



# YACHTING TRANSPORT AGREEMENT

## EXPLANATORY NOTICE

### I. Why a Transport and Services Agreement

Because of changes in tax and customs regulations in Europe, and in particular the cancellation of the Fuel Tax exemption (TICPE) for the charter of a yacht for a leisure voyage, ECPY offered to create, in addition to the traditional charter contract known as the “MYBA Charter Agreement”, a contract likely to benefit, once again, from this TICPE exemption, **For this reason, the contract changes in nature and becomes a Transport and Services Agreement** (hereafter abbreviated to the “Transport Agreement”).

If we add to this fuel tax exemption the various VAT modulations (transport rate of 10% for internal transport and exemption for international transport), it appears that the difference between the final cost of a “Voyage” compared to a “charter” rental is substantial: fuel approximately three times less expensive and VAT reduced by half or exempted completely.

It should be noted that:

1. The use of a Transport Agreement instead of a rental contract (MYBA charter) is worthwhile from a tax perspective, but there are trade-offs with regard to the responsibilities of participants; some become travel agents with information and transparency obligations with regard to Clients.
2. The “Client” renting the yacht and his/her Guests become a Consumer and Passengers, with the legal protection these entail.
3. A yacht providing transport services remains a commercial yacht, above all. So, if it is used under the exemption system which applies to commercial vessels, it must continue to comply with these principles to avoid this tax treatment being called into question.

As proposed, the Transport Agreement aims to:

- Retain the continuity of the traditional offer of cruising and accommodation on board a yacht, as an extremely high class service;
- Ensure, through the key criteria of the Contract, that the potential exemptions and reliefs apply without any tax or customs risks being incurred by the Parties;
- Complies with the overall framework of European regulations on package voyages, whilst being suited to the wishes of the Parties with regard to the jurisdiction clause;
- Contribute to the professional approach of the Yachting world.

### II. Features and implications

In developing the contract in this way, Yachting professionals place this part of their activities under the heading of cruise activities: “organised voyage including a seagoing itinerary and accommodation services on board the vessel”, there is a single Client, the various passengers being part of the Client’s group and there is no “per cabin” sale.

The use of a Transport and Services Agreement or a Charter agreement will depend on the features the contracting Parties choose:

- The first (Transport) allows for the exemption of TICPE, which the second (Charter) does not



- In the case of an international voyage(= including at least one port of call during the voyage outside of the country of departure), the fixed-rate transport contract is VAT-exempt; otherwise transport VAT is payable pro rata on the distances covered in national waters<sup>1</sup>
- The Transport Agreement has all-inclusive service package price which includes the voyage itself, accommodation for the Passengers, a range of basic services, as well as the delivery and redelivery of the vessel to/from the departure/arrival cruise port.
- In the case of a voyage 100% in territorial waters, VAT on the transport price is applied at the Transport rate (10%; this VAT is reduced pro rata of navigation distances in exempt international waters).
- If the service is carried out at the quayside (for events, Cannes, Monaco, etc.) a Transport Agreement cannot be proposed because there is no actual transport of passengers.

So, the choice of which of the two contracts to use, Transport or Charter, should be made in accordance with the use of the Yacht.

### III. Principle provisions

The contract known as a “Transport Agreement” is a commercial service carried out by a commercial vessel owner or charterer for the benefit of a Client and Passengers. There is a single Client on board who holds a single transport document for all of his/her guests.

#### Transport, accommodation and services included

The Contract includes in the fixed rate:

- Embarkation of passengers in the departure port
- A fixed itinerary, including fuel (for a fixed number of navigation hours)
- Fixed rate services on board, including the itinerary, accommodation and services
- Trips to land in the case of a stop at anchor
- Disembarkation of passengers in the arrival port
- Specific delivery and redelivery from the vessel to/from embarkation/disembarkation ports, as well as taxes and fees in these ports

#### Catering and ancillary services

Additional services, known as ancillary services are possible, consisting of catering on request (meals, drinks, etc.), at the client’s request, these additional or “ancillary” services giving rise to additional invoices and being subject to VAT under common law.

Purchases made abroad on behalf of the Client are disbursements from the Advance Provision Allowance (APA). They have their own VAT scheme.

#### Itinerary changes

It is possible for the Client to request changes to the fixed itinerary agreed on signature of the contract and made up of 2 ports (embarkation and disembarkation) and a fixed number of navigation hours in a specified cruising area. So, the spirit of choice available to the Client during navigation on board a yacht is retained, whilst remaining within the framework of a Transport Agreement. If the ports of call chosen are within the scope of the initial rate, it will suffice to indicate these in the Contract (appendix I), the same applies to any passenger movements. If the itinerary chosen generates a surcharge, a specific addendum must be signed with an additional invoice raised.

