Planning for a Superyacht? Here is What you Need to Consider (1 of 2)

Introduction to yacht planning and management covering the key aspects (ensign, holding structures, VAT Reg (import/export) and crewing)

By **Paul Harvey**, 8th March 2024

When you or your client think about their new Superyacht it might conjure visions of luxurious relaxation, crystal clear blue waters and basking in the sun; conversely, I highly doubt the first thing that comes to mind is the need to meticulously plan for the tax and management implications that go hand in hand with such a prestigious asset.

Here at Dixcart, we wanted to create some helpful and informative articles to serve as easy to digest introductions to some key concepts for superyacht planning:

1. The key considerations for Superyacht ownership; and,

1. A closer look at the ownership structure, Flag, VAT and other considerations via working case studies.

In article 1 of 2, we'll take a brief look at vital elements such as:

- **What Holding Structures Should I Consider For a Superyacht?**

- **Where Should I Register The Superyacht?**

- **The VAT Implications of Import/Export of a Superyacht?**
- **Crewing Considerations**
- **How Dixcart can Support your Superyacht Planning**

What Holding Structures Should I Consider For a Superyacht?

When considering the most effective ownership structure you must take into account not only direct and indirect taxation, but also mitigation of personal liability.

One way of managing this position is through the establishment of a corporate entity, which acts as a holding structure, owning the vessel on the Beneficial Owner's behalf.

The tax planning requirements and available structures will help define desirable jurisdictions. The entity will be subject to the local laws and tax regime, therefore modern offshore jurisdictions like the Isle of Man may provide tax neutral and globally compliant solutions.

The Isle of Man offers a wide variety of structures to the Ultimate Beneficial Owner (UBO) and their advisers; such as Private Limited Companies and Limited Partnerships. As noted, the form of structuring is generally determined by the client's circumstances and objectives, e.g.:

- The vessel's intended use i.e. private or commercial
- The UBO's tax position

Due to their relative simplicity and flexibility, Limited Partnerships (LP) or Private Limited Companies (Private Co) are commonly elected. Typically, the LP is operated by a Special Purpose Vehicle (SPV) – often a Private Co.

Yacht Ownership and Limited Partnerships

LPs formed on the Isle of Man are governed by the Partnership Act 1909. The LP is an incorporated entity with limited liability and can apply for separate legal personality at outset under the Limited Partnership (Legal Personality) Act 2011.

An LP consists of at least one General Partner and one Limited Partner. Management is vested in the General Partner, who engages in the activity carried out by the LP i.e. the day-to-day management and any requisite decision making etc. Importantly the General Partner has unlimited liability, and therefore is liable to the full extent of all burdens and obligations incurred. For this reason the General Partner would usually be a Private Co.

The Limited Partner provides the capital held by the LP – in this instance, the method of financing the yacht (debt or equity). The Limited Partner's liability is limited to the extent of their contribution to the LP. It is of vital importance that the Limited Partner does not participate in the active management of the LP, lest they be deemed a General Partner – losing their limited liability and potentially defeating the tax planning, leading to unintended tax consequences.

The LP must have an Isle of Man Registered Office at all times.

The General Partner would be a Special Purpose Vehicle ("SPV") taking the form of a Private Co managed by the service provider – for example, Dixcart would establish an Isle of Man Private Limited Company as General Partner with Isle of Man Directors, and the Limited Partner would be the UBO.

Yacht Ownership and SPVs

It may be useful to define what we mean when we say SPV. A Special Purpose Vehicle (SPV) is a legal entity established to achieve a defined purpose, normally incorporated to ringfence risk – be it legal or fiscal liability. This can be to raise financing, conduct a transaction, manage investment or in our instance, act as General Partner.

The SPV would arrange any matters required for the effective and efficient management of the yacht; including the provision of financing where appropriate. For example, instructing the build, purchase of tenders, working with various third-party experts to crew, manage and undertake maintenance of the Yacht etc.

If the Isle of Man is the most appropriate jurisdiction of incorporation, there are two types of Private Co available – these are Companies Act 1931 and Companies Act 2006 companies.

Companies Act 1931 (CA 1931):

The CA 1931 company is a more traditional entity, requiring Registered Office, two Directors and a Company Secretary.

Companies Act 2006 (CA 2006):

By comparison the CA 2006 company is more administratively streamlined, requiring Registered Office, a single Director (which can be a corporate entity) and a Registered Agent.

Since 2021, CA 2006 companies can re-register under the CA1931 Act, whereas the inverse was always possible since the commencement of the CA 2006 – thus, both types of Private Co are convertible. You can read more about re-registration here.

We tend to see the CA 2006 route elected by most yachting structures, due to the relative simplicity offered. However, the choice of corporate vehicle will be governed by the planning requirements and the objectives of the UBO.

Where Should I Register The Superyacht?

By registering the vessel to one of the many shipping registries available, the owner is choosing whose laws and jurisdiction they will sail under. This choice will also govern the requirements regarding the regulation and inspection of the vessel.

Certain registries offer more developed tax and registration procedures, and the jurisdiction may also offer various legal and tax benefits. For these reasons, the British Red Ensign is often the flag of choice – available through Commonwealth countries, including:

- Bermuda (Category 1)
- British Virgin Islands (Category 1)
- Cayman Islands (Category 1)

- Gibraltar (Category 1)
- Guernsey (Category 2)
- Isle of Man (Category 1)
- Jersey (Category 2)
- Turks & Caicos (Category 1)

In addition to Cayman and Manx registrations, we tend to also see clients favour the Marshall Islands and Malta. Dixcart has an office in Malta who can fully explain the benefits that this jurisdiction offers and have extensive experience flagging vessels.

