

A large, stylized white sailboat is centered on a yellow background. The sailboat has a tall, thin mast and a large, triangular sail. The hull is a simple white shape. The background is a solid yellow color.

SMARTBOOK

2017

The logo for SOS YACHTING features the letters 'SOS' in a bold, white, sans-serif font. Above the 'O' is a stylized orange graphic consisting of two overlapping circles. To the right of 'SOS' is the word 'YACHTING' in a smaller, white, sans-serif font. A thin orange horizontal line is positioned below the 'SOS' text.

SOS YACHTING



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The 2017 VAT Smartbook

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Foreword

This is the second edition of the VAT Smartbook.

As fiscal representatives, we handle administrative compliances and VAT returns for our clients. While this is central to our services, the bulk of our time is spent on providing guidance and information to ensure charters run smoothly.

Over the past five years we have acquired a wealth of knowledge in this complex, niche sector. We believe that by sharing our knowledge with charter industry players we help them provide a better and more professional service to clients. We all have a vested interest in seeing this industry grow and flourish.

The 2017 edition covers changes at the date of publication in Croatia, France, Italy, Monaco and Spain. We have included detailed information about the VAT exemption schemes in France and Italy as well as maps and information about charter regulations in each country.

Every effort was made to ensure the information was accurate at the time of publication. However, new regulations can be put in place at short notice so check our website for updates (sosyachting.com).

We hope you find our Smartbook useful and wish you a successful charter season!

Alessandro Mazzoni
Chief Executive Officer
SOS Yachting





Quiz

True or false ?

See how much you know about charter operations in the EU.

	True	False
1. All trips outside French waters qualify towards the 70% rule under the FCE	<input type="checkbox"/>	<input type="checkbox"/>
2. Non-EU commercial yachts may purchase duty-free fuel in Italy	<input type="checkbox"/>	<input type="checkbox"/>
3. Commercial yachts may purchase duty-free fuel in Spain	<input type="checkbox"/>	<input type="checkbox"/>
4. Charterers pay VAT on fuel consumption in Italy	<input type="checkbox"/>	<input type="checkbox"/>
5. VAT is reduced for international voyages starting in Spain	<input type="checkbox"/>	<input type="checkbox"/>
6. VAT is not charged on charters starting outside the EU and cruising in Croatia	<input type="checkbox"/>	<input type="checkbox"/>
7. Non-EU yachts can charter in the province of Barcelona	<input type="checkbox"/>	<input type="checkbox"/>
8. Non-EU yachts can charter in the Balearics	<input type="checkbox"/>	<input type="checkbox"/>
9. If you don't qualify for the FCE you can't charter in France	<input type="checkbox"/>	<input type="checkbox"/>
10. If you don't qualify for the ICE you can charter in Italy	<input type="checkbox"/>	<input type="checkbox"/>



Commercial yachts and activity in the EU

Overview

Yacht charter regulations can be confusing.

There have been many changes in the last five years. The regulations refer to different legal frameworks - maritime, fiscal, VAT and, separately, taxation on energy products - which are implemented differently in each Member State. There are also a number of grey areas which still need to be clarified.

A large part of the complexity stems from the question of whether commercial yachts are compliant with the provisions regulating exemptions for commercial vessels. These exemptions concern VAT on the purchase of supplies and services (including fuel) and excise duty on energy products.

France also has a unique customs relief scheme in place for commercial yachts which enables them to be imported and released into free circulation in the EU without paying any VAT or customs duties. Other EU Member States have similar customs relief schemes which, however, entail movement of cash flows.

In the EU, VAT is regulated by the Sixth Directive. An EU Directive sets out objectives which require Member States to achieve a particular result. Member States must pass domestic legislation to give effect to the terms of the Directive. However, it is up to the individual countries to devise their own laws on how to reach these goals. This is the reason why the rules and regulations differ from country to country. Let's start by recapping VAT how works in EU Member States.

How does VAT work?

VAT is a tax imposed on the sale of goods and services. It works in the same way across the EU. VAT is calculated on all links in the sales chain from producer to end consumer.

Think of VAT as a tax on the value you add to products and services; in other words, on the price difference between what you paid and what you charge for a product. This how it works.

If an owning company registers its business for VAT:

- o It pays VAT on the supplies and/or services it buys from other businesses
- o Then charges VAT on the supplies and/or services it sells to clients or other businesses

Depending whether you charge it or pay it, VAT is called “output VAT” and “input VAT”. Output VAT is the VAT you charge other businesses or clients when they buy goods or services from you. Input VAT is the VAT other businesses charge you when you buy goods and/or services from them.

For businesses, the idea is that input VAT paid and the output VAT roughly equals out - if it doesn't, the balance is levelled with the tax agency.

So, if a business paid more input VAT than output VAT, it can reclaim the difference from the tax agency. That's what VAT returns are for.

If you are the final consumer (and not a business) you must pay VAT on the products and/or services you purchase in the EU. You cannot reclaim VAT.

Some supplies of goods and services are exempt from VAT. This means that no VAT is applied. The VAT Directive prescribes the supplies that EU countries must exempt and the supplies that they may choose to exempt. Supplies of goods and services for commercial shipping are exempt.

Exemptions and commercial yachts

The Sixth Directive (respectively Article 15(5) and Article 148(a)) regulates the conditions that vessel-hire services and international transport operations must meet to benefit from excise-duty and VAT exemption.

With a thriving charter market, a number of years ago France set up a scheme known as the French Commercial Exemption (FCE) which enabled compliant yachts to operate under the exemptions provided for in the Sixth Directive. The FCE also includes the customs relief scheme for importing yachts under VAT exemption into the EU.

There is a difference, however, between the end use of a commercial yacht and the end use of a commercial ship. In almost all cases, the final user of a commercial yacht (the charterer) uses the yacht for pleasure and not for commercial purposes. An exception can be when the yacht is used for business purposes to make a film or launch a product – for instance, for charters during MPIM, the Cannes Film Festival or the Monaco Grand Prix. However, the overall numbers are small.

This difference was highlighted in 2010. A ruling by the European Court of Justice (ECJ) established that *“the exemption set out in Article 15(5) of the Sixth Directive cannot benefit vessel-hire services for charterers who intend to use the vessel strictly for private purposes as final consumers”*. Indeed, for such a hiring service to be capable of exemption under that provision, *“the lessee of the vessel concerned must use it for an economic activity...”*.

This meant that charter fees would be subject to VAT if the charterer used the yacht for private purposes. VAT is due in the place of supply, the place where the yacht is made available to the charterer. If a charter started in France, VAT would be charged in France.

Owning companies that don't have a permanent establishment in the country are required to appoint a VAT representative to handle the collection and payment of VAT.

Brussels then looked more closely into international transport operations. Do commercial yachts chartering for pleasure meet the terms of the exemption?

The French Commercial Exemption (FCE)

To date, compliance with the terms of the French Commercial Exemption (FCE) enables EU and non-EU registered commercial yachts to purchase VAT exempt supplies and services in France.

The FCE also enables non-EU commercial yachts to be imported and released into free circulation in the EU under a specific customs relief scheme.

Up until 2015, to be compliant, yachts were required to be commercially registered, employ permanent crew and be used exclusively for commercial purposes, i.e. under a charter agreement (no private use by the beneficial owner was allowed).

However, Article 148 (a) of the Sixth Directive grants exemptions to “.... *vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities...*”. Navigation “on the high seas” means in international waters beyond 12 nautical miles from the coastline.

The above three provisions were deemed inadequate by Brussels. So in 2015, the French tax agency added three further criteria.

The Bulletin Officiel des Finances Publiques-Impôts 05/2015 states that a yacht's LOA must be over 15m and that 70% of trips during one calendar year must be outside French waters; a yacht must do more dynamic charters than static charters at the dock.

If compliant with the above, a yacht can benefit from the following advantages in France:

- o Non-EU yachts can be customs cleared without paying VAT upon importation into the EU
- o VAT-exempt fuel supplies
- o VAT exemption on supplies of goods and services (repairs or refit)

Italy has followed suit. For information, see the Italian Commercial Exemption (ICE).

