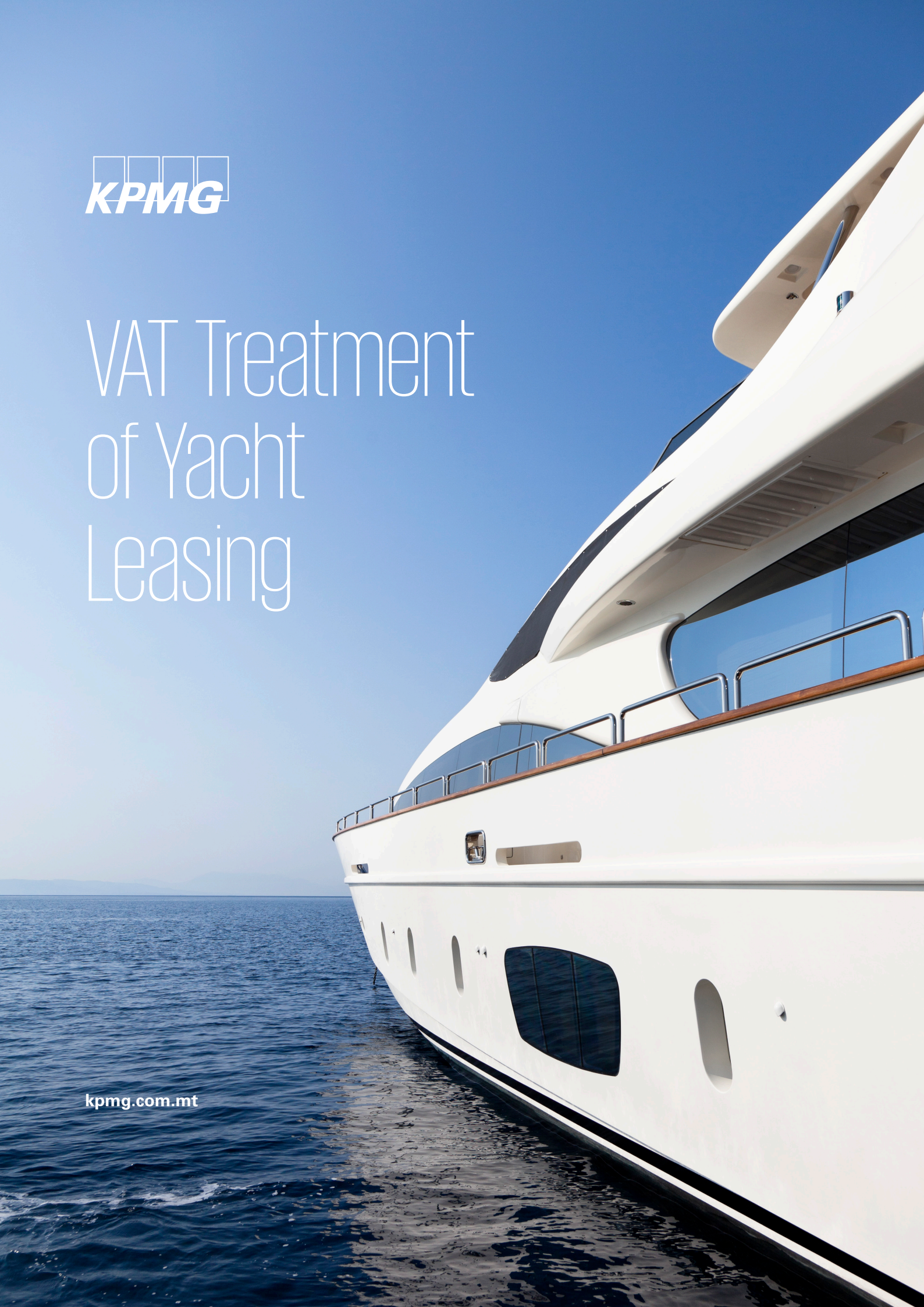




# VAT Treatment of Yacht Leasing

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***In terms of the Guidelines issued by the Maltese Revenue, the overall VAT incidence incurred on the leasing of a yacht can be reduced substantially depending on the extent of use and enjoyment made of the yacht in EU territorial waters.***

## **Introduction**

On 12th March 2020, the Revenue issued new Guidelines ('the 2020 Guidelines') on the application of the VAT 'Use and Enjoyment' provisions on yacht leasing supplies, replacing the ones issued in the past. Whilst still based on Article 59a of the EU VAT Directive, the new Guidelines reflect recent EU developments and best market practices. This factsheet provides an overview of the VAT rules surrounding yacht leasing.

## **Short term yacht leasing**

The short-term lease of a yacht (i.e. not more than 90 days' continuous possession or use) is considered a supply of a service falling within scope of Maltese VAT when the yacht is put at the disposal of the lessee in Malta. Consequently and in principle, a Maltese VAT registration is typically required of owners / operators of yachts who charter out their yacht as aforesaid, and in turn they have a right to claim input VAT incurred in the furtherance of their yacht charter business including Maltese input VAT that may be incurred on the purchase/importation of the yacht.