#### Alignment with other clauses in the MYBA Charter Agreement

All of the other provisions of the “MYBA” charter contract are retained, but are subject to clarification for changes of terminology, if applicable.

As in the past, the following are provided but adapted as required:

<sup>1</sup>with exception for transport between continental France and Corsica

- The make-up of voyage costs, Advance Provision Allowances and the security deposit
- The mutual obligations of the Service Provider/Captain on one hand and the Client/Passengers on the other hand, during the voyage
- The use of water sports equipment and compensation in the event of accidents
- Financial conditions, conditions for payment and related obligations
- Risk-management in the performance of the Service (delays, amendments, cancellations, breakdowns, etc.)
- General legal provisions and specifically the applicable law and jurisdiction.

### **Legal framework**

On these latter points, we recommend that Yachting professionals choose the legal framework (Clause 28) with the Client prior to signing the Contract depending on the nationality of the Parties and the conditions and the locations related to the Voyage. The Agreement is provided in French and in English. In case of a dispute regarding the interpretation of Agreement, the sole French version, included its appendices, is regarded as the legal reference of Agreement.

### **Participants in the Contract**

Like the rental agreement (charter), the Transport Agreement involves 5 participants:

- **The Client**, who is no longer the charterer of the yacht but a Passenger holding a Transport Agreement, as well as his guests, who are also Passengers.
- **The Owner or operator** of the yacht, who becomes the Service Provider under the Transport Agreement, or the Transporter
- **The Central Agent** who still has the same role as for a charter (which may vary depending on the agreements entered into with the Owner) and whose undertakings are reclassified in the Transport Agreement, because of the “package travel” nature of the Agreement, with more formal obligations for the protection of the interests of the Client and the Passengers, for registration as a travel agent, and in respect of professional insurance and financial guarantee.
- **The Stakeholder**, whose function of management and provision of security in respect of the funds paid or deposited, has been separated from that of the Central Agent (these functions are grouped together in the charter contract under the term “Stakeholder”). This does not prevent the Central Agent also being the Stakeholder.
- **The Broker**, who has the same role as in the charter contract with regard to the Owner and the Client, but whose obligations are reclassified in the Transport Agreement, due to the «package travel” nature of the Contract, with more formal obligations for the information of the Client and Passengers, as well as registration as a travel agent, professional insurance and financial guarantee.

The Broker and the Central Agent, classified as travel agents, are automatically liable to the Client for the proper performance of the service. They have formal obligations of information of the Client (features of the voyage, guarantees, insurance, etc.).

The nature of relations between the Service Provider and the intermediaries involved in the sale of the contract (Broker, Central Agent and Stakeholder) is specified in the Contract; it is highly recommended that the Service Provider sign a specific “Agency agreement” for attributing the role of Transparent Intermediary to each of these participants (within the taxation sense). Because of this, the remuneration (commission) which they receive from the Service Provider and which they must invoice to the Service Provider, has the same tax treatment as the Transport Agreement; this commission is therefore exempt from VAT within the framework of an international Transport Agreement (at least one port of call abroad).

It should be noted that, for the role of Broker, only the individual or entity named as Broker in the contract and mandated by the owner is a Transparent Intermediary and benefits, in this capacity from any exemption on its commission. On the other hand, a “business finder”, also known as a “broker” whether an employee of a yacht broker or an independent commercial agent, receives payment which is subject to VAT. He or she has no obligation to register under the Tourism Code.

#### IV. Reminder of the European and French legal framework

Passenger transport is covered by various very specific regulations, in particular:

1. **Regulation EC 392/2009 known as “PLR” on liability for passenger transport by sea** in the event of an accident;

*The transport contract is governed by regulation EC n°392/2009 of the European Parliament and Council dated 23 April 2009 on the **liability of passenger transporters by sea** in the event of an accident. In circumstances where this regulation does not apply, the contract will be governed by the Athens Convention 1974 on sea-transport of passengers and their luggage. French law applies for aspects which fall outside of the scope of Regulation EC n°392/2009 above.*

2. **Regulation EC 1177/2010 known as “PRR” on the rights of maritime passengers**

*As a reminder, the provisions of Regulation EC n°1177/2010 of the European Parliament and Council dated 24 November 2010 regarding the **rights of passengers** travelling by sea are not generally applicable (for vessels transporting fewer than twelve passengers).*

3. **Directive EC 2015/2302 known as “PTR”, on package trips, and its national implementations** (the French Tourism Code).

