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"I am the master of my fate, I am the captain of my soul"

William Ernest Henley

Brexit's Effects on Yachting

An Island

Unto Itself...

As one of Europe's historically great maritime powers prepares to depart the haven of the European Union and set sail for an uncertain future, how will Grand Britannia's 'Brexit' effect yacht owners and buyers? With the British Pound offering a highly attractive rate against other major currencies, what legal issues should those seeking to buy a yacht bearing the 'Made in the Great Britain' consider? As our legal expert Prof. Dr. Cristoph Ph Schließmann explains here, there will be many far reaching consequences of Brexit; from crew employment, through regulations, taxes and custom controls...





T This may be a bold statement to commence with, but, Brexit will certainly change the yachting industry in Europe. As the shocking result of a referendum held on June 23rd of this year confirmed, the seafaring country of Great Britain is leaving the EU. In view of its currently not-to-be-doubted exit, this decision will change the economic and legal life in the EU decisively. The international yachting industry in particular was characterized very strongly by the global British influence as a seafaring nation, as well as by the Common Law with its logic being different from the Civil Law of continental Europe in many areas. This influence will weaken considerably. Although nothing will change legally before the completion of the exit, we must gear up for serious changes, deliberate on permutations and adapt new structures.

The results of Britain's referendum to depart the EU came as quite a shock to most and will have far-reaching effects in the yachting and maritime industries.

YACHTS AND GOODS PURCHASES FROM GB

The considerable decline of the British Pound as compared to the Euro and US Dollar will benefit yacht owners in the USA and current citizens of non-British EU countries. Whether a yacht purchase agreed to in Pounds in England must be financed at exchange rate of 1.33 or 1.18 (Euro-Pound), can yield six-digit savings. Commitments in the Pound are bound to sink in value. Need for action: One should prefer this if one is planning to buy a yacht and is flush with cash funds. If one has commitments in Pound, one should settle this at the current exchange rate, if one has outstanding bills in pounds, one should check whether in individual cases, a tax-reducing partial value write off can be undertaken. If Great Britain does not get any special preferences within the framework of special agreements, the cross-border flow of goods will change in terms of

the VAT, because the EU VAT law will not be applicable any more. In place of tax free community-intra deliveries, or reverse charge services, exports and imports will require adjustments in the accounting and reporting system. Withdrawal from the customs union will lead to the application of customs clauses and customs-relevant imports and exports. Even from the viewpoint of legal export control, there will be new approval processes. In reference to the original certificate of a goods, British yachts will no longer qualify as EU goods. Need for action: If customs duties are reintroduced, changes will trigger the problem within the framework of the settlement price, whether or not companies producing in Great Britain would be better storing the production in continental Europe. From the legal brand point of view, branded companies operating all over Europe will lose the protection of European Union brands on the geographical area of Great Britain, so that new registrations will be necessary.

Without a special agreement, Britain's withdrawal from the customs union will lead to the application of customs clauses and customs-relevant imports and exports

CREW FROM ENGLAND WORKING IN THE EU

Brexit could, and probably will, lead to restrictions in the free movement of workers, most of all for future activities. Crew members from Great Britain will be treated in the EU as third-country citizens without free movement and EU crew members in Great Britain will be subject to the local legal stay provisions, which will in all probability be made more stringent from 1st January 2017. This will also obviously have a radiation effect on British crew members in the EU labour market.

Need for action: EU employers (ships under the EU flag) should check whether according to these new British stay provisions, a EU citizenship by naturalization is possible for crew members or, whether according to the new British rules visa, stay permit and stay papers will be required. It is also not clear how this will affect British citizens already working in the EU.





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INFLUENCE OF BRITISH YACHT REGULATIONS

Large yachts with the British flag are being built exclusively according to the specifications of MCA today. Very frequently, yachts with flags of other countries also follow these construction specifications, which have developed into a near standard comparable to SOLAS (Safety Of Life At Sea), which is why many international safety rules for yachts like MCA are influenced by Britain or are of British origin. What will happen to them is difficult to predict as of now. I personally do not think there will be too many changes here regarding the recognition of RYA certificates. More about this in a special issue.