How does the FCE work?

Let's recap. In order to benefit from the terms of the FCE:

1. The yacht must be registered as commercial
2. The yacht owning company must employ permanent crew on board
3. The yacht must be used exclusively for commercial purposes (under charter agreement or a transport service contract); no switching to private use in France
4. The yacht's LOA must be over 15m
5. The yacht must do more dynamic charters than static charters
6. During each calendar year 70% of cruising trips must be outside French waters

Provisions from 1 to 4 are purely administrative requirements.

Provisions 5 and 6 relate to the charter itinerary. For instance, if you only charter during the Monaco GP you will not qualify, since a GP charter is considered static. The 70% rule is more complex.

The “70% rule”

The *Bulletin Officiel des Finance Publiques-Impôts 05/2015* states that “...During each calendar year 70% of cruising trips must be outside French waters”.

So, what is a trip?

The *Bulletin* defines it as “a segment of a charter identified by guests embarking/diseembarking during the charter. If no guests disembark/embark, the charter includes only one trip”.

What is a qualifying trip?

A qualifying trip must take place either outside French territorial waters (both in EU and/or non-EU waters) or cruise in international and/or non-French territorial waters if it starts or ends in France or Monaco. A trip must include navigation. Charters “at the dock” do not generate any trips.

How to compute your trips

To compute your yearly number of trips you must divide the number of international trips by the total number of trips (national + international) and multiply the result by 100 (since we are talking percentages).

$$\left(\frac{\text{Number of international trips}}{\text{Total number of trips}} \right) \times 100 = X$$

If X equals 0.7 or over (i.e. 70%) you will continue to benefit from the VAT exemption. Let's make an example. During the calendar year (from 1 January to 31 of December 2017) you have done 8 charters which include 39 trips. Of these, 28 are international.

$$\left(\frac{28}{39} \right) \times 100 = 71$$

The result equals 71% so you qualify.

The charter starts in St Florent where guests embark and ends in San Remo where all guests disembark. Guests also embark/disembark in Calvi, St Tropez, Monaco and San Remo. The charter includes four trips.

The first trip, from St Florent to Calvi, is a domestic trip since it only includes French waters.

The second trip from Calvi to St Tropez includes international waters.

The third trip from St Tropez to Monaco also includes international waters ("touch and go" is permitted in France but the itinerary must be logged in the log book), while the fourth trip from Monaco to San Remo includes Italian waters.

The map below shows the charter itinerary of M/Y Sushi.



Three trips are qualifying since they include international waters and/or the waters of another country.

In each calendar year all charters worldwide count as long as the yacht is under commercial registration.

Duty-free fuel in France

In France (like most EU countries) fuel is subject to two taxes: VAT, which accounts for 20% of the final cost, and excise duty which accounts for approx. 50% of the cost per liter.

Current regulations provide that energy products supplied *“for use as fuel for the purpose of sea navigation other than private pleasure vessels”* are excise-duty exempt.

Charter yachts are almost always leased under a rental contract, which identifies the charterer as the final user of the yacht, and for pleasure rather than business purposes.

The 2010 ECJ ruling states that *“the lessee of the vessel concerned must use it for an economic activity...”*. This means that the conditions required for excise-duty exemption fail to be met by the majority of charter yachts under rental contract.

To date, all FCE compliant yachts under a rental contract operating in French waters can purchase VAT exempt supplies, services and fuel, but not excise exempt fuel.

Duty-free fuel and the transport contract

As of 2017, there is an option for yachts wishing the purchase VAT and duty-exempt fuel. They can operate under a transport service contract.

Under a transport contract, the owning company operates the yacht for commercial purposes and offers a service to passengers rather than leasing the yacht to the charterer for recreational purposes. The owner, as service provider/carrier, complies with the “commercial purposes” requirement. However, the contracts has limitations since it is intended for the transport of passengers rather than for charter.

If I have not chartered before, can I qualify for the FCE?

If you did not charter in French or Monegasque waters last year but plan to do so this summer, you can qualify for the French Commercial Exemption “by anticipation”. This means that you will automatically be granted a VAT exemption on the purchase of supplies and services in France and Monaco on the assumption that you will comply with all provisions of the FCE in 2017.

However, if your charter itinerary fails to meet the 70% rule, you will have to pay VAT on all supplies and services purchased duty-free in France and Monaco in 2017 and you will not be exempt from VAT in 2018.

If you do comply, you will be VAT exempt also in 2018.

So, if you intend to apply the FCE by anticipation (in addition to the administrative requirements), you must be sure your chartering schedule will allow you to meet the 70% rule.

What happens if I don't meet the 70% rule?

Yachts with LOA under 15m or for those which do not comply with the FCE, can still charter. They simply do not qualify for any exemptions and the owning company must operate as any other business.

This means that the yacht owning company will pay VAT on the supplies or services it purchases from other businesses (input VAT) and charge VAT on the supplies or services it sells to clients or other businesses (output VAT).

The idea is that the VAT paid and the VAT charged roughly equals out. Every month the owning company must file a VAT return computing input and output VAT. If it has paid more input than output VAT, it can claim the difference back from the authorities in its VAT returns.

With regards to importation, the yacht can no longer benefit from the customs relief scheme in France. However, the yacht can be re-imported and released into free circulation in the EU, including France, under an alternative customs relief scheme in another EU Member State. Typically, importation will entail, at least, movements of cash flows.





The Italian Commercial Exemption (ICE)

To ensure compliance with Article 148(a) of the Sixth Directive, the Italian tax agency defines the scope of “*vessel to be used for navigation on the high seas*”. Resolution 2/E clarifies the conditions commercial charter yachts must meet to benefit from an exemption on VAT and excise duty in Italy.

The Italian resolution follows the French lead (BOFIP 05/2015). Resolution 2/E requires “effective” cruising on the “high seas”, i.e. in international waters. This means waters beyond 12 nautical miles from the coastline. Class, length or tonnage of a vessel are no longer considered to provide sufficient bases for exemption.

The resolution also states that at least 70% of the total number of “voyages” in any one calendar year must be on the high seas. Exemption is granted by assessing the navigation itineraries of the previous year.

The resolution comes into effect immediately. This means that commercial vessels wishing to be exempt in 2017 will be assessed on to their 2016 records.

We are waiting for further clarification. Should the above-mentioned 70% be calculated on the number of voyages (as in the case of the French system), or on the hours of cruising? If the 70% is defined as the number of voyages, what is the precise definition of “a voyage on the high seas”?

Secondly, what documents can be considered “official proof” of compliance with the 70% ruling?

Finally, when purchasing supplies and services, what documents or declarations should the owning company provide Italian vendors to prove eligibility for exemption?

Duty-free fuel in Italy

In Italy all commercial yachts can take on duty and VAT exempt fuel. Yachts must be equipped with a fuel book, called *Libretto di Controllo*, and comply with administrative regulations.

If I have not chartered before, can I qualify for the ICE?

If you did not charter in Italy last year (new construction or just launched) but plan to do so this summer, you can qualify for the Italian Commercial Exemption (ICE) "by anticipation".

This means that you will automatically be granted a VAT exemption on the purchase of supplies and services in Italy on the assumption that you will comply with all provisions of the ICE in 2017.

However, if your charter itinerary fails to meet the 70% rule, you will have to pay VAT on all supplies and services purchased duty-free in Italy in 2017 and you will not be exempt from VAT in 2018.

If you do comply, you will be VAT exempt also in 2018.

What happens if I don't meet the 70% rule?

Yachts that do not comply with the FCE, can still charter. They do not qualify for any exemptions and operate as any other business.

This means that you will pay VAT on the supplies or services you buy from other businesses (input VAT). You will charge VAT on the supplies or services you sell to clients or other businesses (output VAT).

The idea is that the VAT paid and the VAT charged roughly equals out. Every month/year you must file a VAT return computing input and output VAT. If you have paid more input than output VAT, you can claim the difference from the government in your VAT returns.

Do I have to qualify for the FCE and/or the ICE to perform charter activity?

