ATOM
YACHTING

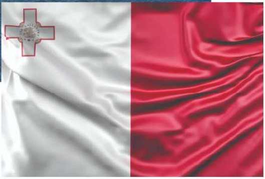
A NEW PERSPECTIVE IN YACHTING

REGISTRATION OF YACHTS UNDER THE MALTA FLAG

FOR GALLANTRY

“WHERE DO I REGISTER MY YACHT?”

This is the basic question most asked by yacht owners who are contemplating the purchase of a yacht and working out where best to register their new vessel.The answer to that question depends on the circumstances of the owner in terms of their nationality, residence, cruising intentions and also the physical characteristics of the vessel itself.



WHY MALTA?

In international shipping, the Malta flag is now synonymous with quality and confidence. As such, with a view to emulating its success in connection with its merchant fleet register, Malta is now positioning itself as an attractive and serious jurisdiction for international yachting.

Being a flag of confidence and a flag of choice, the Maltese Ship Register has grown to be one of the largest and most reputable ship registers in the world. All types of marine vessels may be registered under the Malta flag and take advantage of certain benefits particularly fiscal, which are available under Maltese law.

BENEFITS

- EU compliant legislation.
- Internationally recognised jurisdiction.
- Adherence to international conventions on safety and security.
- A well-organised and fast registration system.
- Low registration costs.
- 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.

- Preferential treatment to Maltese ships in certain ports.
- An international maritime centre providing the whole range of maritime services, ranging from bunkering, to towage, shipbuilding and repair.
- Attractive incentives to owners, charterers and financiers of Maltese vessels
- The Malta Register of Ships provides proof of title and enables the owner to register a mortgage on the vessel
- Yachts can be coded and operated as commercial charter yachts on the register

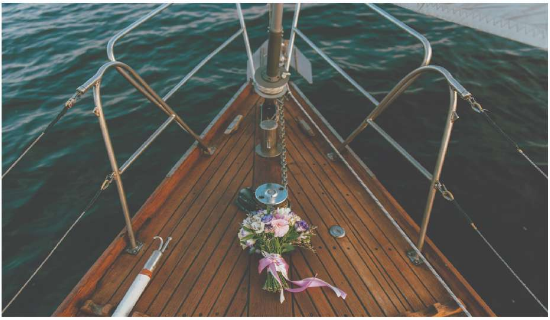
NY WATERWAY

YACHT REGISTRATION

Yachts may be registered under the Malta Flag regardless as to whether they are ultimately intended for private or commercial use.

Any citizen of Malta or of the European Union (EU) and any company registered in Malta or in an EU Member State may register a yacht under the Malta flag. However, unless resident in Malta, an EU citizen must appoint a resident agent in Malta. A non-EU citizen cannot, accordingly, procure the registration of a yacht in Malta directly.

However, any such non-EU citizen would be entitled to set up a company in Malta to hold and register the relevant yacht under the Malta flag. Non-EU registered entities may register a vessel in Malta if such entities also appoint a resident agent in Malta, and if the registrar-general is satisfied that such entities enjoys legal personality under the laws of the country where they are established.



Vessels may also be registered in Malta whilst they are still being built or equipped and pending their completion.Maltese law provides adequate protection for both financiers and vessel owners, while the mortgage system is also straightforward, and the Maltese flag authorities administer the law strictly, but fairly, ensuring clarity and correctness.

A yacht would first be registered under the Malta flag provisionally merely pursuant to the submission of certain prescribed and straightforward documentation to the domestic authorities. Prior to the lapse of six months from the provisional registration of a yacht and pursuant to the submission of additional documentation to the said authorities, the yacht would be permanently registered as a Maltese flagged vessel.

Yachts intended for international commercial use would additionally be required to comply with standards set by the domestic Commercial Yacht Code.

Registration fees levied by the domestic authorities in onnection with yacht registrations are chargeable by reference to size and tonnage.Such fees are generally reasonable.

BAREBOAT CHARTER REGISTRATION

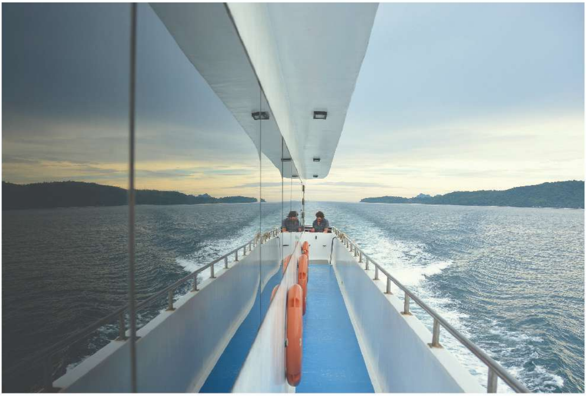
Maltese legislation allows for bareboat charter registration, whereby ship owners are given the option to capitalise on the use of their vessels by providing more operational flexibility. Two scenarios of this type of Malta vessel registration are allowed by Maltese law: the bareboat charter registration of foreign ships under the Malta flag and the bareboat charter registration of Malta ships under a foreign flag.

