

## SURVEY RESULTS NO. 3:

# Aircraft importation in the EU: does the flight pattern/geography and size/type of compensation matter?

This survey no. 3 must be seen in connection with the scenario used for [survey no. 1 from October 2017](#). Survey no. 1 has also been updated December 2017 with further information.

Many corporate aircraft are flying internationally. We have therefore commissioned another verification survey about the impact when a fully EU-imported corporate aircraft is used for non-business purposes outside the EU. How can the compensation part be handled in order to prevent a correction of the input VAT, if the VAT has already been reclaimed 100%?



### Does the geography matter?

The geographic area is extremely relevant to look at in this context and again the result is close to unanimous. This means that any non-business legs flown e.g. in the USA by an American part 91 corporate operator will actually have an impact on the EU VAT handling if the aircraft has been fully imported in the EU and the VAT have been reclaimed 100%.

### Figure 1: Corporate aircraft imported in various EU-member states

Which geographic area will be included when the potential extent of non-business use of an imported corporate aircraft shall be determined in relation to the correct VAT handling?

| Question  | Denmark | Germany | UK  | Isle of Man | Ireland | The Netherlands | Malta |
|---|---------|---------|-----|-------------|---------|-----------------|-------|
| Will the VAT authorities of the member state also include any flights flown worldwide?                          | Yes     | No (1)  | Yes | Yes         | Yes     | Yes             | Yes   |
| The results are based on the answers received from an international consulting firm in the respective countries |         |         |     |             |         |                 |       |

1) The private usage is either regarded as a taxable supply of passenger transport services; in that case, only German travel distances are subject to German VAT, or it is regarded as a taxable supply free of charge, which would be (according to a specific German provision) subject to VAT where the operator is established.

### Does the size and type of compensation matter?

The size of the compensation matters, and the result is for most EU-member states that an amount close to market-rate must be paid as compensation to the importer for any non-business use of the aircraft. Germany has another way to handle this issue and Netherlands was not able to give a precise reply, please see the explanation notes for both below. A correct compensation paid directly to the importer will typically mean that no correction of the input VAT is needed, if the VAT have already reclaimed 100%.

The use of imputed income to compensate any private / personal / entertainment use of a corporate aircraft is generally not accepted and will not exclude an EU VAT claim. Please also be aware of that the US use of SIFL will not solve the compensation problem as these values are often too low to be considered market-rate.

### Figure 2: Corporate aircraft imported in various EU-member states

How is it possible for the management or owner family to pay compensation for any non-business use of a corporate aircraft?

| Questions   | Denmark | Germany | UK  | Isle of Man | Ireland | The Netherlands  | Malta |
|---|---------|---------|-----|-------------|---------|--|-------|
| Must the "private user" make a compensation payment to the importer at a "market-rate" level?                   | Yes (1) | No (2)  | Yes | Yes         | Yes     | n/a, unclear rules in official guidelines/case law (3) (4) | Yes   |
| Can imputed income be used as a compensation payment? (5)   | No      | Yes     | No  | No          | No      | No   | No    |
| The results are based on the answers received from an international consulting firm in the respective countries |         |         |     |             |         |  |       |

- 1) A correct compensation payment in Denmark could be an amount close to a business class ticket on the same leg, but this interpretation can vary in each member state.
- 2) The private usage is either regarded as a taxable supply of passenger transport services; in that case, only German travel distances are subject to German VAT, or it is regarded as a taxable supply free of charge, which would be (according to a specific German provision) subject to VAT where the operator is established.
- 3) The Dutch VAT legislation is unclear on the matter. If the private use qualifies as a benefit provided to personnel or as a business gift, a correction of input VAT should in principle be made. This could be avoided if the private user pays a compensation that is at least equal to the cost price of the private use but advisedly close to a fair market price to avoid any problems.
- 4) It is unclear if the Dutch rules for fictitious supply of a (transport) service can be used as a compensation in order to prevent a correction of the input VAT. The typical calculated amount for a fictitious supply seems small and is often only used for domestic flights. The use of fictitious supply of a (transport) service can therefore be seen as a shortcut to use a corporate aircraft for non-business purposes EU/worldwide without any real VAT consequence.
- 5) Imputed income means that the importer is not receiving any direct compensation payment for non-business flights.

There might be differences between EU member states, but the bottom line is that the European Court of Justice has the final say. With the present picture painted by the ICJ and the Paradise Papers, [the OXFAM list](#) and [the EU Commission blacklist and grey list](#) of Tax Havens it is quite certain that the EU member states, the Commission, the Parliament and the politicians in general will pursue any abnormalities.

The Danish survey result is as expected and in accordance with the guidelines used by OPMAS for the last many years.

## Many advantages with Temporary Admission

Most non-EU operators already use Temporary Admission. Full importation includes a lot of potential VAT/tax liability which nobody wants, and which typically requires 5 years of correct economic activity and 7 years of recordkeeping. All these factors are eliminated with the use of Temporary Admission and most non-EU operators will in fact have the same flying privileges as under full importation. Temporary Admission will give the declarant more flexibility and extra advantages such as unrestricted personal, family and guest usage also for EU-resident passengers.

## What to do for an EU based entity or aircraft registered in the EU customs territory

The Temporary Admission procedure cannot be used by EU based entities or for aircraft registered in the EU customs territory. The only option is to use full importation. It is important to analyze your usage of the aircraft and eventually consult your local VAT adviser for a verification of the exact usage.

## Always ask first

Our advice has always been to ask the local tax authorities for a binding advance tax ruling prior to any importation/admission in order to eliminate any doubt about the outcome. All cases have different details and a binding advance tax ruling will also consider all new European Court of Justice (ECJ) judgements. Even if you have a fully working set-up, we believe, an importation/admission without a binding advance tax ruling from the EU member state into which the aircraft is to be imported, is too great a risk to take.

[KNOW MORE: Read the short story about full importation](#)

[KNOW MORE: Article about lessee's right to reclaim import VAT](#)

[KNOW MORE: Survey 2: What does various EU VAT authorities require to accept an aircraft as VAT exempt?](#)

**This update relates only to a full importation into the EU where the aircraft is not exempt as being used for commercial flights with an AOC/Charter certificate. It does not apply to Temporary Admission with total relief from import duties.**

# OPMAS

Sonderborggade 9  
DK-8000 Aarhus C  
Denmark  
Phone: +45 70 20 00 51  
[www.opmas.dk](http://www.opmas.dk)