*The framework arising from the European directive (EU) 2015/2302 of the European Parliament and the Council of 25 November 2015 on package travel and linked travel arrangements has, like all Directives, been transposed into the national law of each of the countries in question. In France, these elements are included in the Tourism Code which is therefore an essential reference for the Contract (or its national equivalent in the case of services contracted within another EU country). In the French context, travel professionals (travel agents, package trip operators and transporters) are obliged to comply with a set of formalities, specifically in respect of:*

- *Providing information to the consumer, requiring an explicit prior definition of what is included on the proposed voyage;*
- *Consumer protection*
- *Consumer compensation*

*In all circumstances, the wording of the Yachting Tourism Code states that:*

- *The Service Provider (owner or charterer of the Yacht) is the Transporter;*
- *The Broker (who sells the voyage to the Client) is the travel agent;*
- *If applicable, the Central Agent who manages the Yacht is also the organiser of the Voyage.*

*It is therefore required, as a minimum, that the Broker and the Central Agent:*

1. *Register with Atout-France, as a travel agent;*
2. *Take out suitable insurance (or supplement their existing insurance);*
3. *Are covered by a financial guarantee.*

*Compliance with the insurance and financial guarantee obligations is essential for professionals.*

***When the conservation of funds deposited by the Client is entrusted to a third party, the Stakeholder, it is important that the Broker and the Central Agent verify the financial reliability of this third party for these funds.***

#### **V. The Travel documents**

Compulsory information to be included in a cruise ticket is set out in article 78 of decree n° 66-1078 of 31 December 1966 on charter and maritime transport contracts. The ticket (represented by the Contract) provided by the Broker in exchange for payment, must include the following information:

1. The name and type of vessel;
2. The name and address of the cruise organiser;
3. The name and address of the Passenger/Passengers or their representative;
4. The classification, cabin number and price of the voyage, as well as the expenses included in the price;
5. The ports of departure and arrival;
6. The departure and arrival dates;
7. Planned ports of call;
8. Ancillary services promised to the Passenger(s).

#### **VI. Miscellaneous**

Some specific clauses of the charter contract have been deleted, in particular:

- The clause regarding the sale of the vessel during the Contract, this situation should be addressed in respect of its impact on the implementation of the Contract and in particular the change of Service Provider;
- The majority of elements relating to transactions, remuneration and commission between the Owner, the Central Agent, the Stakeholder and the Broker, which the Client does not need to be fully informed of, particularly when it involves situations arising prior to the end of the Contract, these elements are contained in an Agency Agreement between the Transporter and the intermediaries: Broker, Central Agent and Stakeholder.
- The clause on the distribution of benefits in the event of rescue, which no longer exists.

The existence of a direct, transparent Agency Agreement between the Service Provider and Broker, Stakeholder and Central Agent is stipulated in the Contract, for the proper information of the Client. The Agency Agreement template is part of the Transport Agreement kit.

#### **VII. Additional elements**

The Captain should put together a file precisely recording the cruise information required to provide immediate or *a posteriori* justification for the tax and customs exemption (record of trips made, purchases and fuel consumption log book and passenger movements) as part of good operating practice.

## **A. THE FORMS**

1. **The ECPY Transport & Services Agreement**, including:
  - Specific provisions (signatories, yacht, cruise, price, special conditions, signatures)
  - appendix I –initial description of itinerary with list of passengers and table of amendments (deemed to be an addendum without additional cost)
  - appendix II – description of the service (to be completed on a case by case basis, owner or central agent documentation or central agent)
  - appendix III –provisions of the general sale conditions
  - appendix IV – mandatory reproduction of the Tourism Code
2. **A standard addendum** (modification of provisions during the voyage) for Captains (for addenda with an impact on **the Contract cost**).
3. **An Agency Agreement between the Transporter** (Owner or Charterer) and the Central Agent, the Stakeholder and the Broker (Transparent Intermediaries)
4. **The ECPY Day Transport & Services Agreement**
5. **The Calculator**, a simplified calculation tool to compute the cost of Package and associated instalments.

All documents are bilingual, except the Calculator, which is exclusively in English.

## **B. THE NOTICES**

1. **Notices to be provided to the Client**
  - CLIENT1 on taxation
  - CLIENT2 on additional insurance
  - CLIENT 3 on luggage and personal effects
  - CLIENT 4 on the visas & vaccinations
2. **Notices for the professionals**
  - PRO1 on the ECPY Transport and Services Agreement for Yachting
  - PRO2 comparison between ECPY Transport and Services and MYBA charter agreements
  - PRO3 on the commercial presentation of the vessel and the service
  - PRO4 on the travel agent status, in three notices:
    - PRO4.0 on registration to ATOUR FRANCE
    - PRO4.1 on the professional liability policy of travel agents
    - PRO4.2 on the financial guarantee of travel agents
  - PRO5 on the mixed management of fuels
  - PRO6 on the ECPY Day Transport and Services Agreement for Yachting

All notices are available in French and in English

