



Yachting developments in Spain

Within a context of heavy economical crisis, Yachting in Spain has paradoxically increased within the last years. Barcelona is involved in a deep coastline transformation, including new building of Marinas, having a direct impact in the growth of the Yachting business, new employments and income's increase. The Spanish Government is not alien to this reality: Yachting seems to have been eventually understood as a strategic sector for the Spanish economy. Likewise, Administrations are proactively and jointly working with the sector in order to clarify the applicable legal frame, aiming to improve the legal certainty.

The recent publication of Law 14/2014, Ley de Navegación Marítima, is a good example: for the very first time, Yachting is recognized independently from the merchant navy, incorporating figures such as the so called "contrato de arrendamiento náutico" (i.e. charter agreement). Also recently into force, Royal Decree 804/2014 setting a legal frame for yachts over 24 meters, again recognizing a special and differential treatment for the new building, repairing, maintenance and survey, from the traditional regulation under the Merchant Navy.

From an international perspective, there are different topics under review, both in the private and public sector, such as the visa treatment for crews spending long periods in Spanish yards or at base winter ports, or the Pilot services for Superyachts. Mestre Abogados, as founding member of the Barcelona Cluster Nautic, is actively involved in all these discussions and review.

Chartering in Spanish waters is still the hot topic and, particularly, the allowed flags and taxes, with special focus on the Spanish Matriculation Tax and the possibility for non-EU flags to be licensed for chartering in Spain.

As to taxation, Mestre Abogados, as secretary of the Board of Fòrum Marítim Català has been actively involved in the Forum activities in pursuing the removal of the Matriculation Tax during the last years, achieving some intermediate improvements: the abolition of the maximum length of 15 meters for the yachts chartering in Spain, that has undoubtedly opened the market for all range of yachts, of all lengths, avoiding the payment of the Matriculation Tax. The above said exemption subject to the yacht being effectively and exclusively subject to charter activities and therefore not allowing any private use by owners. (Art. 66.1 g) Law 38/92).

A further amendment was introduced as from January 2014 including a new exemption (Art. 66.1 ñ) Law 38/92) as to the possibility for Spanish residents to charter EU registered yachts from other EU suppliers for periods of three months, avoiding the payment of the Matriculation Tax; the law expressly observes the possibility to extend the referred term of 3 months by paying the Matriculation Tax at reduced 3, 2 and 1 % rates. This opened the charter market to Spanish residents under the said conditions and limitations. Contrary to the traditional exemption for charters (Art. 66.1 g) this new exemption does not condition (expressly) the exemption to the exclusive destination of the yacht to charter activities.



It is important to recall that the above exemptions do not apply automatically and would, therefore, need the previous Tax administration's recognition.

With this new legislative scenario regarding Matriculation Tax, after several binding consultations to the Tax Authorities having been launched by ANEN, may be set up as follows:

- (i) Chartering in Spain by a non-resident natural person/ company regularly during summer seasons. The Spanish Tax Authorities understand that the owner may probably have a permanent establishment in Spain and therefore should ask for the recognition of the traditional exemption (Art. 66.1 g Law 38/92). The yacht being therefore obliged to be effectively and exclusively subject to charter activities and therefore the owner not allowed to use the yacht privately.
- (ii) Chartering in Spain by a non-resident natural person/ company occasionally during some summer weeks. In this case, the owner would not need to request the exemption ruled in Art. 66.1 g Law 38/92 and therefore may use the yacht privately within Spanish waters always provided that the charter:
 - Is uniquely performed with non-resident natural persons, neither holders of a permanent establishment in Spain.
 - It is not understood that the non-resident owner holds a permanent establishment in Spain (i.e. by means of an agent).
- (iii) Chartering outside Spanish waters by a non-resident natural person/ company, eventually embarking and disembarking passengers in ports outside Spain but eventually sailing throughout Spanish waters.

Two situations may arise:

- The charter is only engaged with non resident natural persons, neither holders of permanent establishments in Spain: if the non-resident owner has not a permanent establishment in Spain, he may use the yacht within Spanish waters without need to apply for the traditional exemption (Art. 66.1 g) Law 38/92). However, if he has a permanent establishment in Spain, he shall ask for the exemption, the yacht effectively and exclusively subject to charter activities and therefore the owner not allowed to use the yacht privately.
- The charter is engaged with Spanish residents or holders of permanent establishments in Spain. The taxing authorities pointing to two possibilities:
 - That the owner requests the traditional exemption (Art. 66.1 g) Law 38/92) and it is not allowed to use the yacht.
 - That the charterer requests the new exemption 66.1 ñ) Law 38/92. In this case, the owner may use the yacht in Spain once the charter period has finalized. The exemption shall be requested by each charterer for the duration of the charter period.



Having said that, we emphasize that, as the casuistry may be very diverse, every case should be analyzed with great care.

As said, the target is the removal of the Matriculation Tax but there are other intermediate improvements pursued by the yachting sector that may be –hopefully- achieved for the next seasons; as the removal of the requirement that the yacht is effectively and exclusively subject to charter activities with regard to the traditional exemption (Art. 66.1 g) Law 38/92) or, alternatively, that –at least- a percentage of private use is recognized to owners as happens with jets. Or either achieving a gradual application of the tax proportionally to LOA's or attending to the CO2 contamination's levels, similarly to the Spanish annual cars circulation tax, that would certainly specially benefit sailing yachts.

Finally, as to the allowed flags to operate a charter business from Spain and following the licensing of several non-EU flagged yachts to operate from the Balearic Islands, the sector is actively working to align the criteria with other Maritime Authorities in Spain.

From a pure operational perspective, non-EU flagged yachts could be licensed to charter in Spain subject to resolving their VAT status and obtaining a special permission from the Spanish Central Maritime Authority. All in all, still subject to the final discretion of the Spanish Administration.

Notwithstanding all the above progress, there are still many aspects to be clarified towards uniformity and legal certainty, such as the uniform application by the different Maritime and Customs administrations.

In view of the above, if your clients are considering the possibility to charter in Spain this summer, we definitely recommend seeking prior advice in order to avoid unexpected issues.

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