STUDIO PIANA ILLUZZI QUEIROLO TRABATTONI
ASSOCIAZIONE PROFESSIONALE

SANTACROCE

STUDIO PIANA ILLUZZI QUEIROLO TRABATTONI
GENOVA

STUDIO SANTACROCE & ASSOCIATI
ROMA

Brief summary of the new Italian rules on the VAT commercial exemption

a. A superyacht can be considered for the purposes of art. 8-bis "actually used on the high seas" if, with reference to the previous calendar year, she has made travels on the high seas (i.e. beyond 12 nautical miles) for more than 70 per cent of her total 'trips'.
b. The term 'trip' refers to the movements between ports (Italian, EU or non-EU) made for commercial purposes. Other movements between yards, ports or for technical reasons cannot be considered trips for the purposes of the high seas condition.
c. The unit of measure for the calculation of VAT commercial exemption validity is the number of trips (irrespective of their length or duration) that the vessel embarks upon that pass the limit of 12 nautical miles (beyond Italian waters) expressed as a percentage of the total number of trips embarked upon on an annual basis.
d. "Official documents" proving the condition refers to any supporting documentation, coming from either the owner or from the entity in charge of the superyacht, that is able to prove, with accuracy and consistency, the trips taken.
e. If the owner or client is unable to show the official documents for understandable reasons, it will be possible to use a declaration aimed at attesting to the supplier that the vessel is actually and predominantly used for the navigation in the high seas.
f. The declaration must point out the declarant's details, his legal status in connection with the vessel, the reference period and the reasons why it was not possible to show the official documents from which it could have been possible to see that the 70per cent condition was met.
g. In all cases of discontinuity in the use of the vessel it is possible to provisionally apply the exemption regime based on a declaration of the genuine and actual intention to use the vessel for the navigation in the high seas (declaration *ex ante*).
h. If the exemption regime is provisionally applied on the basis of a declaration of the planned use of the vessel, the declarant will have to verify *ex post* if the condition is met and eventually report to his supplier their failure to achieve the 70 per cent condition. In this case, the supplier must remedy and pay the higher tax and interests but not necessarily the penalties by virtue of his diligent behaviour.
i. In any case the supplier will be responsible, also concerning penalties, if a formally valid declaration is consistent with a material breach of the VAT legal framework, because of a fraudulent deal or behaviour for which the supplier was aware that he was playing a role in a fraud (or he should have been aware, using ordinary diligence in commercial practice).
j. In any case where the buyer shows a declaration (*ex post* or *ex ante*) he will have to keep the suitable supporting documentation to allow the Tax Authority to check in the tax audit whether the condition of the navigation in the high seas is met. The percentage of trips in the high seas must be verified for each tax period, i.e. with reference to the calendar year.
k. If a ship is not in operation for one or more years reference shall be made to the percentage of navigation in the high seas in the last calendar year when the ship was used.
l. Similarly, if also during the year the use is characterised by discontinuity, the condition follows to the interim period within the Owner's or user's sphere of competence.
m. The interpretation of the "high seas" condition apply only from the date of publication of the Resolution n. 2/E/2017 (i.e. January 2017)

Carla Bellieni

Benedetto Santacroce