



## Choose the right contract to avoid tax problems...

### Charter Agreement MYBA vs. ISYBA

#### Preface

VAT and tax disadvantages, it is true ... But few know that the choice of the “contract” can not only save money, but to ensure peace of mind “tax”.

Unfortunately many Owners (UE or extra-UE) are considering to leave the business of “charter” for fear of incurring unpleasant tax audits.

Considering, in Tax & VAT terms, the general uncertainty that exists in that exists in MED area, any Beneficial Owner should expect from its “managers” to re-analyze carefully (*if they can*) the current situation, for example in Italy.

Errors of “fiscal management” have caused problems during inspections in Italy in recent years, errors of “fiscal management” that will cause the most serious problems to Yachts which will operate from France in the next season.

Beyond this aspect, that primarily involves non-Italian Beneficial Owners, it must be noted that the choice of the contract may be for any Owner a guarantee for the proper interpretation of Italian Tax & VAT laws and may allow any Charterer to legally reduce their outlays.

Below we propose a comparative analysis of the conditions contained in the forms **MYBA** and **ISYBA**, followed by the development of a specific case, focusing on **economical results**...

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#### Table of contents

##### 1. MYBA vs. ISYBA - Comparing the main contents

- Agreement to let and to hire
- Owner's Obligations
- Charterer's Obligations
- Advance Provisioning Allowance, Positioning Fee, Security Deposit

##### 2. MYBA vs. ISYBA - Example: closing, accounting & invoicing

- Closing (conditions of the contract)
- Accounting & Invoicing
- Conclusions



## Charter Agreement - MYBA vs. ISYBA

*Analysis of the conditions contained in the forms*

### MYBA vs. ISYBA - Comparing the main contents

Subject of the clause ...	MYBA	ISYBA
<i>Agreement to let and to hire</i>	<p>The OWNER agrees to let the Vessel to the CHARTERER and not to enter into any other Agreement for the Charter of the Vessel for the same period. The CHARTERER agrees to hire the Vessel and shall pay the Charter Fee, the Advance Provisioning Allowance, the Delivery/Re-delivery Fee, the Security Deposit and any other agreed charges, in cleared funds, no later than the dates and to the Account specified in this Agreement.</p>	<p>The OWNER let and the CHARTERER hire the Vessel for the Charter Period stated in Box E starting at the port of delivery stated in Box F, letter a), on the date and at the time mentioned in Box E, letter a), and terminating at the port of redelivery stated in Box F, letter b), on the date and at the time mentioned in Box E, letter b). The OWNER shall not to enter into any other Agreement for the Charter of the Vessel for the same period. Nothing contained in this agreement shall be construed as a demise of the Vessel to the CHARTERER and the OWNER remain at all times responsible for her navigation and for due performance of related services.</p>
<i>Owner's Obligations</i>	<p>The Vessel shall be insured, seaworthy, clean, in good condition throughout and ready for service, with full equipment, including up-to-date safety and life- saving equipment (including life-jackets for children if any are carried in the CHARTERER's Party), as required by the Vessel's registration authority and fitted out as appropriate for a Vessel of her size and type and enabling the CHARTERER to use the Vessel as set out in Clause 13.</p> <p>The OWNER shall provide a Captain qualified in accordance with the Vessel's flag state requirements and acceptable to the insurers of the Vessel. He shall also provide a suitably qualified and properly trained Crew. No member of the Crew shall carry or use any illegal drugs on board the Vessel or keep any firearms on board (other than those declared on the manifest) and the Captain and Crew shall comply with the laws and regulations of any country into whose waters the Vessel shall enter during the course of this Agreement. The OWNER shall ensure that the Captain shows the CHARTERER the same attention as if the CHARTERER were the OWNER.</p> <p>The OWNER shall insure the Vessel with first-class insurers against all customary risks for a Vessel of her size, value, and type on cover no less than is provided under Institute Yacht Clauses 1.11.85 or other recognised terms extended to provide Permission to Charter and to cover Third Party liability, Water Skiers liabilities together with liabilities arising from the use by the CHARTERER and other competent person(s) authorized by him of personal water craft, including jet skis, wave runners and other similar powered craft as well as windsurfers, dinghies, catamarans or other water-sports equipment carried by the Vessel. The insurance shall also cover War, Strikes, Pollution and include insurance of Crew against injuries and/or Third Party liabilities incurred during the course of their employment.</p>	<ol style="list-style-type: none"> <li>a) The OWNER shall provide and pay for all expenses relevant to the Captain and crew wages, contributions, insurance, food and so forth and shall ensure that the Captain and crew comply with the laws and regulations of any country into whose waters the Vessel shall enter during the Charter Period.</li> <li>b) The OWNER shall maintain the Vessel, her engines and equipments fully efficient and keep her insured as per Clause 14 at his own expense throughout the Charter Period.</li> <li>c) The OWNER shall instruct the Vessel's Captain to comply with all reasonable orders given to him by the CHARTERER regarding the Vessel's itinerary and to assist the CHARTERER's party during the Charter Period with the crew and Vessel's equipment as per CHARTERER's instructions.</li> <li>d) The OWNER shall be responsible during the Charter Period for: <ol style="list-style-type: none"> <li>i) supplying fuel the main engines, generators, tenders and watersports equipment as per CHARTERER's instructions;</li> <li>ii) provisioning of food and beverages for CHARTERER's party as per CHARTERER's instructions;</li> <li>iii) preparing and serving meals and drinks to CHARTERER's party as per CHARTERER's instructions and in accordance with the OWNER's standard practice;</li> <li>iv) supplying CHARTERER's party with bed linen and towels that shall be changed regularly in accordance with the OWNER's standard practice.</li> </ol> </li> </ol>