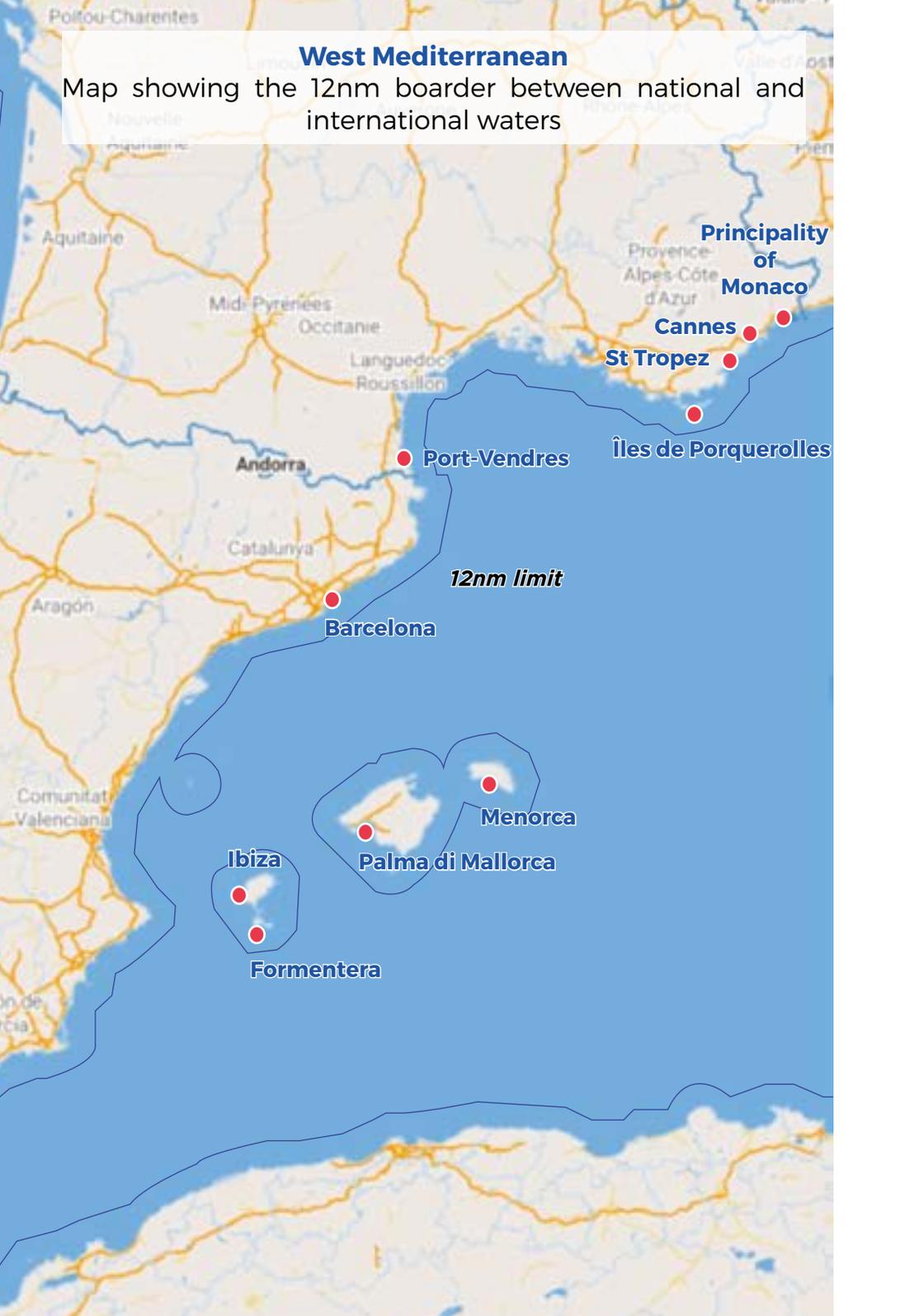
No, it is not mandatory to qualify for the FCE and/or the ICE to charter either in France or in Italy. You can continue charter activities but without any VAT or excise duty exemptions on the purchase of supplies and services in France or Italy (see “What happens if I don’t meet the 70% rule?”).

Depending where you intend to purchase the bulk of supplies and services (including fuel, refit work, etc.) you can choose to comply with either the FCE or the ICE to ensure you are VAT exempt in either France or Italy. It is not mandatory to comply with both relief schemes if you do not plan to purchase VAT exempt supplies and services in both countries.

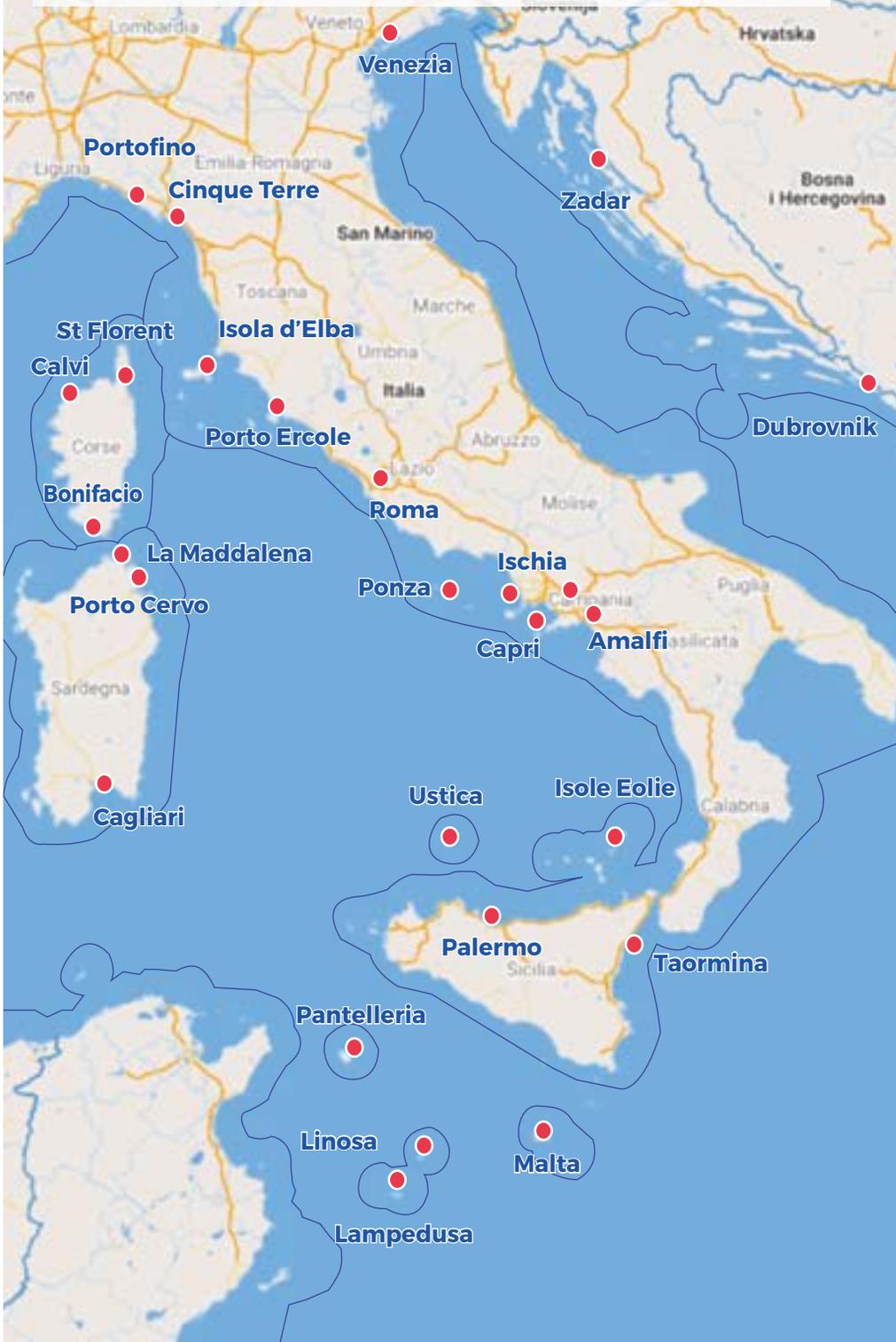
However, with regards to importation, if not compliant with the FCE requirements, the yacht can no longer benefit from the customs relief scheme (FCE) in France. She may be re-imported and released into free circulation in the EU (including France) under an alternative customs relief scheme in another EU Member State. Typically, importation will entail movements of cash flows.

