



Guide to VAT in Italy on the supply of Yacht Charter services

Short-Term hiring of a commercially registered Yacht

Preface

The objective of this guide is to provide a general overview of Italian VAT regulations regarding the supply of yacht charter services (*both short-term and non short-term*) which have emerged subsequent to the abovementioned regulatory amendments, and in light of interpretations and indications supplied by the Italian Revenue Agency.

Given the complexity of the matter, however, and the latest amendments introduced in accordance with execution of European Union Directives, other measures previously adopted and their effects which will be expounded in subsequent years, this report is intended only as a mere introduction to regulations which could subsequently be integrated with specific further analyses in relation to some concrete cases in point that should eventuate.

This text, taken in unison with a knowledge of the same regulations in other European Union countries, should be considered a starting point for reflections and for verifying the degree of harmonization in the different territories.

To that end, the Italian Revenue Agency, acknowledging that even for the supplier of yacht charter services it is a difficult matter to calculate with precision the movement of vessel both inside and outside European Union territorial waters, has established an estimated percentage of taxable remuneration, differentiating on the basis of the length and the type of nautical propulsion of the vessel. And has clarified that "**territorial waters**" is intended to refer to those within a limit of 12 nautical miles from the coast, as inferred by Art. 3 of the United Nations Convention on the Law of the Sea and Art. 2, comma 2, of the "Italian Navigation Code" (*Resolution 22 July, 2009, n. 38/E*).

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Getting started with VAT in EU

From the beginning of 2010 VAT must be due in the country where the Yacht is made available to the Charterer

From the 1st January 2010 there are the changes to the **VAT Place of Supply rules** (as per Directive 8/2008/CE). This has marked a fundamental change to where VAT is charged on charters. The previous arrangements saw VAT becoming due where the owning company had its base. As from the beginning of 2010 the situation is changed for **short term charter** (90 days or less) and **VAT will become due in the country where the yacht is made available to the Charterer**. While this has clarified some confusion on where VAT becomes due on charter, it appears that it will leave many owning companies with a need to register for VAT in numerous jurisdictions where the yacht will pick up charter parties.

Compliance with VAT is really quite simple: a **"vessel"** is just a **"means of transport"** or a **"qualifying ship"** which can be exploited for the purposes of providing services, so it can be exposed to VAT.

The Directive 2006/112/EC as amended by Directive 2008/8/EC changing the *"place of supply of services"* and so affect also the *"Charter Industry"*. For VAT purposes it needs to distinguish the following two situations.

1) *The nature of "charter" is the hiring of a Yacht (mean of transport).*

A **"short term hire"** means that you have a yacht under concession to use for a period of one to ninety days; the place of taxation is the *"place where the means of transport is put at the disposal of the customer"* means the place where the customer takes actual physical control of the means of transport. Hire of a means of transport includes the hire of ships under charter with or without a crew.

What does this mean in fact?

If these occur in ...	then you may ...
.. other member states	<ul style="list-style-type: none"> • have to register for VAT in those member states and account for VAT at the relevant rate accordingly • if you do not have an establishment in those member states, you may need to appoint a local tax representative to account for the VAT there on your behalf.
.. countries outside the EU	<ul style="list-style-type: none"> • be liable to account for any tax in those countries that is applicable on these services
.. in international airspace or waters	<ul style="list-style-type: none"> • not have to account for any tax on that part of the supply in any country.

It means that if you have a EU or non-EU company owning a yacht that's:



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- operating in Italy the place of taxation would be Italy; then the Owners have to register for VAT in Italy (or appoint a local tax representative) and account at the relevant rate accordingly on the total "charter fees".
- operating in Greece the place of taxation would be Greece; then the Owners have to register for VAT in Greece (or appoint a local tax representative) and account at the relevant rate accordingly on the total "charter fees".
- operating in Spain the place of taxation would be Spain; then the Owners have to register for VAT in Spain (or appoint a local tax representative) and account at the relevant rate accordingly on the total "charter fees".

2) The nature of "charter" is a transport of passenger service (qualifying ship).

The place of supply of passenger transport services is determined according to where the transport physically takes place.

What does this mean in fact?

If these occur in ...	then you may ...
- other member states	- have to register for VAT in those member states and account for VAT at the relevant rate accordingly - if you do not have an establishment in those member states, you may need to appoint a local tax representative to account for the VAT there on your behalf.
- countries out side the EU	- be liable to account for any tax in those countries that is applicable on these services.
- in international airspace or waters	- not have to account for any tax on that part of the supply in any country.

a. What about transport services that occur in a Member States of EU?

The Owners have to register for VAT in those member states and account for VAT at the relevant rate accordingly only on the part of the journey inside waters of those member state.

b. What about transport services that occur in international waters?

