

Changes to EU VAT Rules Affect Aircraft Importation (Part 1)



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Attorney Chris Younger discusses recent changes in European Union customs regulations and their relevance to Board oversight of US-owned business aircraft.

Due to recent revisions to European Union (EU) customs duties and value-added taxes (VAT) applicable to business aircraft, Board Members must consider whether their company's US-registered aircraft should be fully imported into the EU or if a duty and VAT-free temporary admission of the aircraft into a particular EU member country will be adequate. In this two part series of articles, we will explore key issues that are relevant in performing this analysis.

EU VAT AND CUSTOMS DUTIES

One of the many purposes of the EU, which currently includes 27 countries, is to harmonize import and export requirements among its members such that all of the members will benefit financially and administratively from uniform requirements.

The basic rules relating to harmonized customs duties are found in the EU's Community Customs Code (the 'Code'). Absent specific guidance from the EU Commission on a particular point, each of the 27 EU member states individually interprets the provisions of the Code in one of the 23 different official EU languages. Thus, interpretation and application of a particular provision of the Code can vary considerably between EU member countries.

'FULL' AIRCRAFT IMPORTATION

Non EU-registered aircraft that are flown into the EU are subject to EU importation requirements including applicable VAT and customs duties, unless they possess an applicable exemption from these taxes.

An aircraft is fully imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country. VAT rates and customs duties vary between EU member countries, but are generally between 15-25 percent of the aircraft's value. >



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If an aircraft is not fully imported into the EU and the rules for a duty- and VAT-free temporary importation of the aircraft (discussed below) do not apply or are not properly followed, any EU member country into which that aircraft is flown may assert that the aircraft has been illegally imported.

In such case, the aircraft could be impounded and the flight crew and passengers on board detained until the issue is resolved. The resolution of such issues will take hours (or quite possibly days), depending on the EU country involved. Subsequent actions potentially could result in the imposition of fines on the owner in addition to liability for all applicable customs duties and VAT.

There are, however, certain situations whereby an aircraft owner may import an aircraft into an EU member country and qualify for a reduced rate on VAT and customs duties and/or a refund of such VAT and customs duties. Proper procedure for application of the reduced rate or qualification for the refund, however, must be followed.

An EU customs expert can provide detailed information on when these options are available and the procedure to be followed to take advantage of them.

'TEMPORARY ADMISSION' OF AIRCRAFT

The Code provides a mechanism to permit an aircraft that is not domiciled or registered in the EU to be temporarily imported into the EU without customs documentation or payment of customs duties or VAT.

This 'temporary admission' regime exists to accommodate the occasional entry of foreign registered aircraft into an EU member state. The requirements for its application are, however, not always easily applied.

Under the Code, an aircraft that is not EU-registered and is in private use may enter the EU for up to six months without liability for VAT or import duty tax. Alternatively, an aircraft that is not EU-registered and is in commercial use may remain in the EU only so long as required for carrying out transport obligations.

Private use of an aircraft includes any use that is other than commercial. Commercial use is defined



in the Code as the transport of persons or of goods for remuneration, or in the framework of an economic activity of an enterprise.

NEXT MONTH

Next time, we will consider the specific requirements for temporary admission of aircraft into the EU and the interpretation of those rules by individual EU member states. We will look at the application of the six-month time limitation to imported aircraft by individual EU-member countries. We will also review the interpretation of the term 'private use' by individual EU-member states and how that interpretation affects the application of customs duties and VAT to a particular aircraft when it enters an EU-member country.

Additionally, we will consider some issues that are ancillary to this analysis such as what passengers are allowed on board flights into and within the EU when an aircraft has been temporarily admitted into the EU.

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