West Mediterranean

Map showing the 12nm border between national and international waters



East Mediterranean





Chartering in Croatia

Before starting charter activities

Yacht compliances

Can EU flagged yachts charter?

Yes, they can.

Can non-EU flagged yachts charter?

Yes. As of May 2017 all non-EU yachts can charter in Croatia with no limitations of length.

What requirements must EU yachts meet?

VAT must be paid or accounted for and duly documented (commercial invoice, for instance).

Are there any other requirements?

The yacht must be commercially registered, employ permanent crew and be under charter contract.

What requirements must non-EU yachts meet?

Non-EU yachts must be imported into the EU and in free circulation. The appointment of a Croatian licensed ship agent is mandatory for EU and non-EU yachts over 45mt.

Does importation entail paying VAT on the value of the yacht?

It depends. Some countries, like France and Malta, have set up VAT schemes which allow commercial yachts to be imported at reduced VAT percentages or under VAT exemption.

Can a non-EU commercial yacht charter in any EU Member State after it has been imported?

Yes, once customs has been cleared and duty/VAT paid, as the case may be, the yacht is in free circulation in the EU and can cruise throughout EU waters. For instance, a yacht imported into the EU in France can charter in Croatia.

Is there a time limit on importation?

No, the yacht is in free circulation until it is exported out of the EU.

Can privately registered yachts charter?

No, neither EU nor non-EU yachts.

Is a charter license required?

Yes, all non-EU yachts must purchase a charter license. A license is also required if the charter starts outside Croatia in an EU or non-EU country and cruises in Croatian waters. Yachts flagged Isle of Man, Gibraltar and the Channel Islands do not need a charter license since the flags are now deemed to be EU.

For how long is it valid?

A license is valid for one calendar year. The number of licenses issued is no longer restricted but the Croatian Ministry of Maritime Affairs has advised it might temporarily suspend issuance for up to 3 months in order to avoid market overload.

Where can I purchase a license?

Through a licenced ship agent.

Are there any further requirements?

Yes, the technical documentation of the yacht must be inspected. The inspection must be organized through your ship agent after your arrival.

Owning company compliances

Does the yacht owning company need to register for VAT?

Yes, before starting any charter activity.

What is the process?

The yacht owning company must appoint a VAT representative based in Croatia. The VAT representative will apply for VAT registration on behalf of the owning company.

What does the VAT representative do?

The VAT representative acts as the local agent/representative of the company and is responsible for administrative compliances including collecting and paying VAT to the government and filing VAT returns. The VAT representative also issues the invoices for the charter to the charterer on behalf of the owning company.

How long does the process take?

It can take between 4 and 6 weeks. The yacht may not start charter activities until all the authorizations are in place.

VAT and charter activities

Use and enjoyment

Is VAT due on charter fees?

Yes, it is.

What is the VAT rate?

The standard rate in Croatia is 25%. VAT on charter fees is reduced to 13%.

When is VAT charged on charter fees in Croatia?

As of May 2017, VAT is due in two cases. On all charters starting in Croatia and on the number of days spent in Croatia if the charter starts outside the EU.

With regards to charters starting outside the EU, if the contract was signed and the fees paid before May 1, 2017, no VAT is due on the fees.

Is VAT due if the charter starts in another EU country?

No, VAT is due in the place where the yacht is made available to charterer.

Is VAT charged on delivery and redelivery fees?

No.

Can the taxable amount for VAT purposes be reduced if the yacht cruises on the high seas?

No, there is no reduction for international voyages.

Do I need to advise the VAT representative about all charter contracts in advance?

Yes, the VAT representative must be up to speed. The representative issues invoice/s for the charter fees and is responsible for collecting and paying the VAT on the fees to the tax agency.

Can input VAT be reclaimed by the owning company?

No.

Fuel, APA and VAT

Is duty-free fuel available?

Duty-free fuel isn't available to commercial yachts in Croatia.

Are duty-free supplies available?

No. In Croatia commercial yachts may not purchase duty free supplies and services. However, VAT exempt supplies and services purchased outside Croatia may be enjoyed in Croatia without Croatian VAT being due on consumptions.

UBO use and taxation

Can the UBO use its yacht?

Yes, with a charter contract in place at a slightly discounted rate.

Will the owning company be liable for income tax on income generated in Croatia?

No, unless it has a permanent establishment in Croatia.

Will the owning company be subject to withholding tax?

No, not as of now.

Is the Owing Company responsible for paying input VAT to the Croatian tax agency?

Yes, both the owning company and the VAT representative are responsible for collecting the VAT from the end user, filing returns and paying VAT to the tax agency.



Chartering in France and Monaco

Before starting charter activities

Yacht compliances

Can EU flagged yachts charter?

Yes, they can.

Can non-EU flagged yachts charter?

Yes, they can.

What requirements must EU yachts meet?

VAT must be paid or accounted for and duly documented (i.e. invoice/s issued by the shipyard, VAT paid certificate, etc.).

Are there any other requirements?

No, not for being legal to charter.

However, if the yacht wants to benefit from VAT exemption on the purchase of supplies and services, it must meet the requirements of the French Commercial Exemption (FCE)*.

What requirements must non-EU yachts meet?

Non-EU yachts must be imported into the EU and in free circulation.

Are there any other requirements?

No, not for being legal to charter.

* See the FCE at page 11 for more information.

However, if the yacht wants to benefit from VAT exemption on the purchase of supplies and services, it must meet the requirements of the French Commercial Exemption (FCE).

Does importation entail paying VAT on the value of the yacht?

No. France has set up a VAT exemption scheme known as the French Commercial Exemption (FCE) which allows commercial yachts to be imported in the EU under VAT exemption.

Can a non-EU commercial yacht charter in any EU Member State after it has been imported?

Yes, once customs has been cleared and duty/VAT paid as required, the yacht is in free circulation in the EU and can cruise throughout EU waters.

Is there a time limit on importation?

No, the yacht is in free circulation until it is exported out of the EU.

Can privately registered yachts charter?

It is possible. For instance, Marshall Islands has developed a specific framework called YET (Yachts Engaged in Trade).

What are the requirements?

There are three key compliances:

1. The yacht's flag state must allow private yachts to charter.
2. The yacht must be into free circulation in the EU. Typically, private non-EU yachts can enter the EU under temporary admission for 18 months without VAT and or customs duties being due. However, being in free circulation entails either being VAT paid or imported under the French Commercial Exemption (FCE) for commercial yachts.
3. The owning company must be VAT registered, appoint a VAT representative and collect VAT from the charterer.

Is a charter license required?

No, not in France.

If a commercial yacht fails to comply with the FCE, can it continue to charter?

Yes. But it will not be able to benefit from VAT exemption.

Owning company compliances

Does the yacht owning company need to register for VAT?

Yes, before starting any charter activity.

What is the process?

The yacht owning company must appoint a VAT representative based in France. For VAT purposes France and Monaco are the same territory. The VAT representative will apply for VAT registration on behalf of the owning company.

What does the VAT representative do?

The VAT representative acts as the local agent/representative of the company and is responsible for administrative compliances including collecting and paying VAT to the government and filing VAT returns. The VAT representative also issues the invoices for the charter to the charterer on behalf of the owning company.

How long does the process take?

It takes 3 to 4 weeks. However, the yacht may start chartering activities after the application for VAT registration has been submitted (approx. 2 or 3 working days).

FRANCE and MONACO

Does the owning company need to register for VAT in France and in Monaco?

No. If the company intends to operate in France or Monaco, it must register for VAT in France. For VAT purposes France and Monaco are considered the same territory, French customs regulations apply in Monaco. A French VAT representative can handle VAT compliances and filing for France and Monaco.

