effective VAT Rate	6.12%

Maltese flag ships

Malta has a maritime tradition and culture that have been conducive to the country becoming well established as a reputable open ship register amongst the top ten registers in the world. All types of vessels, from pleasure yachts to cruise liners, container ships to oil tankers and oil rigs, may be registered under the Malta flag.

Vessel registration under the Malta flag and the operation of Maltese ships is regulated by the Merchant Shipping Act, a law based mainly on UK legislation but subsequently revised and amended in 1986, 1988 and 1990.

The Malta Maritime Authority was set up as a distinct and autonomous corporate body to supervise the organisation of primary maritime services and vested with detailed regulatory powers to enable ports, merchant shipping and yachting centres to operate within a centralised framework.

Advantages include:

- Low company formation and ship registration costs;
- Complete tax exemption to owners, charterers and financiers of Maltese ships of over 1,000 net tons - this exemption may also be extended to smaller ships;
- No restrictions on the nationality of the master, officers and crew;
- No restrictions on the sale or transfer of shares of a company owning Maltese ships;
- No restrictions on the sale and mortgaging of Maltese ships;
- No trading restrictions and preferential treatment to Maltese ships in certain ports;
- Malta is an international maritime centre providing the entire range of maritime services.

Eligibility for registration

All types of vessels, from pleasure yachts to oil rigs, may be registered, provided that, *inter alia*, they are wholly owned by Maltese citizens or Maltese bodies corporate.

The formation of a Maltese company is a straightforward operation: there are no nationality requirements as to both the shareholders and directors. Ships of 20 years and over but under 25 years must pass an inspection by an

authorised flag state inspector before or within one month of provisional registration. Ships of 25 years and over must pass an inspection by an authorised flag state inspector prior to being provisionally registered.

Procedure

A vessel is first registered provisionally under the Malta flag for six months (extendible to one year) during which period all documentation must be finalised.

The requirements, for **provisional registration** are:

- (a) An application for registration by the owner or an authorised representative;
- (b) An application for a change of name, if required;
- (c) A copy of the ship's International Tonnage Certificate, where applicable;
- (d) Proof of qualification to own a Maltese ship; in the case of a body corporate, the memorandum and articles of association;
- (e) A declaration of ownership made before the Registrar by the owner or an authorised representative;
- (f) Evidence of seaworthiness; in the case of trading vessels, confirmation of class; and
- (g) Payment of initial and annual registration fees.

The following documents must be submitted **during provisional registration**.

- (a) A builder's certificate if the vessel has not been registered elsewhere; otherwise, a bill of sale or any other document by which the vessel was transferred to the applicant for registry;
- (b) A cancellation of registry certificate from the last country of registry, showing vessel to be free from encumbrances or otherwise;
- (c) A certificate of survey and a copy of the tonnage certificate certifying that the vessel has been surveyed in accordance with Maltese regulations;
- (d) Evidence that the vessel has been marked in accordance with the law; and
- (e) At least one crew list accompanied by photocopies of the officers' certificates.

Closure of Registry

The registry of a Maltese ship may be closed at the request of the owners provided all liabilities and obligations in respect of the ship towards the State of Malta have been paid and the consent of all registered mortgages is produced.

Table 2:

Ship of Net Tonnage (NT)		Fee on Registration	Annual Tonnage Tax
Exceeding	Not Exceeding		
0	2,500	€ 585	€ 875
2,500	8,000	€585 plus 25 cents for every NT in excess of 2,500 NT	€875 plus 15 cents for every NT in excess of 2,500 NT
8,000	10,000	€1,865 plus 7 cents for every NT in excess of 8,000 NT	€2,795 plus 19 cents for every NT in excess of 8,000 NT
10,000	15,000	€2,005 plus 7 cents for every NT in excess of 10,000 NT	€3,168 plus 14 cents for every NT in excess of 10,000 NT
15,000	20,000	€2,353 plus 7 cents for every NT in excess of 15,000 NT	€3,867 plus 12 cents for every NT in excess of 15,000 NT
20,000	30,000	€2,702 plus 7 cents for every NT in excess of 20,00 NT	€4,450 plus 9 cents for every NT in excess of 20,00 NT
30,000	50,000	€3,400 plus 7 cents for every NT in excess of 30,000 NT	€5,380 plus 7 cents for every NT in excess of 30,000 NT
Exceeding 50,000		€4,800 plus 7 cents for every NT in excess of 50,000 NT	€6,778 plus 5 cents for every NT in excess of 50,000 NT

