

## SURVEY RESULTS NO. 4:

# Aircraft importation in the EU: has a lessee been denied the right to reclaim/recover the VAT imposed during an importation in various EU member states?

This survey no. 4 must be seen in connection with the **BREAKING NEWS** from June 2017 with the subject **“Significant change for EU aircraft importations and leasing structures”**.

Denmark have since 2015 denied a lessee the right to reclaim/recover any VAT imposed during an importation.

We have therefore found it interesting to check if this has only been implemented in Denmark or also in the other EU member states and we have therefore commissioned a verification survey about this subject.

### The result

Most EU member states have chosen to align their local guidelines with the instructions coming from the EU Commission and have denied a lessee the right to reclaim/recover the VAT imposed during an importation. Germany have done it for years; the Isle of Man and the Netherlands have now apparently implemented the same rules as in Denmark. Our guess is the rest will follow shortly.



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

What is the local view in the mentioned EU member states?

Question	Denmark	Germany	UK	Isle of Man	Ireland	The Netherlands	Malta
Has a lessee been denied the right to reclaim/recover the VAT imposed during an importation? (4)	Yes	Yes	No	Yes (1)	No	Yes (2)	Likely NO (3)

The results are based on the answers received from an international consulting company in the respective countries.

1) Answer is probably Yes but local customs are awaiting update form HMRC.

2) Answer is based upon a ruling from the Dutch Supreme Court.

3) Awaiting confirmation from Maltese VAT authorities.

4) It is taken for granted that lessee will use the aircraft 100% in pursuit of economic activity.

### CONSEQUENCES

The risk of being denied access to reclaim VAT should be taken into consideration if the aircraft structure is based on a non-EU lessor with a lessee being the importing entity in the EU.

Please be cautious if the importer is not the real owner of the aircraft. Always ask yourself – which entity has the depreciation allowance and right of disposal as owner of the aircraft?

**WARNING:** Be aware if leasing agreements are used and structured in a way where a lessee is supposed to reclaim the VAT – based on suggested business use. The VAT rates in the EU are between 17-27%, implying a tremendous economic risk!

**What to do for an EU based entity or aircraft registered in the EU customs territory – possible solution:** Structure the ownership so that the real owner is the importer. This might prove difficult as many lessors/lenders/financers will probably not accept the risk of being the importing entity. 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.

**What to do for a non-EU entity – possible solution:** 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.

### **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.

Well-informed tax advisors and aviation service providers in the said member states should already have taken these changes into consideration at least since the end of 2015. We realise that not all EU member states have aligned their local interpretation at present, but all member states will eventually have to do so!

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

 **KNOW MORE:** [BREAKING NEWS – Significant change for EU aircraft importations and leasing structures](#)

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