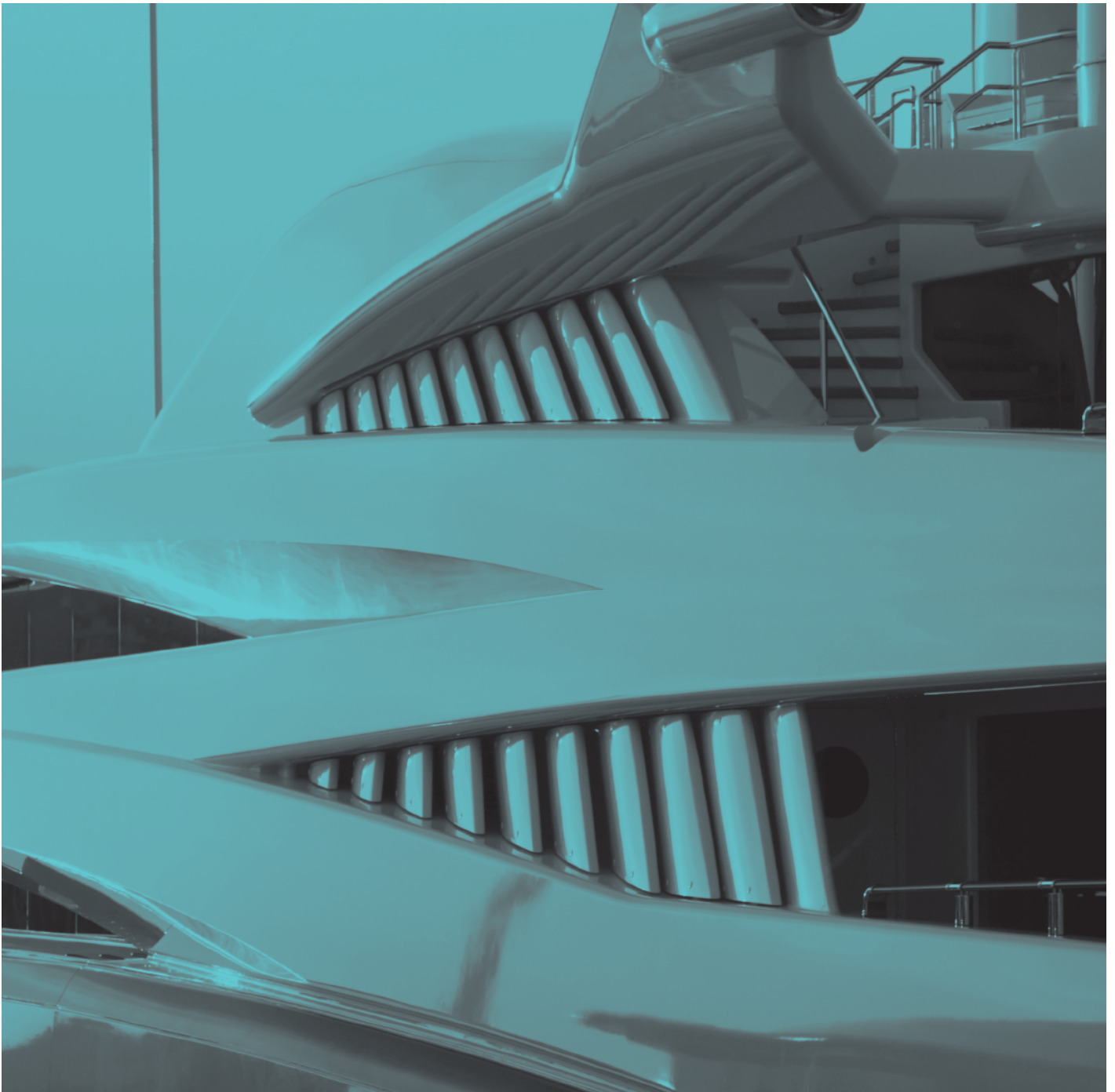


SHIPPING
YACHTS & SUPERYACHTS - FRENCH CUSTOMS INSPECTIONS



You are the owner or the manager of a yacht or a superyacht whose home port is in the South of France or which calls regularly in French ports in the Mediterranean. In such a situation it is highly likely that your yacht and/or crew will undergo customs inspections carried out by officers from the French Coastguard services. Indeed, yachts and superyachts are, and always will be, of particular interest to the customs and tax administrations of the Member States of the European Union.

Customs investigations aim to ascertain whether such vessels are operating within the law, both from a customs and a tax point of view. The customs authorities keep a close watch to ensure that the conditions required both for temporary admission procedure for means of transport (for vessels that fly non-EU flags) and the commercial pleasure status applicable in France are respected. A vessel may have commercial pleasure status in France if it is commercially registered, has a permanent crew on board and is used for a commercial activity (charters).

Furthermore, customs authorities carry out controls on pleasure vessels and merchant ships to guarantee the protection of the territory and to protect national and European interests (controls are enforced on sensitive goods that are being transported such as objects of cultural importance, weapons etc. and customs authorities ensure that the necessary declarations relating to the cross-border transfer of funds are made).

This memo identifies the nature and range of the French Coastguard's powers, explains briefly the legal principles surrounding customs inspections and summarises how you should conduct yourself during an inspection.

