

## SURVEY RESULTS NO. 8:

# Temporary Admission in the EU: what is the limit for multiple continuous stays at the same place?

**This survey should be seen in connection with [survey 7](#) about the period of stay.**

It is a fundamental precondition for the Temporary Admission procedure that the aircraft has a fixed base outside the EU but a frequently asked question subsists: *which facts can indicate that the operator/aircraft has become 'resident/domiciled' in the EU airport even though an official home base is established outside the EU?* We have therefore commissioned another verification survey about this subject.

### **The replies from the different EU member states are based on this case description**

An aircraft is owned by a non-EU SPV and have an US (N) aircraft registration. The UBO (non-EU passport holder) is living locally in the EU member state and have organized a local hangar for an unlimited period. The aircraft has been flying in and out of the EU every month on a regular basis for the last year but does always return locally after each flight.

### **The 180 days' rule and the UK**

Even though we have earlier ourselves received a statement from HMRC (UK Customs) confirming interpretation of the 6 months period mentioned in survey 7, we do often hear about the 180 days' rule in the UK which states that an aircraft can at a maximum stay of 180 days within a year. This rule has no foundation in the EU legislation. The 180 days' rule might be meant to accommodate aircraft which often visits the UK with the Temporary Admission procedure and does not accommodate aircraft with a fixed UK base. We do not have knowledge about the 180 days' rule in other EU member states but regardless of this everyone should be careful overstaying at the same airport/EU member state.

### **The result**

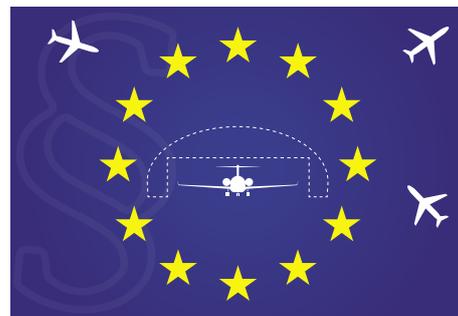
The feedback is unanimous; the mentioned aircraft can no longer stay in the EU member states based on the Temporary Admission procedure. A future stay will require a full importation. Malta seems to have misunderstood the question and for this reason their answer is not listed. The result shows that different facts can indicate that the operator/aircraft has become 'resident/domiciled'. The important question is simply: where does the aircraft 'live' the majority of time or have a special connection to? The set-up used has established the operator/aircraft as 'locals' and this can happen even with a stay shorter than 6 months.

### **What to look for?**

We have listed some indicators which can be used to detect such situation. A frequently visited EU destination could be considered a fixed base and be seen as where the aircraft actually 'lives' or have a special connection to - if the EU destination is:

- Where the aircraft often starts or ends a trip
- Where the aircraft is parked when not used
- Where the aircraft spent most ground time
- Where hangar/parking has been organized on a more or less permanent basis
- Where the crew lives while on duty, operating the aircraft
- Where the maintenance is done
- Where all spares are sent
- Where the aircraft documentation is stored
- Where the UBO has a seasonal home (if private aircraft or aircraft mainly used for the UBO)
- Where the UBO lives on a more or less regular basis (if private aircraft or aircraft mainly used for the UBO)

Each case needs to be looked upon individually. One or more of the above indicators does not necessarily mean that the aircraft is considered to have a fixed EU-base. A lot of the above-mentioned points can easily be eliminated by not having a 'resident/domiciled' behavior. Our opinion is that if the aircraft behaves as 'resident/domiciled' in the EU it must be fully imported.



## Figure 1: Corporate aircraft using Temporary Admission (TA) in various EU member states

How will local customs authorities judge the mentioned case?

Questions	DK	DE	UK	IM	IE	NL	MT	FR	IT	ES	PT	GR
A: Will the local customs authorities allow continuous use of the TA procedure?	No	No (1)	No	No	No	No	-	No	No	No	No	No
B: Will the local customs authorities see this behavior as a circumvention of the TA procedure and eventually deem a full importation hence demand payment of VAT and customs duty due to the fact that the aircraft actual 'lives' locally in EU on a more or less permanent basis?	Yes	Yes (1)	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	Yes

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

1) Local application of legislation and customs internal guidelines is unclear/unspecific, but is the preferred answer.

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

### Be careful

This is a grey zone and it is risky to have a behavior as 'resident/domiciled' with the Temporary Admission procedure without a specific case ruling from the local customs approving of multiple, continuously stays at the same airport/EU member states. A stamp on the 'Supporting document for an oral customs declaration' does not mean that the local customs have accepted a certain behavior. The stamp simply documents the date of entry.

### 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](#)

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

# OPMAS

Sonderborggade 9  
DK-8000 Aarhus C  
Denmark  
Phone: +45 70 20 00 51  
www.opmas.dk