

# GETTING IT RIGHT

## TOP TIPS FOR BUYERS AND SELLERS

ACCORDING TO SOME ESTIMATES THE superyacht industry contributes a staggering €24 billion per year to the global economy. To put that into perspective, that's about €3 billion more than the total GDP of Iceland. For seasoned Yacht Investor readers this is perhaps unsurprising, especially when you consider a couple of significant points: the average price tag of a newly built 'mid-sized' superyacht is circa €50-80 million and the industry has grown steadily at a rate of, on average, 7% per year for the last ten years and shows no signs of slowing down anytime soon.

I can certainly vouch for the fact that most of the top shipyards currently have a limited number of build slots available for yachts over 100 meters in size. It's worth pausing here to note the change that has occurred in our industry – in the early 90s there were only a handful of yachts in the world larger than 100 meters – at the time of writing there are some 67 yachts over 100 metres.

It is therefore imperative, in my opinion, that family office advisors, trustees, fiduciaries, and other trusted advisors to the world's wealthiest people, have a clear understanding of this unique and very demanding asset class.

With this in mind, I have outlined some of the key legal and practical issues for advisors to think about when involved in the most common of superyacht transactions – the sale and purchase of a second hand yacht – as well as the positive steps advisors can take to help ensure a positive outcome for their client / principal.

### Sale and Purchase transaction

I am often asked "What are the key issues for us to think about in a sale and purchase (S&P) transaction?" It's a complicated answer, but let's start by briefly considering the dynamic of a yacht S&P transaction: you have two of the wealthiest individuals on the planet and their advisors coming together to convey a movable, complex and incredibly valuable asset. This is an asset which, more likely than not, has a full time compliment of crew stretching in some cases to 50 plus people. Add to that a few intermediaries and brokers and the scene has been set.

Now we come to the actual transaction, which, in my view, has five important issues that need to be addressed:

**Consider the tax position:** After confirming the sale price, this is one of the first issues I start to explore with my clients. Take, for example, a yacht that is based in the EU: Has VAT been paid on the yacht? Has the yacht been operating commercially? Where is it flagged? How was VAT paid? What

*The sale and purchase process of a superyacht can be complicated, lawyer Mark Needham gives us an overview of some of the pitfalls and opportunities.*

evidence is available to prove the payment of VAT? These are all questions to ask the brokers and the seller or, if you are a seller yourself, these are questions you should be ready to answer. A failure to do so as a buyer can result in a potential 20% uplift on the purchase price (in the form of VAT). It is an expensive thing to miss.

**The inventory:** As a prospective buyer when you view a yacht you see it in all its glory. The aft deck infinity pool, the bespoke personally designed interior, moving down to the fully equipped beach club where you can find all your water toys ready for action. Naturally, you expect that the yacht should come equipped as seen, right? Well, sometimes sellers (especially sellers who own more than one yacht), want to take some things with them: a statue they are particularly fond of or a vintage tender. The inventory is where both parties make clear what they expect from the sale and purchase and its importance cannot be overlooked in a world where works of art and tenders are selling for multiple millions of pounds.

**Future use planning:** As a buyer, you may have very clear expectations about what you intend to do with the yacht; for example you may know that you only ever want to use it privately with your family and friends. To the contrary, some buyer's like the idea of offsetting some of the running costs through chartering it out to third parties. Either way, it is important to consider how you will use the yacht prior to becoming the owner. This is because the manner in which a yacht is used has a direct relationship with its tax status and the certifications the yacht must have i.e. whether it meets the relevant standards for commercial operation.

**Use a company:** It doesn't happen that often, but it is not unheard of for buyers to sign a sale and purchase contract and take delivery of the yacht in their own name. The risks of this are significant

as the buyer's liability to the world at large is unlimited, potentially putting their entire net worth at risk. The solution is a simple one: purchase the asset using a limited liability company. At this point the choice of jurisdiction of the owning entity should be considered in light of the proposed future use of the yacht and its tax position.

**The actual sales contract:** I could write a short treatise on what should and should not be included in a sales contract. However since it differs from deal to deal, I would rather highlight some of the key things to think about and questions to ask:

Firstly and simply, has the contract been written in clear English? Do you understand the duties of all of the parties and the relevant time frames?

Secondly, what documents are you agreeing to give and by when? What documents are you receiving? Are the documents you are receiving sufficient to either register the vessel in the buyers name or evidence the authority of the seller to sell the vessel?

Who is the stakeholder in the transaction? Is there a stakeholder? Are they impartial or do they represent one of the parties to the transaction? If the latter, have they agreed to act impartially notwithstanding their obligations to one of the parties?

Has account been taken of any charter contracts that may have already been entered into prior to an agreement in principle being reached? If so, is it clear that the buyer will perform those charters? Alternatively, is it clear that the seller will pay the charter fees to the buyer upon receipt or has provision been made for the relevant charter contract to be novated?

Finally, as a buyer, what rights of sea trial and condition survey do you have? When do these rights expire and do you have sufficient time to complete all the surveys you want to carry out?

### Conclusion

I think few people will argue with me if I say that the purchase of a yacht is supposed to be fun – it's a lifestyle purchase and the jewel in the crown for many people. I therefore view it as my job, and as the job of the closest advisors to the buyers and sellers of these luxury assets, to ensure that the yacht does not become a burden, especially during the sale and purchase process. Thinking about the above issues at an early stage should go some way to help achieving that objective.

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