

Aircraft importation in the EU: what does various EU VAT authorities require to accept an aircraft as VAT exempt?

We often hear the question: how can an operator (importer) be accepted as an international airline and be VAT-exempt during an aircraft importation and where are the best conditions available?

A European Court of Justice (ECJ) judgement from 2012 often referred to as “the Finnish case” have set the standard in 2012. The judgement said that the aircraft must be **used** by an accepted international airline – but how has this term “used” been interpreted. We have therefore commissioned a verification survey in various EU member states known for aircraft importation. The survey has been made by an international consulting firm.



The result is muddy

The result is muddy as could be expected. All EU member states basically agree that an AOC is mandatory, and the majority of all traffic must be international. But when it comes to the “usage” requirements for a specific aircraft the result varies. The mentioned judgement did not mention anything about a requirement for commercial usage, but this requirement is specified in a later [EU working paper 758](#) from the European Commission VAT Committee and their published guidelines, so we expect that this usage issue eventually will end up at the ECJ for a new interpretation – as such a huge variation in the preconditions is not acceptable in the long run.

OXFAM tax haven states lead

The two [OXFAM tax havens](#) states Ireland and the Netherlands have the lowest thresholds for an aircraft to be accepted as VAT-exempt. The Netherlands also accept aircraft as VAT-exempt for certain company groups even though no AOC/charter certificate has been acquired. The latter do not have any foundation in the mentioned ECJ judgement or EU working paper and is clearly illegal in our opinion. Again, we see these low thresholds as an abnormality that the EU Commission will not accept in the long run. If you opt for procedures offered in these EU tax havens you MUST ask for a written approval available from all authorities in all member states. It is unclear whether or not the EU Commission is aware of this malpractice and will eventually pursue this. The practice is not legal in our opinion.

Figure: Aircraft used by an exempt international airline imported in various EU-member states

What are the local preconditions for respectively the importer and the specific aircraft?

Questions	Denmark	Germany	UK	Isle of Man	Ireland	The Netherlands	Malta
Must importer be the holder of an AOC certificate?	Yes	Yes	AOC is advisable	Yes	Yes	Yes	Yes
What is the minimum required international traffic for an importer in order be accepted as VAT-exempt?	55%	>50% (Chiefly)	>50% (Chiefly)	>50% (Chiefly)	>50% (Chiefly)	>70% (Chiefly)	None
What is the minimum continuously required charter/commercial use of a specific aircraft in order to have the aircraft accepted as VAT-exempt?	100% (This is the answer received from an international consulting firm however this may be wrong)	None – only the complete airline structure matters	>50% (Chiefly)	n/a	None	None, if aircraft is defined within TARIC code 8802	>50% (Chiefly). However, no specific percentages have been set

This table contains the results of our examination in seven EU-countries of how an aircraft operator can be accepted as an international airline and thus be VAT-exempt during an aircraft importation. The answers are based on the answers received from an international consulting firm in the respective countries. All the above answers do only relate to VAT – not the customs duty part.

Totally unfair competition

An airline/commercial operator operating in EU member states that actually follows the guidelines from the European VAT Committee are experiencing fierce and unfair competition when competing against airlines/commercial operators that do not have to use their aircraft 100% commercial in order to achieve the 0% VAT through the airline VAT exemption because their aircraft have been imported through a non-complying EU member state. The same non-complying member states also often allow a lessee the right to reclaim/defer any VAT imposed during an importation ([please see survey 4](#)). This makes the competition unfair for aircraft owners and operators operating in EU member states that actually follows the guidelines from the European VAT Committee. Competition between the EU member states is sound, but the competition becomes unfair when the guidelines from the European VAT Committee are not followed by all member states. Some member states do not follow the EU standards or guidelines, and this is often sanctioned by their local tax/customs authorities in order to offer a better business environment or to create local gateways for certain industries. These jurisdictions are known to bend the rules in favor of local companies, often by only implementing a light version of any new regulation or by simply ignoring or delaying the required implementation.

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: OPMAS Review: The "airline" VAT exemption in the European Union](#)

This update relates only to a full importation into the EU where the aircraft is 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 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