

Temporary Importation to EU

If a yacht operates in EU waters Value Added Tax (VAT) must be considered. These considerations can also impinge on the choice of Flag State, the yacht's ownership structure and the place of ownership.

The EU's Sixth Directive on Value Added Tax was amended in 1993. This amendment states that all yachts which are owned or used by an EU resident in EU waters must pay VAT or have proof of VAT exemption. Failure to comply with EU regulations can have serious consequences for a yacht and its owners – this can include detention or seizure of the yacht, or severe financial penalties.

It is therefore vital that the yacht complies with all regulations and has appropriate ownership structures in place.

Owners who are non EU residents, or a yacht which is non EU Flagged, who wish to sail their yachts in EU waters for private purposes may temporarily bring their yacht into the EU without customs duties or VAT needing to be paid.

The boats concerned have to be placed under the 'temporary importation procedure' (TI) with Customs and the period of use in the EU is limited in time to eighteen months. The temporary importation rules are covered under Article 562 of the Customs Code. When the time is up the boat has to leave, in official jargon this period is called 'the period of discharge'. The re-exportation of the goods from the customs territory of the Community is the usual way of ending or 'discharging' a temporary importation procedure. If the boat does not leave before the end of that time then customs duty and VAT become due.

A boat is temporarily imported into the EU and not into one of the constituent Member States. Thus it can move from one Member State to another with no further customs formalities during the 18 month period allowed.

After 18 months the yacht must be exported before re-entering the EU under the same rules.

How can a yacht be placed under TI? Just crossing the frontier of the customs territory of the Community is in general sufficient. But, the yacht may be required to use a route specified by customs and they may require the vessel to make an oral or written customs declaration. It is possible that customs may require the provision of some kind of security or guarantee to cover the payment of the customs duties and VAT that become due if the boat does not leave the EU.

The legal provisions on temporary importation are found in Articles 562 and 137 to 144 of the Customs Code.

We have considerable experience in the importation of yachts and the formation and management of appropriate corporate structures.

Temporary Importation - EU Customs Code Articles

Article 137

The temporary importation procedure shall allow the use in the customs territory of the Community, with total or partial relief from import duties and without their being subject to commercial policy measures, of non- Community goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.

Article 138

Authorisation for temporary importation shall be granted at the request of the person who uses the goods or arranges for them to be used.

Article 139

The customs authorities shall refuse to authorize use of the temporary importation procedure where it is impossible to ensure that the import goods can be identified. However, the customs authorities may authorize use of the temporary importation procedure without ensuring that the goods can be identified where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure.

Article 140

1. The customs authorities shall determine the period within which import goods must have been re-exported or assigned a new customs approved treatment or use. Such period must be long enough for the objective of authorized use to be achieved.
2. Without prejudice to the special periods laid down in accordance with Article 141, the maximum period during which goods may remain under the temporary importation procedure shall be 24 months. The customs authorities may, however, determine shorter periods with the agreement of the person concerned.
3. However, where exceptional circumstances so warrant, the customs authorities may, at the request of the person concerned and within reasonable limits, extend the periods referred to in paragraphs 1 and 2 in order to permit the authorized use.

Article 141

The case and the special conditions under which the temporary importation procedure may be used with total relief from import duties shall be determined in accordance with the committee procedure.

Article 142

1. Use of the temporary importation procedure with partial relief from import duties shall be granted in respect of goods which are not covered by the provisions adopted in accordance with Article 141 or which are covered by such provisions but do not fulfil all the conditions laid down therein for the grant of temporary importation with total relief.
2. The list of goods in respect of which the temporary importation procedure with partial relief from import duties may not be used and the conditions subject to which the procedure may be used shall be determined in accordance with the committee procedure.

Article 143

1. The amount of import duties payable in respect of goods placed under the temporary importation procedure with partial relief from import duties shall be set at 3 %, for every month or fraction of a month during which the goods have been placed under the temporary importation procedure with partial relief, of the amount of duties which would have been payable on the said goods had they been released for free circulation on the date on which they were placed under the temporary importation procedure.
2. The amount of import duties to be charged shall not exceed that which would have been charged if the goods concerned had been released for free circulation on the date on which they were placed under the temporary importation procedure, leaving out of account any interest which may be applicable.
3. Transfer of the rights and obligations deriving from the temporary importation procedure pursuant to Article 90 shall not mean that the same relief arrangements must be applied to each of the periods of use to be taken into consideration.
4. Where the transfer referred to in paragraph 3 is made with partial relief for both persons authorized to use the procedure during the same month, the holder of the initial authorisation shall be liable to pay the amount of import duties due for the whole of that month.

Article 144

1. Where a customs debt is incurred in respect of import goods, the amount of such debt shall be determined on the basis of the taxation elements appropriate to those goods at the time of acceptance of the declaration of their placing under the temporary importation procedure. However, where the provisions of Article 141 so provide, the amount of the debt shall be determined on the basis of the taxation elements appropriate to the goods in question at the time referred to in Article 214.
2. Where, for a reason other than the placing of goods under the temporary importation procedure with partial relief from import duties, a customs debt is incurred in respect of goods placed under the said procedure, the amount of that debt shall be equal to the difference between the amount of duties calculated pursuant to paragraph 1 and that payable pursuant to Article 143.