The key criterion for any of the two types of bareboat charter registration to take place is the compatibility of the foreign ship registry with the Maltese ship registry. Amongst other foreign compatible registries there are: Belgium, Canada, Cyprus, Estonia, France, Gibraltar, Liberia, Marshall slands, Panama, Russia Federation, Singapore, Turkey and Ukraine.

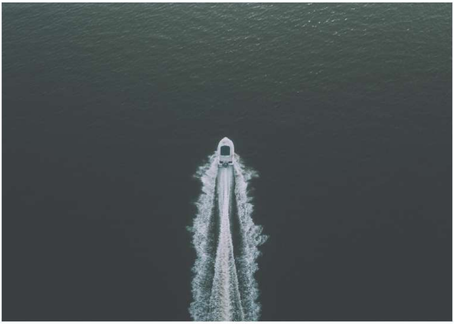
BAREBOAT CHARTER REGISTRATION OF FOREIGN SHIPS UNDER THE MALTA FLAG

The maximum period for such type of registration is two years, which period may be further extended for additional periods of two years each should the parties involved agree to do so. The registration procedure does not differ much from normal registration of a vessel.

A vessel which is registered as a bareboat charter needs to conform to the same obligations and also benefit from the same rights and privilegesaccorded to vessels registered under the Malta flag..



BAREBOAT CHARTER REGISTRATION OF MALTESE SHIPS UNDER THE FOREIGN FLAG



Prior to registering a maritime vessel as a bareboat charter under a foreign flag, the initial step is to obtain the consent by the Maltese maritime authority to that effect. Such consent will only be issued upon filing and review of certain documents such as consent by registered owners and mortgagees, and evidence of compatibility of foreign registry where applicable.

TAX CONSIDERATIONS

Income derived by a Malta company from the operation of one or more commercial yachts should ultimately be chargeable to tax in Malta at a combined overall effective Malta tax rate of 5% - by application of Malta's refundable tax credit system. In fact, such income would be chargeable to tax in Malta at the rate of 35% at the level of the operating company. However, upon a distribution of net dividends by that company in favour of its shareholders, the said shareholders should generally be entitled to a refund of six-sevenths of the Malta tax suffered at the level of the operating company on the profits out of which the dividends were distributed.

VAT LEASING SCHEME

EU Member States may tax the use and enjoyment of services, which would therefore include the lease of a pleasure yacht, for the time that the service is effectively used and enjoyed within European territorial waters.

On a lease of a pleasure yacht taking place in Malta, Maltese VAT will be charged on the portion of the lease covering effective use and enjoyment of the pleasure yacht within EU territorial waters. No VAT will be chargeable on the portion of the lease which covers the use and enjoyment of the pleasure yacht within non-EU territorial waters or international waters.

It is important to note that during the lease period, the lessor must maintain adequate records, including documentary evidence and technological data, to determine the actual effective use and enjoyment of the pleasure yacht by the lessee within and outside EU territorial waters. In order to benefit from such scheme, this scheme must be applied within the context of setting up of operating leases.

The 2019 Guidelines, issued by the Commissioner for Revenue, provides the Commissioner with the discretion to approve that the lessor applies VAT only on the portion of the lease which covers the effective use and enjoyment of the pleasure yacht within EU territorial waters.

IS YACHT REGISTRATION IN MALTA RIGHT FOR YOU ?

While cruising and visiting picturesque places along coasts is probably the dream of all yacht lovers, a seasoned yacht owner will tell you that there is more to owning a yacht than what meets the eye. After acquiring a yacht, the next natural step is to register your yacht under the flag of a jurisdiction of your choice. It will be in your best interest to choose a jurisdiction which is fiscally competitive and highly accessible, yet reputable.

VAT LEASING SCHEME

Country Highlights

- Reputable and one of the largest flags in the world

- Over 57 million Registry Gross Tonnage
- Over 11,000 Vessels Registered
- VAT on pleasure yacht lease is levied limitedly on actual and effective use in the EU
- Fast Registration Services
- Accessibility & Emergency 24 hours registry services

The overall VAT incidence incurred on the leasing of a yacht can be reduced substantially depending on the use made by the yacht. Maltese VAT on leases that are deemed to take place in Malta is calculated on the basis of the yacht's effective use and enjoyment within EU territorial waters. This means that no VAT is chargeable on the portion of the lease attributable to effective use and enjoyment of the yacht within non-EU or international waters.

