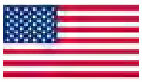
Global Tax Report

In issue 138, *TSR* provided an update on tax issues affecting Europe. In this issue as well as following up these developments we also investigate the situation worldwide.



UNITED STATES

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In the United States, yachts may be subject to sales tax, a transaction-based tax due in the state where the yacht is purchased; and use tax, a tax due in the state or states where the yacht is present. While closing offshore or in a tax-free jurisdiction will avoid state sales tax, cruising in the waters of certain states can still trigger a use tax liability, generally set at the same rate as the state's sales tax and applied against the yacht's original cost or, in some cases, current value. The rate and application of use tax on yachts varies by state, resulting in uncertainty when cruising in US waters without proper planning. Fortunately, state laws have exhibited a trend towards a more benevolent application of sales and use tax in recent years. The trend continued in 2013 as two states – Connecticut and Maryland – enacted tax legislation favourable to yacht owners.

Connecticut generally imposes a tax on the storage, acceptance, consumption or any other use in the state of tangible personal property, including yachts. Prior to 1 July 2013, with respect to a vessel with a sales price exceeding $100,000, the applicable rate was 7 per cent. After this date, the applicable rate for a vessel with a sales price exceeding $100,000 was reduced from 7 per cent to 6.35 per cent. Additionally, as of 1 July, a vessel that is "docked" in the state for 60 or fewer days in a calendar year is exempt from Connecticut sales and use tax. Although the applicable statute uses the term "docked", days on which a yacht is cruising, moored or at anchor in Connecticut waters will probably count toward the 60-day period.

In Maryland, yachts that are used or principally used within the state have been subject to tax at the rate of 5 per cent on their fair market value. If a yacht is present in Maryland for more than 90 days in a calendar year, it will be deemed to be principally used in Maryland and subject to the tax unless principal use in another jurisdiction is proven. As of 1 July 2013, the maximum sales and use tax that may apply to yachts in Maryland is $15,000.

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The rate reduction and 60-day exemption from use tax on vessels in Connecticut and the cap on the vessel sales and use tax in Maryland follow a recent pattern of yacht-friendly tax legislation in the United States. In 2010, Florida capped sales and use tax on vessels at $18,000, reducing the use of offshore closings and foreign registration, particularly for yachts that are owned directly or indirectly by Florida residents or that will cruise in Florida waters for more than 90 consecutive days or 183 days in any one-year period. Also in 2010, Maine provided for an exemption to its 5 per cent sales and use tax that applies to a vessel purchased by a non-resident outside of Maine if the vessel is registered outside the state, used outside the state, and present in the state for no more than 30 days during the first 12 months following its purchase. The recent law in Maine also allows for an exemption of 60 per cent of the vessel's sales price if the vessel is present in the state for more than 30 days during the first 12 months following its purchase, effectively reducing the tax rate to 2 per cent.

While these positive changes for yacht owners may foreshadow similar favourable tax changes in other coastal states, for now, cruising in certain states may result in a use tax of up to 9.5 per cent of the yacht's cost or value. Avoiding use tax requires an analysis of use tax provisions in each state on the yacht's itinerary and, in particular, any states to which the yacht's owner has a nexus, such as a business or residence. Fortunately, with a proper strategy, an owner may cruise in the US without use tax concerns.

AUSTRALIA

Mary Anne Edwards
CEO AIMEX & Superyacht Australia

Cruising in Australia is simple. There are no taxes levied on foreign superyachts cruising Australia. Foreign private superyachts are free to cruise Australian waters without any special charges or taxes to do so. Any services and provisions purchased in Australia and to be consumed in Australia are subject to a 10 per cent goods and services tax (GST). Superyachts can purchase duty-free fuel and provisions within 48 hours of leaving Australia.

The owners or masters of yachts cruising Australian waters on cruising permits will be able to obtain GST-free repairs or refits by presenting their cruising permits to their repairers/refitters. The Australian Taxation Office will not require presentation of documents showing prior arrangement of repairs or refits. GST-free repairs/refits include any repairs or refits to the yachts that are carried out during the course of their visits to Australia. Examples of these include:

- Repairs necessitated by accidents in Australia; and
- Routine maintenance.

To be GST free the supply of goods must be provided by the supplier of the refit/repairs to the vessel. The repairer/refitter can make a GST-free supply of the repair/refit by retaining a copy of the cruising permit. In addition to the cruising permit, the repairer/refitter will retain the financial records ordinarily required for taxation and accounting purposes.

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Current regulations make it possible to charter in Australia, but it requires GST to be paid on the vessel and the vessel must be set up as an Australian business and comply with other regulatory requirements to complete the charter process. There are a number of very experienced superyacht agents in Australia who are able to assist in this process.

In 2012 Superyacht Australia put forward a submission to the federal government requesting a review of the Australian charter regulations. There is a very strong push by the industry and now supported by the Queensland Government to review the current charter regulations and make them far more attractive to foreign-flagged vessels. Superyacht Australia is hopeful that following the recent Australian federal government election the new government will look favourably on this review. Both parties see the economic value to the country in supporting a strong superyacht sector and Superyacht Australia has been lobbying to ensure a policy of facilitation not regulation.