

# Customs & Trade in Israel

## A Legal Newsletter

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### Yachts Also Pay Purchase Tax

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#### Background:

In 2013, the Customs and Purchase Tax Tariff Order was amended, levying a 30% purchase tax on yachts imported to Israel. As the enforcing entity, the Customs Authority decreed that yacht owners interested in venturing beyond Israel's borders must obtain a permit to travel abroad, which attests to the legal liability to pay import taxes. As part of the approval process, the yacht owner must inform the Customs Authority of his intent three days prior to venturing abroad. The early notice is intended to allow the Customs Authority to examine the circumstances of the yacht's arrival to Israel and the possibility to levy import taxes. The import tax rate is 17% (applies before 2013), as well as a 15% purchase tax.

In light of the increased enforcement in the sailing sector, several questions surfaced:

Should import taxes be collected from a yacht temporarily docking in an Israeli marina?

What if the yacht first entered Israel prior to the purchase tax amendment, then sailed abroad and now returned to Israel?

Another question relates to yachts which serve a commercial as opposed to personal use? For example, yachts operated by a sailing school or yacht owners who offer cruises.

In this article we will review the various rulings by Israel's courts regarding these questions.

#### Sailing School Yachts

The Tax Authority issued a 482,828 ILS deficit notice to a sailing school for importing maritime vessels. The school argued that as taxi drivers receive a significant tax cut (including an exemption from purchase tax and at times from customs) in order to compensate for increased wear and tear, the same reasoning should apply to commercial use of yachts, as opposed to private use of yachts. The school therefore argued that the taxi driver exemption rationale (increased wear and tear) should be applied to yachts intended for commercial rather than personal use.

The school added that in light of lack of enforcement by the Tax Authority over the years, yacht owners came to rely on an exemption from purchase tax. Moreover, the school argued that the Tax Authority is employing a selective enforcement policy only against maritime vessels intending to venture beyond Israel's borders, whereas it does not enforce its new policy against private individuals or businesses which remain within Israel's borders.

On the other hand, the Tax Authority argued that the school's distinction between private and commercial use of vessels does not exist in the law, and in fact, there is no distinction in the law between commercial and private use. In addition, the Tax Authority argued that purchase tax and VAT may be levied upon entry to Israel without being considered retroactive tax, as long as the tax was not

previously paid. As for the school's reliance argument, the Tax Authority argued that it should be rejected due to the fact that in any case there has not been a five year period from the time of the deficit (the statute of limitations for indirect tax), as every entry of goods into Israel constitutes import.

The court determined that the Tax Authority was acting within its power, and that it employs a unified enforcement policy in accordance with the law. On the other hand, the sailing school failed to report the import of the maritime vessels, although it was legally obligated to do so, even if it disputes its purchase tax liability. Under these circumstances, the court rejected the school's claim of reliance upon no tax enforcement for yachts.

In addition, the court determined that despite collection difficulties in the past, the Tax Authority acted in order to enforce the law, and through a legislative change it was made possible to collect the tax in spite of tax evasion attempts. The court therefore ruled that the school's attempt to base its case on reliance and non-enforcement arguments, while it itself failed to fulfill its duties and did not report the import of the yachts - is unacceptable.

As for the school's argument regarding excluding yachts for commercial use, the court determined that the Customs and Purchase Tax Tariff Order levies import taxes on luxury goods, and does not exclude yachts or any maritime vessel for commercial use, nor is there a distinction between yachts for private or commercial use. The court added that no conclusions may be drawn from the taxi purchase tax exemption, and one cannot create a tax exemption for an entire category without any real basis beyond a general argument not supported by any evidence. The court noted that should the school wish to advance legislation that would exempt yachts in a similar manner to the taxi exemption, it may do so by lobbying the appropriate authorities.

In light of the above, the court rejected the school's claim.

[TA 12693-04-18, **Via Maris Sailing Haifa (2004) Ltd. V. The State of Israel**, ruling given on 2.10.19 by honorary judge Meirav Klempner Navon]

### **Private Yachts**

In 2017, a motion to certify a class action was submitted against the Tax Authority, requesting the cancelation of passive collection processes of VAT and purchase tax. The yacht owners argued that the Tax Authority cannot collect import taxes in light of the statute of limitations, and it is not just for it to collect the tax which was not practiced at the time when the yachts were brought to Israel. In addition, the claimants argued that the examinations delay yacht owners who wish to depart Israel immediately.

The Jerusalem District Court rejected the motion, determining that the claimant's maritime vessel was docked in the Herzliya marina since 2010. In 2016, when the claimant docked at the marina following a cruise abroad, a customs official gave him a delay order, stating that "the yacht may not venture beyond Israel's borders without the approval of the Customs Authority / payment of taxes under the law". The purchase tax amendment came into effect in August 2013, so a period of two years, eight months and 18 days passed from the day the amendment came into effect until the claimant received the deficit notice. The court therefore ruled that there is no basis to the statute of limitations argument, as the set period for statute of limitations for indirect tax is five years.

In addition, the court ruled that the fact that the yacht was docked in an Israeli marina from 2010 is inconsequential. Until August 2013 no purchase tax was levied upon yachts, and therefore the purchase tax payment was not required of the claimant until it came into effect. Following that date, the purchase tax payment was required from the first instance that the yacht entered the Herzliya marina after the amendment came into effect.

[TA 43164-04-17, **Tapio V. The Tax Authority**, ruling given on 29.1.19 by honorary judge Avigdor Dorot]

Another recent case brought before the court involves the owner of a maritime vessel docked in an Israeli marina, who registered as the owner of the vessel at the Administration of Shipping and Ports under an Israeli flag. The owner claimed that when he first brought the maritime vessel to Israel, in 2010, he was not required to pay the purchase tax and VAT. In November 2017, following a deficit notice from the Tax Authority, he decided to pay the import tax as required.

The maritime vessel owner turned straight to the Supreme Court, unlike the previous civil claim. The Supreme Court dismissed the claim in limine, ruling that since there is an alternative remedy (filing a civil claim under section 154 of the Customs Ordinance) which allows for the payment of the tax under protest and filing a subsequent claim to the court within three months for a return of the payment, the proceeding should not be heard by the Supreme Court.

[H.C. 836/19, **Yair Safray V. The Tax Authority**, ruling given on 26.9.19]

**The above review is a summary. The information presented is for informative purposes only,  
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