All four of these jurisdictions offer administrative benefits, modern legislative environments and are compliant with the Paris Memorandum of Understanding on Port State Control – an international agreement between 27 Maritime Authorities.

The choice of flag should again be determined by the UBO's objectives and how the boat is intended to be used.

What Are The Implications For The Import/Export of a Superyacht?

Depending on a mix of factors relating to ownership and registration etc. sailing between territorial waters will often require serious consideration. There can be significant Customs Duties due, in mishandled circumstances.

For example, non-EU yachts must be imported into the EU and are subject to full rate VAT on the value of the yacht, unless an exemption or procedure can be applied. This can present significant costs for the owner of a superyacht, now potentially liable for up to 20%+ of the yacht value, at the time of importation.

As noted above, with proper planning, procedures can be applied which can abate or extinguish this liability. To name a few:

VAT Procedures for Private Charter Yachts

Temporary Admission (TA) – Private Yachts

TA is an EU Customs procedure, which allows certain goods (including private Yachts) to be brought into the Customs Territory with total or partial relief from import duties and taxes, subject to conditions. This can provide up to 18 months of exemption from such taxes.

In brief:

- Those non-EU vessels must be registered outside of the EU (e.g. Cayman Islands, Isle of Man or Marshall Islands etc.);
- The legal owner must be non-EU (e.g. an Isle of Man LP and Private Co etc.); and
- The individual operating the vessel must be non-EU (i.e. the UBO is not an EU citizen).

You can read more about TA here.

VAT Procedures for Commercial Charter Yachts

French Commercial Exemption (FCE)

The FCE procedure allows commercial yachts operating in French territorial waters to benefit from VAT exemption.

In order to benefit from the FCE, the yacht needs to comply with 5 requirements:

1. Registered as a commercial yacht

1. Used for commercial purposes

1. Have a permanent crew onboard

1. The vessel must be 15m+ in Length

1. At least 70% of charters must be conducted outside of French Territorial Waters:
    - Qualifying voyages include those cruises outside of French and EU waters, for example: a trip starts from another EU or non-EU territory, or where the yacht cruises in international waters, or starts or ends in France or Monaco via international waters.

Those that meet the qualifying criteria can benefit from VAT exemption on importation (normally calculated on the value of the hull), no VAT on the purchase of supplies and services for the purposes of trading commercially, including no VAT on the purchase of fuel.

As you can see, whilst beneficial, the FCE can be operationally complex, particularly with regard to complying with point 5. A “non exemption” alternative is the French Reverse Charge Scheme (FRCS).

French Reverse Charge Scheme (FRCS)

Article 194 of the EU Directive on the Common System of Value Added Tax was brought into force to reduce the administrative VAT burden of both the EU Member States and non-established persons doing business in EU member states. Due to the discretion afforded with regards to implementation, the French Authorities were able to extend this Directive to offer non-established entities certain VAT benefits via the implementation of the FRCS.

Whilst EU entities must make 4 importations in a 12 month period, to be eligible for the FRCS, non-EU entities (such as incorporated Isle of Man LPs) do not need to meet this criterium. They will however still need to engage a French VAT agent to assist with the local administrative duties and formalities.

No VAT will be payable on the hull importation under the FRCS, and as such will not require disbursement. Albeit, VAT on goods and services will still be payable, but can be reclaimed later. Therefore, correct application of the FRCS can provide a cashflow neutral VAT solution.

Once the FRC importation has been completed and the yacht has been imported into France, the yacht is granted free-circulation and can operate commercially within any EU territory without restriction.

As you can see, due to the formalities and potential tax liabilities at stake, importation needs to be carefully planned and Dixcart work with specialist partners to ensure proper compliance with formalities.

Malta VAT Deferral

In the case of a commercial chartering activity, Malta provides an additional benefit when it comes to importation.

Under normal circumstances, importing a yacht into Malta would attract Vat at the rate of 18%. This would need to be paid upon importation. At a later date, when the company uses the yacht for commercial activity, the company would claim the Vat refund back in the Vat return.

The Malta authorities have devised a Vat deferral arrangement which eliminates the need to physically pay out the VAT on importation. The VAT payment is deferred, until the first VAT return of the company, where the VAT element will be declared as paid and claimed back, resulting in a VAT neutral position from a cashflow point-of-view upon importation.

There are no further conditions attached to this arrangement.

As you can see, due to the formalities and potential tax liabilities at stake, importation can be complex and needs to be carefully planned.

Dixcart has offices in both the Isle of Man and Malta, and we are well placed to assist, ensuring proper compliance with formalities.

Crewing Considerations

It is common for the crew to be employed via a third-party agency. Under such circumstances, the third-party agency will hold a crewing agreement with the owning entity (i.e. the LP). The agency will be responsible for vetting and supplying crew members of every level of seniority and discipline – from Captain to Deckhand. They will work alongside service providers like Dixcart to ensure the best possible experience for the UBO and their guests.

How Dixcart can Support your Superyacht Planning

Over the last 50 years, Dixcart has developed strong working relationships with some of the yachting industry's leading experts – from tax and legal planning, to building, yacht management and crewing.

When combined with our extensive experience in the effective and efficient operation of corporate entities, registration and administration of yacht structures, we are well placed to assist with superyachts of all sizes and purposes.

Get in Touch

If you require further information regarding yacht structuring and how we can assist, please feel free to get in touch with Paul Harvey at Dixcart.

Alternatively, you can connect with Paul on LinkedIn

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