BRITISH OWNERS WITH YACHTS IN THE EU

The VAT-free dispensation will be applicable provisionally. In the process of provisional usage, persons who reside in places outside the customs area can: bring in yachts from non-EU countries as well as yachts owned by non-EU citizens under complete exemption of import duty in the customs area and its territorial waters—provided the craft are used for private purposes, are not altered during their use and finally are exported back in the same condition as they were imported earlier; are used temporarily or for fixed durations in the customs

area of the EU and are intended beforehand for re-export from the customs area.

The yacht under British flag will be introduced temporarily in the EU and not in one of its member countries. Hence, it can be moved from one member country to another within the permitted 18-month period, without requiring any further customs formalities to be fulfilled. If the yacht leaves the area before the expiry of this 18-months, customs duties and VAT must be paid. As the monitoring customs office, the processing customs office will demand proof of the clearance of the yacht after the expiry of the approved use period. After the completion of the process of provisional use (i.e. the re-export of the yacht from the customs area of EU), the yacht can return to the EU for another 18-months, a new period of provisional use will then start. Yachts owned by British citizens who are already taxed in EU and stay in the EU, will not lose their taxation status, provided they do not stay more than three years outside the EU.

SERIOUS CHANGES IN CORPORATE STRUCTURE

Companies, most of all in the maritime industry that are operated in continental Europe as per British law, will lose the freedom of settlement in the EU

once the EU exit comes into force. The "foundation theory" in use at present allows limited companies founded in England to be operated exclusively e.g. in Germany with very few hurdles. If, in contrast "Great Britain" is a third country, the EU countries can fall back on the "Head Office theory," the consequence of which would be that English limited companies will operate under the local law as apparently foreign joint stock companies are converted to partnership companies and personal liability comes into play. Even European share-holding companies with head office in the EU can lose their legal basis.

Need for action: Companies according to British law with main activity in the EU countries must therefore think about a change in legal structure in the concerned EU country, or ensure that the actual administration and management of the company is carried out in England, something that is not desired from the strategic market point of view.

TAXATION CHANGES

In addition to the already addressed tax changes the following will apply to cross-location companies. Pay-outs by German companies to British parent companies are subject to tax deduction at

source at present, due to the parent–subsidiary guideline. After the completion of Brexit, there will be a tax deduction at source of five percent once the double taxation agreement kicks in. Joint–stock companies in Great Britain wanting to migrate to a EU country in the future must liquidate hidden reserves that are subject to taxation.

Great Britain, as a future third–country in relation to EU, will have a legal structure of foreign transactions tax law rules like e.g., Germany. A company in Great Britain can then initially be checked in view of bypassing circumstances and intermediate company according to the foreign transactions tax law with the consequence of addition of tax in Germany, if the shareholder owns more than 50 percent of the company and the revenue of the foreign company is subject to a liability through income tax of less than 25 percent—without being based on a comparison with income from other sources. As long as no exceptional circumstances for active incomes exist, no advantages accrue to the companies which have their head office or their management in a member country of the European Union or in a contract

country of the EWR agreement and which can prove, that the company, is pursuing a “genuine economic activity” in this country.

In third–countries one must prove a full “substance escape,” which means that the foreign company must maintain such trade deals of a commercially established business operation while participating in general economic transactions in the third country and exercise everything for the preparation, conclusion and exercise of business activities without the cooperation of a shareholder or such a close person according to the foreign transaction tax law. Alibi activity is not sufficient, the company must achieve revenue with a genuine corporate structure, own employees, own on–site management and without trustees. This applies independently of a double–taxation agreement and its umbrella effect which offers the advantage that a partner with residence in Germany can represent the third–country company, without having to start a factory at the place of residence.

Need for action: Many owner–managed, medium–sized companies in the yacht industry are facing

this problem while performing activities in Great Britain and must if necessary, reorganize themselves there.

We can be excited about what will happen as change always provides opportunity, but whatever the case we should be cautiously preventive of those positions we currently hold.



From customs to taxation, from crew employment to corporate structures, the Brexit's ripple effect through the yachting industry is not to be underestimated.