Do any compliances for charter differ in France and Monaco?

No.

VAT and charter activities

Use and enjoyment

Is VAT due on charter fees?

Yes, it is.

What is the VAT rate?

The standard rate in France and Monaco is 20%.

When is VAT charged on charter fees?

20% VAT is charged on charters starting in France or Monaco.

Is VAT due if the charter starts in another EU country?

No, VAT is charged in the place where the yacht is made available to charterer.

Is VAT charged on delivery and redelivery fees?

Yes. VAT is charged at the same percentage as on the charter fees, 20% for charters in French and EU waters; 20% of 50% (10%) of the charter fee for charters including international waters.

Map of Sardinia and Corsica and international waters boundary



Is VAT due if the charter starts outside the EU?

No, VAT is not charged on the time spent in French waters. However, other Member States may charge VAT on the number of days spent in that country if the charter itinerary includes multiple countries.

Can the taxable amount for VAT purposes be reduced if the yacht cruises on the high seas?

Yes, 20% VAT is due on 50% of taxable amount for charters starting from a French or Monegasque port with cruising itinerary within and outside EU waters.

Are there any other requirements for yachts cruising on the high seas?

Yes. Cruising itineraries must be recorded in the logbook since proof of navigation in international waters might be required by local authorities.

Do I have to advise the VAT representative about all charter contracts in advance?

Yes, the VAT representative must be up to speed. The representative issues invoice/s for the charter fees and other ancillary charges, as required, and is responsible for collecting and paying VAT on the fees to the tax agency.

Fuel, APA and VAT

Is duty-free (VAT and excise duty) fuel available?

Yes, duty-free fuel is available to EU and non-EU commercial yachts. However, there are some restrictions. FCE compliant commercial yachts under a rental contract may purchase only VAT exempt fuel. FCE compliant commercial yachts under a transport contract may purchase duty-free fuel (excise and VAT).

What is excise duty on fuel ??

Excise duty is an inland tax on the sale of energy products (called TIPCE in France) and accounts for approx. 50% of the cost of fuel. In 2017 the cost is 0.57 € per liter.

Are there any regulations for duty-free bunkering?

Yes. Fuel must be taken on 48 to 72 hours before the start of the charter or up to 96 hours after the end of the charter.

Are duty-free supplies available?

Yes. In France commercial yachts may purchase duty free supplies and services, if they comply with the FCE. However, the exemption cannot be passed on to the charterer.

Is VAT charged on APA?

The matter is under discussion. In the future we expect VAT will be charged on all supplies and services purchased for the charterer unless VAT was charged at source. VAT will also be charged on fuel consumed during the charter if it was purchased VAT exempt by the yacht owning company.

UBO use and taxation

Can the UBO use its yacht?

Yes, at the below conditions:

1. A charter contract must be in place and VAT charged, if applicable
2. A reduction of up to 20% on the listed price is allowed. This reduction corresponds to the brokers' standard commission which owners don't need to pay.
3. Proof of the transfer of funds to cover the charter fees must be available

Will the owning company be liable for income tax on income generated in France or Monaco?

No, unless it has a permanent establishment in either France or Monaco.

Is the owning company subject to withholding tax?

No, not as of now.

The Direction de la Législation Fiscale, the legislative body of the French tax agency, clarified this point in December 2016 indicating that “*the Stakeholder is not liable to pay any withholding tax*”.

Is the Owing Company responsible for paying input VAT to the French tax agency?

Yes, both the Owing Company and the VAT representative are responsible for collecting the VAT from the end user, filing returns and paying VAT to the tax agency.

Can the owning company reclaim input VAT?

Yes. Like any business, if input VAT is greater than output VAT, the owning company can claim the difference. However, the invoice/s with input VAT must be in the name of the owning company.





Chartering in Italy

Before starting charter activities

Yacht compliances

Can EU flagged yachts charter?

Yes, they can.

Can non-EU flagged yachts charter?

Yes, they can.

What requirements must EU yachts meet?

VAT must be paid or accounted for and duly documented (for instance, commercial invoice, etc.)

Are there any other requirements?

No, not for being legal to charter.

However, if a yacht wants to benefit from the Italian Commercial Exemption* (ICE), it must meet the following cumulative requirements: it must be commercially registered, employ permanent crew and be under charter contract. As of January 2017, 70% of the trips performed on an annual basis must be “on the high seas”.

What requirements must non-EU yachts meet?

Non-EU yachts must be imported into the EU and in free circulation.

* For more information on the Italian Commercial Exemption (ICE) see page 20

Are there any other requirements?

No, not for being legal to charter with regards to VAT. However, all commercial yachts must submit an “Application for the commercial use of EU and non-EU yachts in Italian waters” to the *Capitaneria di Porto* (Harbour Master’s office) in the first port of call in Italy.

If the yacht wants to benefit from the commercial exemption, it must meet the following cumulative requirements: it must be commercially registered, employ permanent crew and be under charter contract. As of January 2017, 70% of the trips performed on an annual basis must be on the high seas.

Does importation entail paying VAT on the value of the yacht?

It depends. Some countries, like France and Malta, have set up VAT schemes which allow commercial yachts to be imported at reduced VAT percentages or under VAT exemption. If a yacht is imported outside an exemption scheme, VAT and excise duty will be due on the value of the yacht.

Can a non-EU commercial yacht charter in any EU Member State after it has been imported?

Yes, once customs has been cleared and duty paid, as the case may be, the yacht is in free circulation in the EU and can cruise throughout EU waters. A yacht imported into the EU in France, for instance, can cruise in Italy.

Can privately registered yachts charter?

No, neither EU or non-EU yachts.

Is a charter license required?

No, it isn't.

* See the ICE at page 20 for more information.

Owning company compliances

Does the yacht owning company need to register for VAT?

Yes, before starting any charter activity.

What is the process?

The yacht owning company must appoint a VAT representative based in Italy. The VAT representative will apply for VAT registration number on behalf of the owning company.

What does the VAT representative do?

The VAT representative acts as the local agent/representative of the company and is responsible for administrative compliances including collecting and paying VAT to the government and filing VAT returns. The VAT representative also issues the invoices for the charter to the charterer on behalf of the owning company.

How long does the process take?

It takes 3 or 4 working days. The yacht may not start charter activities until all the authorizations are in place.

VAT and charter activities

Use and enjoyment

Is VAT due on charter fees?

Yes, it is.

What is the VAT rate?

The standard rate in Italy is 22%.

When is VAT charged on charter fees in Italy?

VAT is charged in two cases. On charters starting in Italy and, if the charter starts outside the EU, on the number of days spent in Italy.

Is VAT charged on delivery and redelivery fees?

Yes, it is.

Is VAT due if the charter starts in another EU country?

No, VAT is charged in the place where the yacht is made available to charterer.

Can the taxable amount for VAT purposes be reduced if the yacht cruises on the high seas?