Short-term yacht charters which commence in a territory outside Malta would be subject to the VAT rules of such territory, if any.

## **Long term yacht leasing to non-business lessees (B2C)**

Long-term yacht leases (i.e. leases covering more than 90 days' continuous possession or use) to non-taxable persons fall within the Maltese VAT net when:

- The lessee is established in Malta; or
- The lessor is established in Malta and the yacht is put at the disposal of the lessee in Malta.

A Maltese VAT registration is typically required in case of long-term leases to non-business lessees when the lease falls within Malta VAT jurisdiction. In turn, such lessors have a right to claim input VAT incurred in the furtherance of their yacht charter business including Maltese input VAT that may be incurred on the purchase/importation of the yacht.

## **Long term yacht leasing to business customers (B2B)**

Long-term yacht leases (reminder: leases covering more than 90 days' continuous possession or use) to persons engaged in business (i.e. taxable persons) follow the standard B2B place of supply rules. In other words, they fall within the Maltese VAT net if the customer (i.e. the lessee) is established in Malta, irrespective of where the lessor is established or where the yacht is placed at the disposal of the lessee.



## 'Use and Enjoyment' Provisions

An inherent attribute of a yacht is that it is a moveable asset that crosses borders and territories. The tax rules surrounding yachting and yacht leasing vary among jurisdictions and may also be absent in non-EU or international water territory. Such tends to leave a window of opportunity for structuring yacht related transactions in a tax-efficient manner.

In its powers to prevent double taxation, non-taxation and distortion of competition, on 12th March 2020, the Revenue issued amended [Guidelines](#) on the application of the 'use and enjoyment' provisions in a yacht leasing context, as promulgated by Article 59a of the EU VAT Directive and Item 12 of Part Two of the Third Schedule to the Value Added Tax Act. In terms of the 2020 Guidelines, the general principle remains that 18% Maltese VAT applies on the leasing of pleasure boats that are deemed to take place in Malta in terms of standard VAT rules. However, where certain conditions are satisfied, the lessor can adjust the VAT charged to the lessee such that it would be commensurate with the actual time that the yacht spends within EU territorial waters. Such 'use and enjoyment' provisions can only be applied when the determination of the actual time within / outside EU territory is possible.

The 2020 Guidelines further provide details on how the VAT returns of the lessor should be adjusted to reflect actual use and enjoyment of the lessee during the relevant period. In

essence, to the extent that the use and enjoyment of the yacht in a particular VAT period is less than 100% in the EU, the lessor can claim a refund of VAT that would have been overcharged thereby. The claim must be made through the VAT return covering the period immediately following that in which the use and enjoyment of the yacht in non-EU territory was made. For the purpose of the calculation of time in / outside EU territory, the lessor shall utilise such documentary and / or technological data, including logs retained by the master of the pleasure boat as well as any GPS / AIS data, as the lessor can reasonably obtain from the lessee.

Such adjustment mechanism reflects the acknowledgement by the Revenue of the difficulty of lessors of pleasure yachts to assess the extent to which yachts are used within and outside EU territorial waters in those situations where the lease payments are payable in advance, as is the commercial norm. It also ensures that over the term of the lease, VAT is charged on the portion of the lease reflective of the effective use and enjoyment within the EU.

Albeit not expressly mentioned in the 2020 Guidelines, we understand that prior approval must be sought from the VAT Department in writing for the lessor to adjust the Maltese VAT charged to the lessee on the basis of effective use and enjoyment. Further conditions may be applied by the Revenue and one expects anti-avoidance measures will be adopted by the Revenue to ensure that the rules are not abused of.

## Other VAT considerations

### Purchase of the Yacht by the Lessor

The VAT treatment of the purchase of the yacht by the lessor will depend on whether the yacht is procured locally, acquired from another EU Member State, or imported into Malta from a third country. However, in any case, the purchase / importation of a yacht should be VAT neutral for lessors who use their yachts exclusively for business, including yacht chartering.

With respect to importations, in principle, the importation of a yacht in Malta is subject to 18% Maltese VAT, payable to the Customs Authorities at point of customs clearance. When the yacht is intended to be leased, the import VAT can be claimed back by the lessor through standard claim procedures.

However, Malta applies attractive VAT deferment procedures which replace the need to physically pay and eventually recover the VAT. Subject to the satisfaction of certain conditions, importers of pleasure yachts intended for yacht leasing may procure an authorisation for such VAT to be deferred, even without the need of a bank guarantee in cases when the Revenue can easily trace the importer.

### Sale of the Yacht by the Lessor

The VAT treatment of any sale of the yacht (by the lessor or by any other person) will depend on the place where the sale takes place for VAT purposes. If the sale takes place in Malta, 18% VAT would be due on the consideration charged for the sale.

Conversely, no Maltese VAT would be chargeable by a seller of a yacht in Malta if the seller had not claimed the Maltese VAT charged on its purchase. It may well be that such a yacht would have the status of 'VAT Paid' at the initial point of purchase of the yacht by the seller, provided that the conditions to procure such status have been met at the point of purchase.



For more information about the 2020 Guidelines and yachting transactions feel free to contact:



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