The above fees are reduced or increases depending on the age of the ship as follows:

Age of Ship		Reduction of Fee on Registration %	Reduction or Increase on Annual Tonnage Tax %	
Equal to or Exceeding	Less than			
Years				
0	5	50	-30	
5	10	25	-15	
10	15	-	-	
15	20	-	+5	
20	25	-	+10	Subject to Minimum Increase of €1,165
25	30	-	+25	

Ship Finance:

Registration of Mortgages under Maltese Law

Following is a brief outline of the security provided by a Maltese registered Mortgage:

1. Mortgages enjoy a significantly higher ranking over other privileged claims as specified in the Merchant Shipping Act Cap 234 of the Laws of Malta, and rank, in relation to other mortgages, according to the priority in date and time of their registration.
2. A vessel registered under the Malta flag may not be deleted by the owner without the prior written consent of the Mortgagee. A Maltese vessel (whose trading certificates have expired on account of the owner's negligence) may not be struck off the Register without the Registrar's submission of a one month notification received in writing by the Mortgagee, the owner and their respective local representatives.
3. The Mortgagee has the absolute power to sell the ship, but where there are several mortgagees, a subsequent mortgagee can only do so with the concurrence of prior mortgagees, unless the sale takes place following the order of a court of competent jurisdiction. The balance of the proceeds of sale, after discharging the mortgage debt, must be deposited for the benefit of other creditors and the mortgagor.
4. The Mortgagee has the power to apply for any extensions, pay fees, receive certificates, and generally do all such things in the name of the owner as may be required in order to maintain the status and validity of the registration of the ship.
5. The Mortgagee also has the power to prohibit the creation of any further mortgages and may likewise preclude the transfer of ownership of the Ship without his prior written consent. This may be effected by the inclusion of an express clause to this effect in the Mortgage Deed.

6. More importantly, the Mortgagee has an Executive title such that in the event of a breach of any of the conditions stipulated in the Loan Agreement, the Mortgagee may proceed to take full possession of the vessel without first having to obtain a Court judgement.

The filing and registration of the Mortgage instrument is effected here in Malta at the Malta Maritime Authority before the Registrar of Ships. The Mortgage is to be drawn up on the appropriate statutory form. Upon the registration of a Mortgage, the Registrar indicates the date and time on the said Mortgage and records it on the Register book. The original duly executed Mortgage instrument is then forwarded to the Mortgagee by the local representatives and is to be kept by them.

Apart from a copy of the Mortgage Deed itself, no other security documents need be registered with the Registry.

The registration of a Mortgage can be effected through the services of a Maltese representative for the Mortgagor by virtue of a Power of Attorney duly issued. This ensures that any amendments or alterations that may arise at the last minute may be easily effected by the duly empowered Attorney-in-fact. Moreover, the Mortgagee's representative can ensure that, prior to the registration of the Mortgage, there are no other existing mortgages or encumbrances which may jeopardise the priority ranking of the Bank/Financier.

It is important to note that the Mortgagor's Shareholders/Directors resolutions as well as Power of Attorney authorising the registration of the Mortgage are normally forwarded to the Mortgagee's local representatives for their examination in the light of Maltese Law. All signatures must be duly notarised and apostilled by the Ministry of Foreign Affairs, or legalised by a Maltese Consul, as the case may be.

The information contained in this fact sheet has been prepared by Busuttill & Micallef – Certified Public Accountants · Tax Consultants, Malta. It is of a general nature and is not intended to address particular circumstances of an individual or entity. The fact sheet is intended to provide the reader with an overview of the tax planning and other opportunities in Malta. This information is also subject to any changes that may occur to the relevant legislation.

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