The short-term lease of a yacht, which is no longer than 90 consecutive days of possession or use, is considered a supply of service falling within the scope of Maltese VAT when the yacht is put at the disposal of the lessee in Malta. However, for long-term leases which are longer than 90 consecutive days of possession or use, the lessor must be established in Malta in addition to having the yacht put at the disposal of the lessee in Malta. The rule in relation to the long-term lease is applicable as long as the lease contract does not include a clause expressly relating to the transfer of ownership of the yacht or objectively assessed, the ownership of the yacht will not pass automatically to the lessee through the normalcourse of the lease contract.

When the lease falls within the remit of the Maltese VAT as per previous paragraph, the Commissioner for Revenue may consider the place of supply of such hiring of a means of transport to be outside Malta if effective use and enjoyment of the services takes place outside the EU territory. Having said that, the Commissioner for Revenue may exercise discretion to approve that the lessor levies VAT only on the portion of the lease covering effective use and enjoyment within the EU.

In order to benefit from the yacht leasing scheme described above, a number of conditions must be satisfied.

GENERAL CONDITIONS

- ✓ Lessor must possess a valid Maltese VAT identification number;
- ✓ Yacht must be placed at the disposal of the lessee in Malta;
- ✓ Lessor and lessee must enter into a yacht leasing agreement, which agreement must be presented to the VAT Department;
- ✓ Prior approval must be sought from the VAT Department in writing for the lessor to apply Maltese VAT on the basis of effective use andenjoyment;
- ✓ Lessor must maintain adequate and appropriate records to demonstrate effective use and enjoyment within/outside the EU territory; and
- ✓ An annual declaration must be filed with the Commissioner for Revenue within the prescribed timeframe.

CONDITIONS FOR LONG-TERM LEASES

In addition to the above listed conditions, long-term leases must abide by the below conditions:

Lessor must be established for VAT purposes in Malta; and

- Lessee, who can be established in or outside Malta, must be a non-taxable person, i.e. a person who does not lease in the yacht for business purposes

Following the rules above, the lessor would be obliged to charge VAT to the lessee on the lease fee and declare and pay same to the VAT Department upon submission of the VAT returns, which are typically submitted every quarter. In this context and given that generally yacht lease fees are paid in advance, an adjusting mechanism to ensure that the ultimate VAT charge reflects the actual effective use and enjoyment of the yacht within the EU, is applied.

This means that on the monthly lease fees charged in a year, VAT is levied provisionally based on the actual percentage of effective EU use and enjoyment of the yacht in the prior year. This will then be adjusted annually to reflect the actual ratio of effective EU use and enjoyment in the relevant year.

If annual lease of a pleasure yacht, taking place in Malta, is EUR 1,200,000 per year and EUR 100,000 is charged per month and the yacht has during the previous year been used within EU territorial waters for 122 days and has been used outside of EU waters for 244 days, the applicable ratio would be that for one third of the year the yacht has been used within the EU, while for two thirds of the year, it has been used outside of the EU, therefore applicable VAT on lease per month would be:

Use and Enjoyment in EU waters

Use and Enjoyment Outside of EU waters

A ratio of 1:3 is applicable

$$\frac{\text{Euro100,000} \times 18\%}{3} =$$

Euro 6,000 VAT per month

No VAT is charged on the other 2/3rds of the year during which the yacht has been used outside of EU waters.

Therefore, a EUR 12,000 per month of savings on VAT would be made.

OTHERS CONSIDERATIONS

Purchase of the Yacht by the Lessor

The VAT applicable on 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 VAT implications follow standard VAT rules and the transaction should be VAT neutral for lessors who use their yachts exclusively for business.

Sale of the Yacht by the Lessor

The VAT applicable on the sale of the yacht by the lessor will depend on the place where the sale takes place for VAT purposes. If the sale takes place in Malta, 18% VAT would usually be due on the consideration charged for the sale. When VAT is so charged and paid to the Commissioner for Revenue, the yacht may qualify for a VAT Paid Certificate that is issued by the Commissioner for Revenue to the buyer if certain conditions are met as follows:

- ✓ The buyer is not registered for VAT in Malta without any exemptions;
- ✓ The sale consideration charged is not below the yacht's residual value as determined by the Commissioner for Revenue; and
- ✓ If the yacht had been leased before its sale, the lease made commercial sense.

