

## YOUR YACHT YOUR MONEY



BY CATHERINE KENT

Many owners consider placing their yachts in charter, usually as a way to offset ownership and operating costs. The perks are obvious: Chartering a yacht produces income and, in some cases, significant tax benefits. However, chartering can be an onerous undertaking, as the laws relating to yacht charter are complex and constantly changing. As attractive as income and tax savings may be, prior to signing the first charter contract, yacht owners should be aware of the restrictions on chartering, the process of becoming eligible for charter and the costs involved.

The complexities of yacht charter are far too vast and variable to describe on a general basis, as the law governing any particular charter will depend on the cruising area, the port of departure and the yacht's flag. Many countries, including the United States, have cabotage laws, which limit charter activity for vessels that are not flagged in and owned by citizens of the country where the charter is to take place.

While it's possible to charter in these areas without meeting local ownership and flag requirements, certain requirements are unavoidable, and there is risk involved even in legal arrangements to avoid cabotage restrictions. For example, to charter a yacht with its crew in the United States, the yacht must be documented with a "coastwise" endorsement, which requires that the yacht be U.S.-built and owned, and controlled by a

# Should You Put Your Yacht In Charter?

How to determine whether the benefits will outweigh the costs.

U.S. citizen or citizens. Although yachts built and flagged outside of America and owned by non-U.S. citizens may charter under bareboat arrangements, U.S. duty (1.5 percent of the value of the yacht) and state sales and use taxes must be paid (including tax on the charter fee).

Charters must meet several requirements to be considered "bareboat," including that charterers select and retain their own crew. Even if the specific requirements of a bareboat charter are met, there is a risk that the U.S. Coast Guard or Customs and Border Protection may challenge the characterization of the charter as a

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bareboat if they suspect the charter in essence does not meet the legal criteria.

Yachts must also meet their flag state's requirements to charter. Some flags require full commercial certification, which means the yacht must comply with international conventions relating to charter—such as the International Convention on Load Lines, the Maritime Labour Convention and the International Maritime Organization's principles of safe manning—and the flag state's commercial regulations, such as the Large Commercial Yacht Code for the Cayman Islands.

In other flag states, yachts that are unable or unwilling to meet these standards are allowed limited periods of charter without full commercial certification. However, because these yachts do not meet international requirements for commercial activity, charter in the European Union—where full commercial certification is required—is off-limits.

Chartering in the EU involves an additional layer of complexity: importation, registration and payment of value-added tax (VAT). In the EU, VAT on importation of a yacht for charter is assessed and collected by the country where the yacht is physically imported, and the owner needs to be registered in this country. Certain countries and methods of importation allow for payment and reclaiming of VAT on importation, or for paying VAT at zero rate. VAT on charter fees is assessed and collected by the country

where the yacht picks up passengers to begin its charters, and the yacht owner must hire a VAT agent and register for VAT payment in each such country.

Fees for VAT registration through a registered VAT agent are nominal (approximately \$3,500 last year, plus a small percentage of all VAT collected on charters). Once a yacht is imported into the EU for charter, VAT must be paid on all use of the yacht, including by the owner. The Marshall Islands flag is working on a program whereby an owner would not have to pay VAT on his own use of the yacht while in the EU during charter season, however, full commercial certification would still be required, and it is possible the owner may have to post a 5 percent bond to ensure the yacht is exported from the EU within a certain period of time.

Prior to making the decision to charter, owners should understand these variables and associated costs to determine whether it is worth the financial benefit. But for an owner who is up for the challenge, particularly one with a knowledgeable legal and management team, yacht charter can be a lucrative undertaking with the benefits far outweighing the costs. **Y**

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