What you need to know about customs investigations

The fact that a yacht or superyacht can be subject to a customs inspection is something that should always be considered when owning or managing a vessel. In order to understand your rights in this respect, it is of crucial importance to be familiar with the legal framework surrounding customs inspections. Such knowledge will better allow you to deal with an investigation and prepare you for the consequences.

French customs authorities have at their disposal the legal means to inspect pleasure or commercial vessels, as well as tenders/helicopters. Their investigations can either take place on board your vessel as an unexpected, isolated event or as part

of a full investigation into the use of your vessel and its tax situation, whether your vessel is lying in a French port or is undergoing repairs or refit in a French shipyard.

What investigatory powers do the French customs services possess?

An important distinction is to be made between (a) the special powers used by the customs services to inspect any type of vessel, and (b) their general on-board powers of investigation.

a) Powers to inspect vessels:

These powers can be found in the French Customs Code ("FCC"). According to article 62 of the FCC, Coastguards are allowed to inspect any vessel, commercial or pleasure, located within the maritime zone radius of the customs authority and an adjoining sector of between 12 and 24 nautical miles.

Article 63 of the above-mentioned Code also gives them power to carry out vessel inspections alongside a quay.

Under these articles, the Coastguard may inspect any part of the vessel, including private areas.

b) General powers of investigation:

Aside from the wide range of powers designed to investigate vessels sailing in French waters, or staying in French ports or shipyards for technical reasons, the Coastguard has general powers of investigation which they do not hesitate to use.

They have:

- > a right of communication that allows them to request any document (the original or a copy) that may help further their investigations. This document can be retained or seized;
- > a right to question any person on board; and
- > a right to resort to international mutual administrative assistance which enables signatory states to the agreement to exchange information on customs cooperation.

Confronted with such wide investigatory powers, the owner, manager, captain and crew of a yacht may well wonder who would be liable in the event of an offence.



Who can be held liable in the event of a customs offence?

The FCC stipulates who would be liable if an offence were to be established.

The following persons may be held liable:

- > the captain (article 393 and following of the FCC);
- > the shipowner(s) (article 392 of the FCC).

In the light of these provisions, Coastguards are often inclined to speak to the captain directly during their investigations, as his liability is systematically at stake when an offence is recorded on board the vessel.

What are the consequences?

Customs authorities usually produce statements to support their investigations. If there is no infraction recorded they will not produce a statement to mark the end of their inspection. However, if an inspection uncovers an offence or if a document is seized or the captain or another crew member is questioned, a customs statement will be provided. This statement is used to establish what has taken place during the investigation and/or to set out the facts and the law relating to the offence.

Where an offence has been committed and discovered as part of an investigation, the customs authorities may offer to settle the dispute by means of a compromise. If the offence is particularly serious or if no compromise can be reached, the customs authorities may decide to commence legal proceedings against the person they believe to be criminally liable.

The penalties incurred will be decided upon according to the nature of the offence. Customs authorities may be able to seize the vessel. If this happens, a guarantee or bond can be lodged in exchange for the release of the vessel.

If a minor offence has been committed (articles 410 to 413 FCC), the penalty will be a fine. This might be fixed or calculated according to the amount of duties and taxes involved. If an offence falls under article 414 FCC (customs offences), the penalty may be a prison sentence (3 to 10 years) and a fine of between one and five times the value of the goods, depending on the circumstances.

How should you conduct yourself during a customs investigation?

Do

- > alert your legal representatives as soon as possible should your yacht become the subject of an investigation, in order to receive the best advice during each stage of the investigation;
- > request the help of a translator if French is not your first language to ensure you understand the customs officers' questions and to translate the customs statement for you before you sign it;
- > tell the customs officers that they will be provided with documentation at a later date should it not be immediately available;
- > try to be as succinct as possible when answering questions. If you don't know the answer, explain to the customs officers that you will find out from someone who does (such as the shipowner) and that details of his/her response will be forwarded to them subsequently; and
- > keep on board all documentation that proves that the vessel is commercial if your vessel benefits from French commercial pleasure status.

Don't

- > refuse a customs inspection. Obstructing a customs investigation is a crime and may lead to criminal penalties;
- > refuse to sign the customs statement. This will have no impact on its validity as the Coastguards will specify on the statement that you refused to sign it;
- > provide documents which were not asked for by customs officials and don't give inappropriate answers when interviewed; don't talk about another vessel or give out personal information about the shipowner etc;
- > for vessels that benefit from the temporary admission procedure and are for private use, don't keep documents on board that could lead customs to think that the real user is a EU citizen, or that the vessel has stayed longer than the permitted 18 months in the European Union; and
- > accept a settlement if an offence is established, without understanding the elements of the offence beforehand and without understanding the legal consequences of the settlement.

Conclusion

Customs inspections carried out by French Coastguards are a recurring problem in yacht and superyacht management. This is due to the status of such vessels and the fact that they benefit from certain tax advantages, or because they find themselves in a situation where their VAT obligations are suspended.

Owners and crews should always be prepared for a customs inspection. Ince & Co provides immediate advice on the best approach to adopt when subject to a customs investigation. We assist clients in preparing crews for interview with coastguards, advise on their rights and obligations when a vessel is under investigation and advise you whenever an offence has been established against the captain or the shipowner.

For further information on customs-related matters please contact Freddy Desplanques in our Le Havre office (freddy.desplanques@incelaw.com), or your usual Ince & Co contact.

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