

Viareggio July 27, 2019

**NEWS from the EU Commission about the Infringement proceedings opened on November 8th, 2018 on certain Italian fiscal rules related to the Yachting sector.**

The Commission this **July 25**, 2019 has decided as part of the “July Infringement package” to take further steps on the infringement proceedings opened on November 8th, 2018 regarding certain Italian fiscal rules related to the Yachting sector and in particular on:

1. the application of reduced VAT rate based on the percentages of presumable use of the yacht outside territorial waters (Circular AdE 49/2002) on “short terms” contract (not more than 90 days);
2. excise duty exemption on fuels used for bunkering by yachts used in charter activities. The issue had already been analyzed by the Tax Authority in July 2016 regarding the VAT profiles recharged to the Charterer in the so-called APA procedure; today the Commission points to the exemption from excise duty, whose benefits under current legislation are in fact transferred from the owning company to the charterer.

**Italy already officially replied two times to the Commission’s complaint about “flat-rate Vat reduction with the following considerations:**

- Distinction between long term contract (leasing) and short term contract (90 days);
- Interpretation of the current derogation contained in art. 59 bis of the EU VAT Directive, instead of the general provision of article 56 that Commission intends to apply;
- The “advantages” of the current “flat-rate” VAT reduction in force that protect the interests of the Italian Tax authorities on incomes and also reduces the probability of fiscal evasion on a particular sector as this of the means of transport.

The Commission finally decided on July 25, to refer Italy to the EU Court of Justice for its system of exemption on “Excise” on fuel used for chartered yachts in EU waters. The position of the Commission is that *“current EU excise duty rules allow Member States not to tax fuel used by a navigation company for commercial purposes, i.e. the sale of sea navigation services. An exemption can apply but only if the person leasing the boat sells such services to others. In breach of EU rules, Italy allows chartered pleasure crafts, such as yachts, to qualify as ‘commercial’ even if they are for personal use.”*

At the same time, the Commission has decided to send “reasoned opinions” to Italy and also to Cyprus for not applying the correct amount of Value Added Tax (VAT) on short term lease contracts of Yachts based on a reduced flat-rate VAT system depending on the length of the Yacht. The position of the Commission is that *“Current EU VAT rules allow tax exemptions for services when the effective use and enjoyment of the product is outside the EU. However, the rules do not allow for a general flat-rate reduction without proof of where the service is actually used. Cyprus and Italy have established VAT rules according to which the larger the boat is,*

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*the less the lease is estimated to take place in EU waters. As a consequence, the applicable VAT base can be substantially reduced. **If Cyprus and Italy do not act within the next two months on these reasoned opinions, the Commission may decide to bring the cases before the Court of Justice of the EU.***

The Italian Marine Industry Association (UCINA), the Italian Tax Authority and the Italian Ministry of Finance are already working together on the arguments of the above Reasoned opinions, in order to further clarify the position of Italy and also protect the future of the Yachting market.

We have also been informed that the French Tax authority and the French Ministry of Finance received in the last months a similar letter of "request for information" about the **reduced flat-rate VAT system of 10% on Charter and leasing scheme in place in France. For this reason, a discussion has started between Tax authorities in Italy and France on this issue and may help in finding a solution that protects the Yachting market.**

**In order to have a complete "scenario" here below a summary of the different steps in the EU infringement's procedure.**

Article 258 of the Treaty on the Functioning of the European Union gives the Commission, acting as Guardian of the Treaties, the power to take legal action against a Member State that is not respecting its obligations under EU law. The infringement procedure begins with a request for information (a "**Letter of Formal Notice**") to the Member State concerned, which must be answered within a specified period, usually two months. The Formal notice to Italy on the above issue has the date of November 8, 2018. If the Commission is not satisfied with the information and concludes that the Member State in question is failing to fulfil its obligations under EU law, the Commission may then send a formal request to comply with EU law (so called "**Reasoned Opinion**"), calling on the Member State to inform the Commission of the measures taken to comply within a specified period, usually two months. If a Member State fails to ensure compliance with EU law, the Commission may then decide to refer the Member State to the **Court of Justice** (however, in many infringement cases, Member States find an agreement with the Commission before are referred to the Court). **If the Court rules against a Member State**, the Member State must then take the necessary measures to comply with the judgment.

**The above NEWS does not impact the current VAT provisions and scenario of Commercial Yachts with Charters with departure place from an Italian Port/Marina, considered that Italian VAT law will remain fully in place until the final step of a decision of the infringement's.**

**It's also important to point out that the formal Notice of last November and the new "reasoned Opinion" of the Commission of July 2019 is not referring to the Italian leasing scheme.**

Dott. Ezio Vannucci