## Charter Agreement - MYBA vs. ISYBA

Analysis of the conditions contained in the forms

### Charter Agreement MYBA vs. ISYBA

Subject of the clause ...	MYBA	ISYBA
<p><i>Charterer's Obligations</i></p>	<p>The CHARTERER will pay, at cost, for all other expenses. These include, but are not limited to, shoreside transport; fuel for the main engines and generators; fuel for tenders and water sports equipment; food and all beverages for the Charter Party; berthing dues and other harbour charges including pilots' fees, local taxes, divers' fees, customs formalities and any charges for waste disposal, charges for water and electricity taken from shore; ships' agents' fees where applicable; personal laundry; Charter Party communications and internet use; and hire or purchase costs of any special equipment placed on board at the CHARTERER's request.</p> <p>Payment for extraordinary expenses such as special requirements or equipment, shoreside transport or excursions or any other expenses not customarily considered part of the Vessel's operating costs may be required to be paid, via the Broker's account in advance or to the Captain on boarding, in addition to the APA.</p>	<p>a) The CHARTERER shall be responsible for the definition of the Vessel's itinerary as well as for the definition of the food, beverages and other well-being and entertainment services for his Guests on-board the Vessel and shall pay an <b>Additional Hire for all consequential costs</b> (including, but not limited to all fuel costs for the main engines and generators; fuel for tenders and watersports equipment; berthing dues and other harbour charges including pilots' fees, local taxes, divers' fees, custom formalities and any charges for waste disposal, charges for water and electricity taken from shore; agency fees for vessel's husbandry where applicable; food, beverages, personal laundry, communications and internet use for CHARTERER and his Guests; hire or purchase costs of any special equipment placed on board at the CHARTERER's request).</p> <p>b) The CHARTERER shall be responsible to inform his Guests with an accurate and truthful description of the Vessel, the Vessel's itinerary and the catering, bar and recreational services on-board the Vessel.</p> <p>c) The CHARTERER shall nominate a contact person travelling with the Vessel, who shall communicate with the Vessel's Captain and crew in order to ensure the successful performance of the charter in every way. The contact person is authorized to make decision on behalf of the CHARTERER in matters occurring on board the Vessel.</p>
<p><i>Advance Provisioning Allowance Positioning Fee Security Deposit</i></p>	<p>Advance Provisioning Allowance (APA) covers all expenses incurred by CHARTERER; these include, but are not limited to, shoreside transport; fuel for the main engines and generators; fuel for tenders and water sports equipment; food and all beverages for the Charter Party; berthing dues and other harbour charges including pilots' fees, local taxes, divers' fees, customs formalities and any charges for waste disposal, charges for water and electricity taken from shore; ships' agents' fees where applicable; personal laundry; Charter Party communications and internet use; and hire or purchase costs of any special equipment placed on board at the CHARTERER's request.</p> <p>The Security Deposit shall be held by the Stakeholder on the OWNER's behalf and may be used in, or towards, discharging any damage or liability that the CHARTERER may incur under any of the provisions of this Agreement.</p>	<p>a) "Advance Provisioning Allowance" (A.P.A.) represents the approximate <b>Additional Hire</b> that the CHARTERER shall pay to the OWNER in order to cover the other charges not included in the Hire that the OWNER shall sustain as a result of orders received by the CHARTERER during the Charter Period as stated in this Agreement.</p> <p>b) "Positioning Fee" represents the Additional Hire that the CHARTERER shall pay to the OWNER to move the Vessel to the Port of Delivery.</p> <p>c) "Security Deposit" represents a guarantee that may be used in, or towards, discharging any amount not covered by the Advance Provisioning Allowance, or damage or liability that the CHARTERER may incur under any of the provisions of this Agreement.</p>