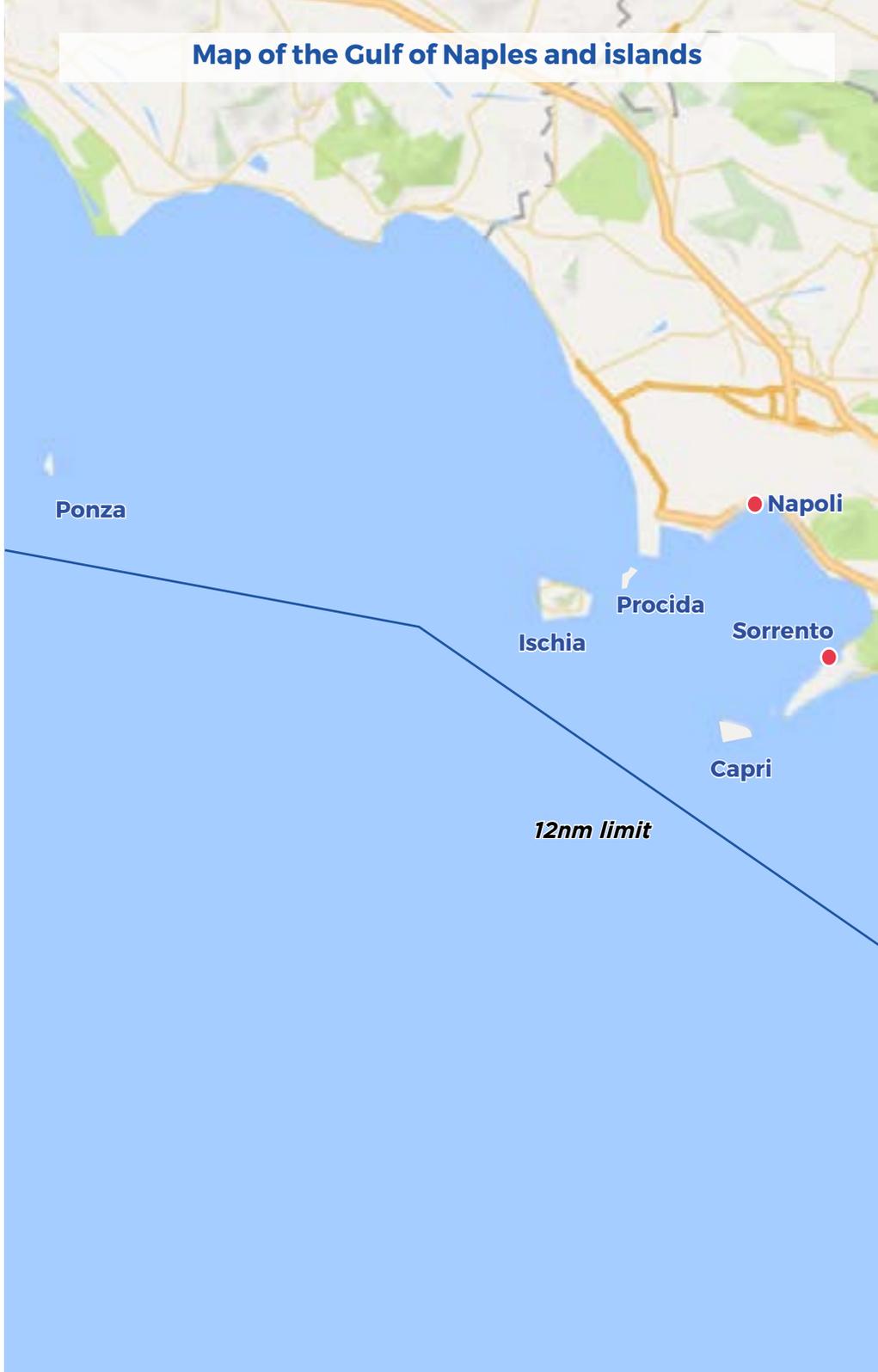
Yes, it can if the charter starts from an Italian port and the cruising itinerary includes EU waters and international waters.

22% VAT is charged on a percentage of the taxable amount. For yachts over 24mt, VAT is charged on 30% of the charter fees. In this case, the overall VAT percentage amounts to 6.6%. The percentage gets higher as a yacht's LOA decreases.

Are there any other requirements for yachts cruising on the high seas?

Yes, cruising itineraries must be recorded in the logbook since proof of navigation in international waters might be required by the authorities. "Touch and go" navigation into international waters for the purpose of gaining a reduction in the VAT due constitutes an abuse of rights.

Map of the Gulf of Naples and islands



Ponza

● Napoli

Ischia

Procida

Sorrento ●

Capri

12nm limit

Do I need to advise the VAT representative about all charter contracts in advance?

Yes, the VAT representative must be up to speed. The representative issues invoice/s for the charter fees and other ancillary charges, as required, and is responsible for collecting and paying VAT on the fees to the tax agency.

Fuel, APA and VAT

Is duty-free (excise duty and VAT) fuel available?

Yes, duty-free fuel is available to EU and non-EU commercial yachts.

Are there any regulations for duty-free bunkering?

Yes, all commercial yachts must be equipped with a fuel book (*Libretto di Controllo*).

What is the Fuel Book?

The fuel book is used to track bunkering. It includes information about the yacht, propulsion and consumptions. Each time the yacht refuels, the vendor will detail the quantity of fuel and engine oil taken on. Finally, the Captain must keep the book current by recording the hours of navigation and consumptions on a daily basis.

Are duty-free supplies available?

Yes. In Italy commercial yachts may purchase duty free supplies and services. However, the exemption cannot be passed on to the charterer who must pay VAT on the portion of APA for fuel and oil consumption at the end of the charter period. The VAT percentage applied on fuel and oil consumption is the same as the percentage applied on the charter fees.

Is VAT charged on APA?

The portion of the APA used by the Captain to purchase supplies and services for the personal use of the Charterer (therefore not related to the yacht's operations) is not subject to VAT as long as adequately documented.

UBO use and taxation

Can the UBO use its yacht?

Yes, with a charter contract in place at a slightly discounted rate.

Will the owning company be liable for income tax on income generated in Italy?

No, unless it has a permanent establishment in Italy.

What is a Permanent Establishment (PE)?

Under the current OECD Model Tax Convention, in general terms a PE might arise in the following two circumstances:

- o where there is a fixed place of business through which the business of the non-resident company is carried on, and
- o where there is a dependent agent of the non-resident concluding contracts on its behalf in that country.

Is the owning company be subject to withholding tax?

No, not as of now.

Is the Owing Company responsible for paying input VAT to the Italian tax agency?

Yes, both the Owing Company and the VAT representative are responsible for collecting the VAT from the end user, filing returns and paying VAT to the tax agency.

Can the owning company reclaim input VAT?

Yes. Like any business, if input VAT is greater than output VAT, the owning company can claim the difference.



Chartering in Spain

Before starting charter activities

Yacht compliances

Can EU flagged yachts charter?

Yes, they can.

Can non-EU flagged yachts charter?

It depends on the province where the yacht plans to charter. Non-EU yachts can only charter in the province of the Balearic Islands.

What requirements must EU yachts meet?

VAT must be paid or accounted for and duly documented (i.e. invoice from the shipyard, VAT paid certificate, etc).

Are there any other requirements?

Yes, unless Spanish flagged, they must pay the 12% matriculation tax on the value of the yacht or apply for the matriculation tax exemption. The Matriculation tax exemption scheme is standard and is handled by your VAT representative.

What requirements must non-EU yachts meet?

Non-EU yachts must be imported into the EU and in free circulation.

Are there any other requirements?

Yes, they must pay the 12% Matriculation tax on the value of the yacht or apply for the Matriculation tax exemption. The procedure is standard and is handled by your VAT representative.

Which flags are considered EU?

Red Ensign* flags are deemed to be EU in Barcelona. All other provinces consider them non-EU.

Does importation entail paying VAT on the value of the yacht?

It depends. Some countries, like France and Malta, have set up VAT schemes which allow commercial yachts to be imported at reduced VAT percentages or under VAT exemption.

Can a non-EU commercial yacht charter in any EU Member State after it has been imported?

Yes, once customs has been cleared and duty paid, as the case may be, the yacht is in free circulation in the EU and can cruise throughout EU waters. For instance, a yacht imported into the EU in France can cruise in Spain.

Is there a time limit on importation?

No, the yacht is in free circulation until it is exported out of the EU.

Can privately registered yachts charter?

No, neither EU nor non-EU yachts.

Are there any other compliances?

Yes, before starting charter operations, you must apply for an authorization to charter. EU and non-EU flagged yachts now follow the identical procedure and submit a “*Declaración responsable*” (affidavit of liability) to the General Direction of Transport.

Is a charter license required?

Yes, all yachts must purchase a charter license for the province/s where they intend to charter. If guests embark/disembark, a license is also required if the charter starts outside Spain in an EU or non-EU country and includes Spanish waters.

* Category 1 Red Ensign flags include: Bermuda, BVI, Cayman Islands, Gibraltar, Isle of Man and UK.

For how long are licenses valid?

For the current year licenses issued in the province of Barcelona will be valid for one calendar year. Licenses issued in the Balearics are valid for 3 months and can be renewed on expiration.