The Owners not have account for any tax on that part of the supply in any country.



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What about VAT in Italy

The "charter" of a Yacht with Italian or foreign flag (EU or non EU)

The "Charter" of Yachts in Italian waters that are registered as commercial vessels (*mean of transport or qualifying ship*) and are used exclusively in charter **can not legally be exempt from the VAT.**

- 1) If the nature of "charter" is the "short-term hiring of a Yacht" (*mean of transport*) commercially registered in Italy or a EC's or not EC's member State and the place where the customer takes actual physical control of the Yacht is in Italy, then the Owners have to register for VAT in Italy (*or appoint a local tax representative*) and account at the relevant rate accordingly on the total "charter fees".

Owner	Charterer		Delivery	Use	VAT in Italy
Italian, EC, non-EC	Italian, EC, non-EC	taxable or private consumer	Italy	Italy	YES
				EC	YES
				no EC	NO
			EC's State (no Italy)	Italy	NO
				EC	NO
				no EC	NO
			no EC' State	Italy	YES
				EC	NO
				no EC	NO

- 2) If the nature of the "charter" is the "transport of passenger services" performed with a "qualifying ship" commercially registered in Italy or a EC's or not EC's member State, the Owners have to register for VAT in Italy (*or appoint a local tax representative*) and account at the relevant rate accordingly only on the part of the journey inside Italian waters.



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When the Italian VAT should be applied on Charter Fees

In Italy, when the nature of "charter" is the "short-term hiring of a Yacht" (mean of transport) commercially registered in Italy or in a EC's or in a not EC's member State, the VAT on Charter Fees must be applied following these general rules:

Italy: VAT on Short-Term hiring (bareboat & time charter agreement) of a Commercial Yacht <i>see Italian law: art. 7-quater, comma 1, lettera e), D.P.R. n. 633/1972</i>					
Owner Company	Charterer	Delivery	Use	VAT due in Italy	Gross Hire
Italian, EC, non-EC	taxable or private consumer	in Italy	EC	YES	+ VAT (due in Italy)
		out of EC	in Italy	YES	+ VAT (due in Italy)
	-	in Italy	non EC	NO	no VAT due in Italy
	Italian, EC, non-EC	EC (no Italy)	everywhere	NO	no VAT due in Italy
		out of EC	non Italy	NO	no VAT due in Italy

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According to Directive 2008/8/EC, in Italy the territoriality rules regarding VAT on “short-term hire” of commercially registered Yachts (*means of transport*) and the adoption of the “*use and enjoyment principle*” are set for in the Art. 7-quater of the Italian VAT Decree n. 633/1972.

Therefore, “*charter fees*” are subject to Italian VAT if the bareboat or time charter agreement commences:

- 1) in the Italian territory (*are deemed to be supplied in Italy when the commercially registered Yacht is put at disposal of natural persons within the Italian territory*) and the commercially registered Yachts is used within EC maritime territorial waters.
- 2) outside the EC territory and the commercially registered Yachts is used within Italian maritime territorial waters.

Moreover, “*charter fees*” are NOT subject to Italian VAT the bareboat or time charter agreement commences:

- 3) in Italy and the commercially registered Yachts is used outside EC maritime territorial waters.
- 4) in a EC’s member State (*different from Italy*).
- 5) outside the EC territory and the the commercially registered Yachts is NOT used within Italian maritime territorial waters.

What rate of VAT to be applied in Italy on Charter Fees

The Italian VAT regime of Charter Fees is in compliance with the judgement of the Court of Justice UE of 22 December 2010, C-116/10, the so called Bacino’s Case, and with the Art. 148 (c) of the Directive 2008/112/EC (*that replaced the Art. 15 (5) of the EC’s “Sixth Directive”*).

According to the Note n. 49/E issued by the Italian Revenue Agency on the 7th June 2002 (*confirmed by the Note n. 43/E issued by the Italian Revenue Agency on the 29th September 2011*), these are the rules to be applied for the calculation of VAT payable in Italy on “short-term” **bareboat** or **time charter agreement** (*independently from the flag of the Yacht and the nationality of the Owner and the Charterer, that have no relevance*):

- A) the current ordinary VAT rate **on the Charter Fees** if the commercially registered yacht is used as “*static charter*” in an Italian Marina or in the case where the cruising area is limited within the Italian territorial sea waters or inland waters.
- B) the current ordinary VAT rate **on a proportion of the Charter Fees** (*which varies depending on the type of yachts, motor or sailing, and of its length*) if the commercially registered yacht **it is assumed can also be used on the high seas** (*outside EU maritime territorial waters, as defined in the Montego Bay Convention, ie. 12 miles from the coast*).