## Choose the right contract to save money...

*A specific case, focusing on economical results...*

The development of a specific case - Closing (main conditions of the Charter)

### 1) Type of contract:

- a) MYBA's form: time charter by demise
- b) ISYBA's form: time charter

### 2) Main conditions of the contract:

- a) Vessel: Motor Yacht (*commercially registered in Italy or a EC's or not EC's member State*) with a L.O.A. of 35 mt
- b) Charter Period: from 12.00 LT hours on the 29 march 2015 to 12 LT hours on the 8 april 2015
- c) Port of delivery: Genoa (Italy)
- d) Port of redelivery: Naples (Italy)
- e) Cruising Area: Mediterranean Sea
- f) Hire: Euro 50.000 (+ VAT if due)
- g) A.P.A.: Euro 25.000
- h) Security Deposit: Euro 10.000

### 3) Summary of the "fees" and "ancillary costs" recorded at the end of the charter period:

- a) Hire: Euro 50.000,00 (+ VAT)
- b) Food & Beverage: Euro 8.000,00 (+ VAT if due)
- c) Berthing dues: Euro 5.000,00 (+ VAT)

### 4) Fuel

- a) Fuel consumption: Lt. 7.500
- b) Fuel cost (Duty Free): Euro 0.65 / per liter (+ VAT if due)
- c) Fuel cost (No Duty Free) : Euro 2,0 / per liter (VAT included)

Charter Agreement  
MYBA vs. ISYBA



## Charter Agreement - MYBA vs. ISYBA

*A specific case, focusing on economical results...*

The development of a specific case - Accounting & Invoicing

### A) Accounting based on the MYBA Charter Agreement

Subject to the conditions contained in this form the Owner will be billed to the Charterer only the **Charter Fee** (*Euro: 50,000; Euro 35,000 exempt to VAT, Euro 15,000 subject to VAT at the rate of 22%*).

All **costs** for "Fuel No Duty Free", "Food and beverage" and "Berthing Dues", however, should not be accounted for by the Owner because they relate to costs incurred directly by the Captain in the name and on behalf of the Charterer using the APA and the Security Deposit (*Euro 25,295 plus VAT at the rate of 22%*).

### B) Accounting based on ISYBA Charter Agreement

Subject to the conditions contained in this form the Owner will be billed to the Charterer:

- Considerations relating to services rendered by the Owner in favor of the Charterer during the charter period, consisting of the following items:
  - a) **Hire** (*equal to Euro: 35,000 + VAT at the rate of 22% only on 30%*);
  - b) **Additional Hire** for the services performed by the Owner in favor of the Charterer (*see: consumption of Fuel Duty Free, provisioning of food and beverages/preparing and serving meals and drinks, amounting to Euro 27,875 not subject to VAT, see art. 8-bis D.P.R. n. 633/1972*);
- All the "costs" that claimed the Owner in advance to execute the orders of the Charterer (*see Berthing Dues, amounting to Euro 5,000, plus VAT at the rate of 22%*) and that the Charterer is required to reimburse (*after submission of the relevant documents to be attached to the invoice*).



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*A specific case, focusing on economical results...*

### C) Accounting statement - MYBA vs. ISYBA

#	Accounting statement	MYBA		ISYBA	
a	Accounting transactions <b>exempt</b> to VAT	Euro	35,000.00	Euro	24,500.00
b	Accounting transactions <b>subject</b> to VAT (in Italy)	Euro	40,295.00	Euro	15,500.00
c	Accounting transactions <b>not subject</b> to VAT in Italy	Euro	0,00	Euro	27,875.00
d	VAT at the rate of 22%	Euro	8,865.00	Euro	3,410.00
	<b>Total</b> (a+b+c+d)	Euro	<b>84,160.00</b>	Euro	<b>71,285.00</b>

### C) Conclusions

Many operators, also Italian, underestimate the importance of carefully evaluate the "content" of the clauses in the form (*contract*) iused to document agreements between Owner and the Charterer. The choice of the form can not be "uncritically" (*that is, without having read it in depth*) and without carefully consider any "tax consequences" that may ensue.

From the "real" example above developed it is noted that using the form named ISYBA-YTIME:

- i) The Charterer will save legally Euro 12,875 (*approximately - 15.3%*);
- ii) The Owner will be billed correctly & legally any amount received.

ISYBA respects all International Associations of the sector, but knows the **real** Italian fiscal situation and the Laws governing the Charter Industry in Italy.

ISYBA's Members are sorry if our common Customers, Owners & Charterers, are induced to pay more than they should ...



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*A specific case, focusing on economical results...*

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#### References to Italian VAT 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.

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*).



## “Italian Reduced VAT” for Commercial Yachts

*Short-Term hiring of a commercially registered Yacht*

### Commercial Yachts VAT applicable in Italy on Charter Fees

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.»