Where can I purchase a license?

The process is handled by your VAT representative.

Are there any further requirements?

Yes, valid insurance compliant with the provisions of Spanish Royal Decree 607/99 and Spanish Royal Decree 1575/89.

Owning company compliances

Does the yacht owning company need to register for VAT?

Yes, the yacht may not start charter activities before all authorizations are in place.

What is the process?

The yacht owning company must appoint a VAT representative based in Spain. The VAT representative will apply for VAT registration on behalf of the owning company.

What does the VAT representative do?

The VAT representative acts as the local agent/representative of the company and is responsible for administrative compliances including collecting and paying VAT to the tax agency and filing VAT returns.

The VAT representative also submits all applications to the authorities (VAT registration, matriculation tax exemption and authorizations to charter and charter licenses).

The VAT representative issues the invoices for the charter to the charterer on behalf of the owning company.

How long does the process take?

It can take up to 8 weeks. The yacht may not start charter activities until all the authorizations are in place.

VAT and charter activities

Owning company compliances

Is VAT due on charter fees?

Yes, it is.

What is the VAT rate?

The standard rate in Spain is 21%.

When is VAT charged on charter fees in Spain?

VAT is due in two cases. On all charters starting in Spain and, if the charter starts outside the EU, on the number of days spent in Spanish waters.

Is VAT charged on delivery and redelivery fees?

Yes.

Is VAT due if the charter starts in another EU country?

No, VAT is due in the place where the yacht is made available to charterer.

Can the taxable amount for VAT purposes be reduced if the yacht cruises on the high seas?

No, there is no reduction for international voyages.

Do I need to advise the VAT representative about all charter contracts in advance?

Yes. The VAT representative will issue invoice/s for the charter fees and is responsible for collecting and paying VAT on the fees to the tax agency.

Can input VAT be reclaimed by the owning company?

Yes. If input VAT is greater than output VAT, you can claim the difference.

Fuel, APA and VAT

Is duty-free fuel available?

Duty-free fuel isn't legally available to commercial yachts in Spain.

Are duty-free supplies available?

No. In Spain commercial yachts may not purchase duty free supplies and services legally.

UBO use and taxation

Can the UBO use its yacht?

Yes, with a charter contract in place. However, if the UBO is Spanish or has an economic connection with Spain, the Matriculation tax exemption will be forfeit.

Will the owning company be liable for income tax on income generated in Spain?

It depends; residents of countries that do not have a dual taxation treaty with Spain are subject to a 24% non-resident income tax on all revenues generated in Spain.

Is the owning company subject to withholding tax?

No, not as of now.

Is the Owning Company responsible for paying input VAT to the Spanish tax agency?

Yes, both the owning company and the VAT representative are responsible for collecting the VAT from the end user, filing returns and paying VAT to the tax agency.

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QUIZ ANSWERS

1. All trips outside French waters qualify towards the 70% rule under the FCE
 - True

2. Non-EU commercial yachts may purchase duty-free fuel in Italy
 - True

3. Commercial yachts may purchase duty-free fuel in Spain
 - False, duty-free fuel is not legally available in Spain.

4. Charterers pay VAT on fuel consumption in Italy
 - True

5. VAT is reduced for international voyages starting in Spain
 - False

6. VAT is not charged on charters starting outside the EU and cruising in Croatia

- o False, as of 2017 VAT is charged on all charters starting outside the EU for the number of days spent in Croatia.

7. Non-EU yachts can charter in the province of Barcelona

- o False. Nota bene: Barcelona considers all Red Ensign Flags as EU*.

8. Non-EU yachts can charter in the Balearics

- o True, non-EU flagged yachts can only charter in the Balearics.

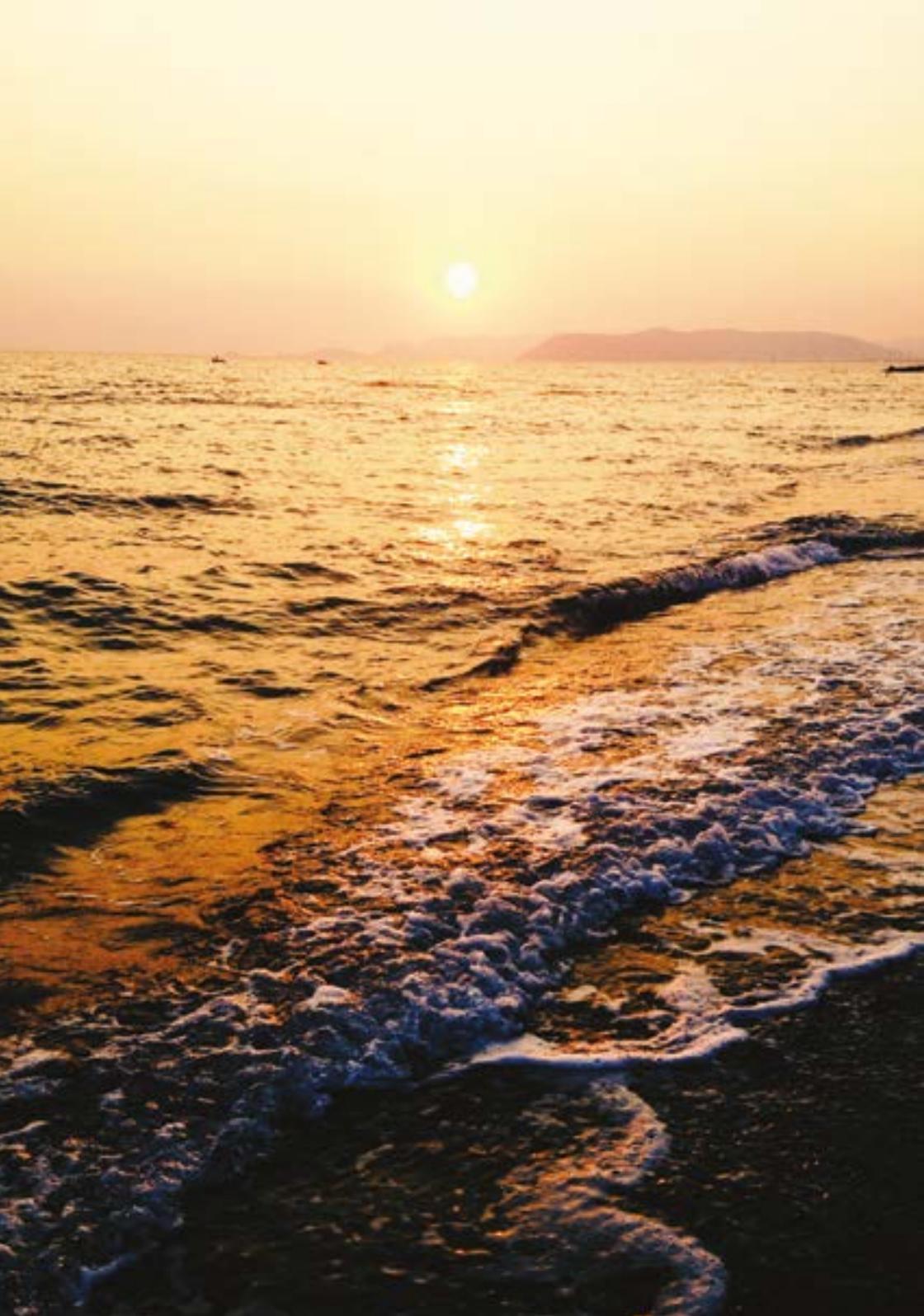
9. If I don't qualify for the FCE I can't charter in France

- o False

10. If I don't qualify for the ICE I can charter in Italy

- o True

* Category 1 Red Ensign flags include : Bermuda, BVI, Cayman Islands, Gibraltar, Isle of Man and UK.



ANNEX 1

to SAD Guidelines (TAXUD/1619/08 rev. 3.4):

Overview of European Union countries

For customs, tax and statistical purposes, the European Union (EU) draws a distinction between four different areas:

- o a customs area;
- o an excise area;
- o a VAT/ICT area;
- o a statistical area (not included here)

Alpha code denotes the names of the Member States of the European Union abbreviated according to the two-letter ISO code (Alpha Code)

Territory lists the geographical location of the Member State countries within and outside the European continent.