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Italian Reduced VAT - Explanatory table

based on Note n. 49/E issued by the Italian Revenue Agency on the 7th June 2002

In order to calculate the proportion of the **“Charter Fee”** on which to charge VAT (*at the ordinary rate*) payable in Italy, please see the explanatory table provided by the Note n. 49/E issued by the Italian Revenue Agency on the 7th June 2002.

Type of yacht and its length over all (LOA)	Percentage of the “Charter Fees” subject to VAT
Motor Yacht - LOA over 24 metres	30 %
Sailing Yacht - LOA over 24 metres	
Motor Yacht - LOA between 16,01 and 24 metres	40 %
Sailing Yacht - LOA between 20,01 and 24,00 metres	
Motor Yacht - LOA between 12,01 and 16 metres	50 %
Sailing Yacht - LOA between 10,01 and 20,00 metres	
Motor Yacht - LOA between 7,51 and 12,00 metres	60 %
Sailing Yacht - LOA up to 10,00 metres	
Motor Yacht - LOA up to 7,50 metres	90 %

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Owning Entity’s requirements to pay VAT in Italy on Charter Fees

In order to be able to pay the VAT on charters, depending on whether the Owning Entity is based in the EU or outside of the EU, two different procedures apply:

a) The direct identification of VAT for non-residents in Italy (residents in other EU member states).

For Owning Entities established in other EU member states, including for example, the Isle of Man and in general those European countries that are part of the European free customs zone, can apply for the direct identification relevant for VAT purposes in Italy in order to obtain the Italian VAT registration number (*partita IVA*) and to issue invoices with Italian VAT.

b) Need to appoint the tax representative for non-European based owning entities.

Non EU based Owning Entities cannot apply for the direct identification process to obtain an Italian VAT position. In order to do so and to be able to issue invoices with the Italian VAT number, the non-EU based entities shall appoint a tax representative in Italy. The tax representative, who is jointly liable with the owning entity for the payment of VAT and other tax due in Italy, is generally involved also with the invoicing of the charters’ operations, keeping the VAT records, performing VAT payments, filing VAT returns and INTRASTAT statements. In order to limit his/her liability vis à vis the Italian tax authorities, it may be possible that the tax representative requests some sort of security (*insurance bond, bank guarantee or cash*) in order to be protected in the case the Owning Entity does not perform the payment due to the Italian tax administration.

After direct registration and assignment of a VAT number, the Owning Entity (*European or non-European*) shall, inter alia, be subject to the following reporting and filing obligations as set forth in the Italian VAT legislation:

1. Invoicing and recording of active operations.
2. Periodic liquidations and VAT quarterly payments
3. Annual communication of VAT data
4. Annual VAT return
5. Annual payment on account of VAT
6. Adjustment payment
7. Keeping and storage of registers and documents
8. Presentation of INTRASTAT forms



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When and how much you have to pay VAT in Italy on Charter Fees

Here an explanatory table to clarify the situation in Italy, taking into account a commercially registered yacht with a **LOA > 24m**; a charter period of 10 days (*short-term charter*); a Charter Fee of Euro 100.000 (*VAT not included*); the Italian ordinary **VAT rate at 22%** (*from 01 october 2013*).

Port of Delivery	Port of Redelivery	Cruising Area (as defined in the charter agreement)	Charter Fee	% of Charter Fee subject to VAT	VAT payable in Italy
Venice (Italy)	Venice (Italy)	Static charter in Venice as “floating hotel”	100.000	100	22.000
Venice (Italy)	Corfu (Greece)	Adriatic Sea (without giving further details about the use)	100.000	30	6.600
Venice (Italy)	Venice (Italy)	Adriatic Sea; from Venice with direct navigation to Kotor, sailing in “non-italian” territorial waters, return to Venice with direct navigation from a non-italian harbour (<i>EU or non EU</i>) (*)	100.000	0	0
Kotor (Montenegro)	Venice (Italy)	Adriatic Sea (without giving further details about the use)	100.000	30	6.600
Kotor (Montenegro)	Venice (Italy)	Adriatic Sea; sailing in the territorial waters of Montenegro and Croatia, return to Venice for immediately redelivery with direct navigation from a non-italian harbour (<i>EU or non EU</i>) (*)	100.000	0	0
Kotor (Montenegro)	Venice (Italy)	Adriatic Sea; from Kotor, sailing for 7 days outside EU’s territorial waters, arrival in Trieste (<i>clearance 1</i>) and sailing for 3 days in italian territorial waters with redelivery in Venice (<i>clearance 2</i>) (*)	100.000	30	1.980

(*) Charterer/Owning Entity must be in possession of the necessary documentary evidence

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Who is the beneficiary of Italian “reduced” VAT

In Italy the VAT treatment of the “**yacht chartering**” is similar to that of the “**yacht leasing**”; this analogy is confirmed by the Note n. 49/E issued by the Italian Revenue Agency on the 7th June 2002. For this reason the beneficiary of “**Italian reduced VAT**” is the Charterer and not the Owning Entity.

