

Separating morality from legality - and why yachting has the moral high ground



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Following an onslaught of misguided moral righteousness in the wake of the 'Paradise Papers' Quentin Bargate challenges the misconception that all UHNW individuals who own yachts are seeking to evade tax.

In this article, Quentin muses on the benefits of offshore flags, corporate structures and open beneficial ownership registers.

I don't believe lawyers should write too much about morality, but in 2017, following the disclosure of the so called Paradise Papers, I felt compelled to do so in the face of an onslaught of misguided moral righteousness that followed, villainising the wealthy for using perfectly legal means of investing their wealth in offshore corporations in order to achieve tax efficiency. In the process, many august journals blurred the lines between entirely legal tax avoidance and illegal tax evasion. It is a distinction lost on the general public in any event.

The British Overseas Territories are a success, not only for the prosperous that take advantage of their services, but also for the local economies of the territories concerned, and importantly for the people who live and work there. Apart from yacht registration, many offer a wide range of corporate and financial services. It was regrettable that we saw yacht owners who choose to flag their vessel with an offshore flag state being pulled into the debate in the ever popular pantomime of the evil Superyacht owner who hides his wealth and avoids paying tax.

Many of these flag states are British Overseas Territories, such as the British Virgin Islands, or the Cayman Islands. They support seafarers, and do vital work alongside other "Red Ensign" (i.e British) flags, but you hear little about that, or the other services that they offer.

The choice of flag state should be considered one of the most important decisions in yacht ownership. It will affect the regulations the owner and vessel are subject to including construction, inspection, regulatory compliance regimes and, of course, taxation and liability protections. The benefits of registering a vessel under a recognised good quality offshore flag state are clear and considerable.

A privately registered yacht with a non-EU owner can be imported into the EU under the Temporary Admission regime in Europe, allowing 18 months of operation in EU waters without having to pay VAT. This is legitimate tax avoidance. And who benefits? Not just the owner but also the economies of the European countries visited whether for ship repair, bunkering, victualling, restaurants, marinas and support services of all kinds.

For those of us who work within the superyacht industry, it follows that it is not just morally beneficial, but also sound business sense to promote our industry in a positive light. Too much misinformation appears in the popular press about the use of these offshore flag states for nefarious purposes. It is important to also remember that these flag states also offer high construction, safety and employment standards, protection of British maritime law, consular services and navy; and commercial confidentiality.

Looking at the well trumpeted fact that only a tiny percentage of those who have the wealth to own a superyacht do in fact do so, perhaps we need to focus more on educating the wider public on both the legality and ethical nature of much of the structuring within our industry.

I cannot personally think of any film in which a superyacht has been featured where it was not used as the lair or get away vehicle for some disreputable character. Granted, playing the villain is often the best acting role, but the more we can dispel this misleading association between yacht ownership and dodgy behaviour, then potentially the more new individuals we can encourage into what is a fantastic and unique world.

We need to be clear about the differences between a Flag of Convenience (“FOC”), which our swarthy money laundering individual might in fact use and a reputable offshore flag state that is subject to the laws and regulations of recognised nations with stable legal and fiscal regimes.

As a case in point, it is estimated that 80 per cent of large yachts are flagged in the British overseas territories that make up the Red Ensign Group. This Red Ensign Group uses the UK’s Maritime & Coastguard Agency (“MCA”) regulations for construction, safety and employment, which has a positive impact on maritime security for the yacht, owners, guests, and crew. In addition it protects the ethical welfare of mariners working aboard, the marine environment and resale value of the vessel, due to the ensured high standards of maintenance and quality.

In this age of heightened awareness of security threats, you will see that a commercially registered vessel over 500GT, flagged under a reputable offshore flag state such as Cayman Islands, must comply with the ISPS code that sets the minimum security arrangements for ships, ports and governmental agencies. This prescribes to *“detect security threats and take preventative measures against security incidents affecting ship or port facilities used in international trade”*. Surely with the increased risk of terrorism, it must be beneficial that these superyachts are able to respond to aid the government in detection and prevention of any threats.

There is a good story to be told, but it is not being told often enough. It is a story of high standards, increased safety, crew welfare, and the positive impact on the hardworking local people of overseas territories. It is also a story of wealth generation across Europe and elsewhere, and the enhancement of our own security.

Now, the pressure is on for publicly searchable beneficial ownership registers; no longer will the wealthy enjoy any meaningful financial privacy, their security will be compromised and the aims of General Data Protection Regulation (“GDPR”) will be entirely lost. How ridiculous!

We should not let the prurient interests of the tabloid press, or leaks such as that of the Paradise Papers, obscure the bigger picture. It is the duty of all of us that know of these many benefits to get out there and tell that story.

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