Customs Area includes the Member States participating in the EU Customs Union.

VAT (Value Added Tax) /**ICT** (Intra-Community Transactions) Area includes the countries participating in the common VAT and ICT area within the EU.

Excise Area includes the EU Member States applying indirect taxes (excise) to the sale of certain products (alcohol, tobacco, etc.) between Member States.

Exceptional areas

Some areas are part of the geographical territory of the EU, but are not in the customs area, the excise area and/or the VAT area of the EU. These are regarded as exceptional areas. Non-EU countries are also known as 'third countries'.

If you import goods from an exceptional area that is not in the customs area of the EU, the same rules apply as if you were importing the goods from a non-EU country.

Example:

The Faroes, Greenland, Ceuta and Melilla are part of the territories of EU Member States but are not in the customs and tax areas of the EU. For the purposes of import duty, VAT and excise duty, these areas are therefore classified as third countries.

A Country/area	B Alpha code	D Territory (1)	E Customs area	F VAT/ ICT area	G Excise area
Austria	AT	Yes	Yes	Yes	Yes
Belgium	BE	Yes	Yes	Yes	Yes
Bulgaria	BG	Yes	Yes	Yes	Yes
Cyprus (2)	CY	Yes	Yes	Yes	Yes
Czech Republic	CZ	Yes	Yes	Yes	Yes
Croatia	HR	Yes	Yes	Yes	Yes
Denmark	DK	Yes	Yes	Yes	Yes
Faroes	FO	No	No	No	No
Greenland	GL	No	No	No	No
Germany	DE	Yes	Yes	Yes	Yes
Busingen (3)	CH	Yes	No	No	No

A Country/area	B Alpha code	D Territory (1)	E Customs area	F VAT/ ICT area	G Excise area
Heligoland (12)	DE	Yes	No	No	No
Jungholz and Mittelberg (Kleines Walsertal)	AT	Yes	Yes	Yes	Yes
Estonia	EE	Yes	Yes	Yes	Yes
Finland	FI	Yes	Yes	Yes	Yes
Åland Islands (4)	FI	Yes	Yes	No	No
France	FR	Yes	Yes	Yes	Yes
New Caledonia	NC	No	No	No	No
Wallis and Futuna	WF	No	No	No	No
French Polynesia	PF	No	No	No	No
Mayotte (13)	YT	Yes	Yes	No	No
Saint-Martin (French part)	FR	Yes	Yes	No	No
Saint-Barthélemy	BL	No	No	No	No
Saint-Pierre and Miquelon	PM	No	No	No	No
Guadeloupe	FR	Yes	Yes	No	No
Martinique	FR	Yes	Yes	No	No
French Guiana	FR	Yes	Yes	No	No
Réunion	FR	Yes	Yes	No	No
French Southern and Antarctic Territories	TF	No	No	No	No
Monaco	FR	No	Yes	Yes	Yes
Greece	GR	Yes	Yes	Yes	Yes
Mount Athos	GR	Yes	Yes	No	Yes

A Country/area	B Alpha code	D Territory (1)	E Customs area	F VAT/ ICT area	G Excise area
Hungary	HU	Yes	Yes	Yes	Yes
Ireland	IE	Yes	Yes	Yes	Yes
Italy	IT	Yes	Yes	Yes	Yes
Campione d'Italia (5)	CH	Yes	No	No	No
Livigno	IT	Yes	No	No	No
Lake Lugano (6)	IT	Yes	No	No	No
San Marino (7)	SM	No	No	No	Yes/No (9)
Latvia	LV	Yes	Yes	Yes	Yes
Lithuania	LT	Yes	Yes	Yes	Yes
Luxembourg	LU	Yes	Yes	Yes	Yes
Malta	MT	Yes	Yes	Yes	Yes
Netherlands	NL	Yes	Yes	Yes	Yes
Poland	PL	Yes	Yes	Yes	Yes
Portugal	PT	Yes	Yes	Yes	Yes
Romania	RO	Yes	Yes	Yes	Yes
Slovenia	SI	Yes	Yes	Yes	Yes
Slovakia	SK	Yes	Yes	Yes	Yes
Spain	ES	Yes	Yes	Yes	Yes
Canary Islands (10)	ES	Yes	Yes	No	No
Ceuta	XC	Yes	No	No	No
Melilla	XL	Yes	No	No	No
Andorra (9)	AD	No	No	No	No

A Country/area	B Alpha code	D Territory (1)	E Customs area	F VAT/ ICT area	G Excise area
Sweden	SE	Yes	Yes	Yes	Yes
United Kingdom	GB	Yes	Yes	Yes	Yes
Isle of Man	GB	No	Yes	Yes	Yes
Gibraltar	GI	Yes	No	No	No
Channel Islands (11)	GB	No	Yes	No	No

1. This means the territory of the European Union as defined in Article 52 of the Treaty on European Union and Article 355 of the Treaty on the Functioning of the European Union, which may differ from the political territory of the Member State concerned. Including the base of the British armed forces, where the British armed forces can be supplied free of tax.

2. Regulation 866/2004/EC lays down the conditions under which goods wholly obtained in the occupied areas, or which have undergone their last, substantial, economically justified processing or working in an undertaking equipped for that purpose in the areas not under the effective control of the Government of the Republic of Cyprus, may enter the Government-controlled areas as Community goods.

As regards goods crossing the line in the opposite direction, i.e. from the Government-controlled to the occupied areas, no export formalities are required and such goods are not eligible for agricultural refunds since the entire territory of the Republic of Cyprus acceded to the European Union in May 2004.

3. Busingen is geographically in Switzerland, but is German territory and is regarded in practice as part of Switzerland's customs area.

4. The Åland Islands acceded to EU territory by a supplementary declaration, but only for customs purposes. Therefore the Åland Islands are not part of the VAT and excise areas of the EU.

5. Campione d'Italia is geographically in Switzerland.

6. This applies only to the Italian waters of Lake Lugano, from the shore to the political border of the zone between Ponte Tresa and Porte Ceresio. The remaining area is Swiss territory.

7. San Marino has established a customs union with the EU.

8. Pursuant to administrative agreements, exports of excise goods to San Marino should be covered by an Administrative Accompanying Document (AAD).

9. Andorra has established a customs union with the EU. Chapters 1 to 24 (transport) come under T1, others under T2 (restitution good from Andorra, always T1 with the clause 'only collect the agricultural element, agreement EEC-Andorra').

10. The Canary Islands consist of Lanzarote, Fuerteventura, Gran Canaria, Tenerife, La Gomera, El Hierro and La Palma.
11. The Channel Islands consist of Alderney, Jersey, Guernsey, Sark, Herm and Les Minquires
12. Heligoland is not part of the customs territory of the EU but, under Article 161(3) of the Customs Code, goods dispatched to Heligoland are not considered exports from the customs territory of the EU. Agricultural products consigned to the island of Heligoland are to be considered exported for the purposes of the provisions on payment of refunds (Article 43 of Commission Regulation (EC) No 612/2009).
13. It shows situation of Mayotte after entering from 1.1.2014 the EU and customs and statistics area of the EU

Disclaimer

This document is intended as a general guide only and does not constitute legal or fiscal advice. The application of the advice in this document to specific situations will depend on the particular circumstances involved. Accordingly, we recommend that readers seek appropriate professional advice regarding any particular problem/s they encounter. This information should not be relied upon as a substitute for such advice. Although we have made considerable efforts to be thorough in the construction of these pages, we offer no assurance that the information posted here is timely, accurate, complete or applicable to any particular set of facts. Its application to specific situations will depend on the particular circumstances involved. While all reasonable attempts have been made to ensure that the information contained herein is accurate, SOS Yachting companies and its legal owners accept no responsibility for any errors or omissions it may contain whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person or entity that relies upon it.

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Croatia
France
Monaco
Italy
Spain