Being the Charterer to decide how and where to use (*within the agreed Cruising Area*) the yacht during the charter period, then the Charterer must notify in advance the Owning Entity the type of VAT treatment applied, assuming its responsibility towards the Italian Tax Authorities.

Then, the **Charterer** wishing to benefit from the system “**Italian reduced VAT**” must sign an additional module to the “**bareboat**” or “**time-charter**” ISYBA’s standard forms which authorize the **Owning Entity** to invoice Charter Fees with “**reduced VAT**”.

This “**Annex**” (*named “Applicazione IVA”*) is written in Italian as it must be made available to the Italian tax authorities in case of control.

This additional module has been issued by **ISYBA** (*Italian Ship & Yacht Brokers Association*) and is an integral part of the following standard agreement:

- a) **ISYBA-YLOC** (*ed. 2014*), bareboat charter agreement for pleasure vessel
- b) **ISYBA-YTIME** (*ed. 2014*), time-charter agreement for pleasure vessel in commercial use (*no ISPS certified*)
- c) **ISYBA-YCRUISE** (*ed. 2014*), cruise voyage agreement for commercial vessel in tourist use (*ISPS certified*)

Accordingly, the Charterer that shall pay to the Owning Entity the VAT (*reduced or not, in accordance with the decisions and instructions of the Charterer*) on the Charter Fees and it is up to the Owning Entity to pay such VAT to the Italian Tax Authorities.

Thank you for choosing a Licensed Broker associated with ISYBA

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Happy Holidays in the Italian sea

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References to Italian Regulations

Regulations governing the application of VAT in Italy are contained, mainly, in the Decree of the President of the Republic (DPR) 26 October 1972, n. 633, which is based on three assumptions:

- (i) objective,
- (ii) subjective
- (iii) territorial.

Recently the above mentioned DPR n. 633/1972 was amended, in accordance with the European Union Directive, with reference to the part governing the definition of criteria that identifies the prerequisites of territoriality and the supply of services to both B2B (*Business To Business*) and B2C (*Business To Consumer*); accordingly, in defining the general rule for all the cited typologies apposite rules for such supply of services have been introduced, included therein are some related to the yacht charter sector.

The supplies of yacht charter services are divided into three distinct cases:

- (i) supply of short-term yacht charter services rendered to either type of charterer (B2B or B2C), such case is regulated specifically by Art. 7-quater;
- (ii) supply of non short-term yacht charter services rendered to a non-taxable person (B2C), such case is regulated specifically by Art. 7-sexies;
- (iii) supply of non short-term yacht charter services rendered to an Italian taxable person (B2B), such case is regulated in general by Art. 7-ter.

Art. 7-quater, comma 1, lett. g) cited DPR n. 633/1972, provides that, in exception of what is established by cited Art. 7-ter, comma 1, it is considered to have been effected within the territory of the country where « *the provision of hire services, including leasing, hiring, and similar, short-term, of means of transport when the same means are put at the disposal of the consignee in the territory of the State, always with the proviso that they are used inside the European Union. Likewise, the supply is considered to have been effected in the territory of the country when the means of transport are put at the disposal of the consignee outside European Union territory and they are used inside the territory of the State* ».

Art. 7-sexies, comma 1, lett. e), cited DPR n.633/1972, provides that, in exception of what is established by cited Art. 7-ter, comma 1, lett. b), supply is considered to have been effected within the territory of the State « *if rendered to non-taxable person lessees (omissis) the provision of hire services, including leasing, hiring, and similar, non short-term, of means of transport when they are provided by the lessor established in the territory of the State and they are used inside the European Union. Likewise, where the supply is provided by taxable person lessors established outside the territory of the European Union it is considered to have been effected in the territory of the State when they are therein used* ».

Art. 7-ter, comma 1, lett. a), cited DPR n. 633/1972, provides that the supply of services (generic) is considered to have been effected in the territory of the State « *when they are rendered to taxable person lessees established in Italy* ».

Art. 40 Regulation 15 March 2011, n. 282/2011, provides that « *The place in where the means of transport is actually put at the disposal of the customer as referred to in Article 56 of Directive 2006/112/EC, shall be the place where the customer a third party acting on his behalf takes physical possession of it* ». In particular Art. 56, paragraph 1, provides that the place of the supply of short-term hiring of transport shall be the place where the means of transport is actually put at the disposal of the customer.»