THE RIGHT TO CLAIM INPUT TAX ON FUEL AND OTHER COSTS

The supplier of the yacht charter would be entitled to claim input VAT on the cost of fuel and any other provisions that were purchased – subject to such goods being sold to the client of the yacht charter under a separate contract or subject to being invoiced separately from the charter service. Such supplies would be charged to the client at the full standard rate of VAT.

Subject to the satisfaction of certain conditions, the supplier of the yacht charter would also be entitled to claim any input VAT incurred on the fuel purchased for the outward journey of the yacht to its next port of destination after the charter's completion. Further refunds may also apply on maintenance costs.

Reputability of the Flag and Register

While there are other jurisdictions which may come off as cheaper options, registering your yacht under a reputable flag is essential if you want to sail with peace of mind. The Maltese Flag is the most popular EU flag amongst superyachts registered in the EU because Malta has entered into a number of treaties aimed at regulating and supervising the industry which has earned it a position on the White list on both the Paris MOU as well as theTokyo MOU, and it has also entered into various bilateral agreements with foreign governments where Maltese ships receive preferential treatment in respect of port charges and taxes. Malta also carries out a highly rigorous supervisory exercise on vessels registered under its flag. It has set up a Flag state inspectorate which ensures adherence to international standards which adds to the reputability of the Malta flag.

Quick Straightforward Procedure

Although Malta imposes rigorous standards that have earned it a golden reputation in the maritime sphere, these standards do not hinder those seeking to register their vessel. Malta provides for a straightforward procedure for registration and deletion of vessels, including the registration and discharging of mortgages which are essential when seeking to obtain financing.

In fact, there are a number of benefits associated with registering in Malta, including:

- ✓ its competitive registration and renewal fees;
- ✓ no restrictions on the nationality of the master, officers and crew serving on Maltese vessels;
- ✓ minimum technical requirements in relation to pleasure yachts allowing owners to freely design their own yachts;
- ✓ a 24-hour service to deal with urgent matters.

TONNAGE TAX SYSTEM

Country Highlights

- Reputable and one of the largest flags in the world
- Over 57 million Registry Gross Tonnage
- Over 11,000 Vessels Registered
- EU approved tonnage tax system
- Exempt from Tax on Shipping Activities

- 5% effective tax rate on other Trading Activities

Malta has been recognised for its highly advantageous corporate tax rates as well as its social security tax rates. Currently, the corporate tax rate is 35%, however, this may be reduced to 5%, whilst the social security tax rate is 10%. Upon comparing such rates with those of other jurisdictions which also offer some form of a tonnage tax scheme, it may be deduced that Malta's rates are quite favourable to foreigners.

Vessels involved in the international carriage of goods or passengers by sea, including commercial yachts, qualify as tonnage tax ships and, therefore, are entitled to avail themselves of the benefit of not paying tax under the provisions of the Income Tax Act, but, instead, paying an annual fixed tax — tonnage tax — calculated on the basis of the net tonnage of the vessel. The regulations set out qualifying criteria and provisions for a shipping organisation to qualify for the tonnage tax benefits, including provisions on shipping management activities, vessels under charter out agreements, ancillary activities that may be regarded as shipping activities, as well as the conditions for towage and dredging activities to benefit from the tax exemption. The Malta tonnage tax system ensures legal certainty to the shipping industry and strengthens Malta's position as a leading flag state.

The main fiscal advantages of the tonnage tax system for a shipping organisation covering shipping activities include:

- exemption from corporate tax under the Income Tax Act on shipping activities;
- exemption from tax under the Income Tax Act on any income, profits or gains derived from the sale or other transfer of ship tonnage tax ship which had been acquired or sold whilst under the regime or from the disposal of any rights to acquire a ship which when delivered would qualify as a tonnage tax ship; and
- exemption from tax on the distribution of profits derived from shipping activities to the shareholders

Eligibility

- The ship is operated through a genuine shipping organisation;
- The ship is declared as tonnage tax ship in accordance to the Maltese regulations;
- The activities undertaken by the shipping organisation are shipping activities; and
- The flag link requirement is fulfilled.

Pleasure Yacht under VAT Yacht Leasing Scheme	Commercial Vessel under Tonnage Tax System
1 Week Entity Formation Attainment of Entity Tax Number	1 Week Entity Formation Attainment of Entity Tax Number
1 Week Registration of Vessel	1 Week Registration of Vessel

2 Weeks

VAT Yacht Leasing Setup Approval

2 Weeks

Registration of the Shipping Organisation and Tonnage Tax Ship

ATOM

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