



LAW AND DECREE

VAT IN LONG-TERM RENTAL AND LEASING CONTRACTS

INCLUDING NAUTICAL LEASING

In the yachting world it is common for shipowners to decide to finance the purchase of yachts through leasing contracts in order to benefit from a flexible form of financing suitable both for the purchase of yachts ready for use and for the purchase of yachts under construction. In fact, the extreme flexibility of this practice allows, as happens quite frequently in practice, that the choice of financing the purchase of the yacht may also take place after the construction contract has been signed between the shipowner and the shipyard, with the leasing company taking over the construction contract.

The VAT regime applicable to rental and lease contracts, including leasing contracts of yachts not for a short term (i.e. for a period longer than 90 days), have a different VAT treatment depending on the subjective profile of the user/lessee. A distinction must be made between the case where the user is a taxable person (transaction generally referred to as B2B, or business to business) and the case where he is a final consumer (transaction generally

referred to as B2C, or business to consumer).

The difference consists in the fact that our legal system provides two different criteria for defining the territoriality of the service and therefore its taxable VAT in Italy.

If the user/lessee of the yacht in hire, charter or leasing, is a taxable person, the service is taxable for VAT purposes in the country where the user/lessee is resident.

On the other hand, if the user/lessee is a final consumer, the VAT territoriality of the service must be verified on the basis of certain variables.

The subject has also been recently analysed by the Tax Office, with its answer to the Ruling No. 96 of January 19th, 2023, which confirmed that services of hiring, chartering or leasing yachts, provided to user/lessee not VAT registered, are to be considered taxable in Italy if:

- the yacht is actually made available to the user in Italy;
- the supply is made by taxable persons established in Italy and the yacht is used within the European Union (i.e. in the territorial waters of one of the countries of the Union).





Generally, yachts, especially the larger ones, are not only used in coastal navigation but also cruise routes that take them partly into EU waters (within 12 miles from the coast) and partly in international waters. Therefore, in such cases, the Law states that only the part of the fee that relates to use in territorial waters is taxable for VAT purposes, while the part that relates to the use of the yacht in international waters will not be taxable, due to the lack of the requirement of territoriality of the service. As for the modalities for determining the actual use of the yacht within and outside EU waters, the answer to Ruling no. 96 of 2023 did not provide any specific indications, which it is hoped the office will provide in future practice measures. As of today, therefore, the only reference on the matter is the Order of the Director of the Tax Office of October 29th, 2020.

It is also recalled that in these cases of mixed use (in EU and international waters) the user/lessee must submit to the tax authorities a declaration (commonly referred to as Nautical Declaration) with which the extent of the use in EU waters is communicated, as this allows to quantify the VAT taxable base of the lease, also financial, or hire contract. The declaration made by the user/lessee can only be sent electronically and must be drawn up according to the Form approved by Tax Office Order No. 0151377 of June 15th, 2021. In fact, as of November 1st, 2020, the method of flat-rate quantification of the taxable base that was widely used in the past is no longer

applicable in any case.

The mechanism for quantifying the taxable base described above is also applied to leasing contracts involving yachts under construction. In this case, as clarified by the Tax Office, the same rules already pointed out are also applied to the initial maxi-installment as well as to any instalments paid before actual delivery.

With its answer to Ruling No. 394 of 2022, the Tax Office also clarified that even in cases of leasing contracts involving yachts under construction, drawing up the nautical declaration, the user may also declare a provisionally determined the Vat taxable based on the intended use of the Yacht. The user will then be obliged to check, once the Yacht has been completed and delivered, that what has been provisionally declared corresponds to the actual use and, if necessary, to adjust the taxable base and the related amount of VAT to be paid.

dott. Ezio Vannucci
Partner Moores Rowland Partners STP
e.vannucci@mooresrowland.it