



The short story about full importation - For business aircraft owners, as Part 91

OPTION

2

This short story about full importation is meant to only focus on important subjects with the use of short statements in order to give the reader a quick overview. There are 3 importation options described below. Option 2, as an example, describes a typical scenario where the aircraft is operated by a corporate operator. Other scenarios also exist, so the short story does not cover all possible importation scenarios. You can use the many links if you need a deeper insight into a specific subject.

The description is based on the EU Customs Code (UCC) and various EU working papers and directives. This description is in our opinion the correct interpretation of the newest regulations, but all EU member states have not necessarily implemented everything at present.

There are 3 options of importation

- 1 For non-business aircraft owners and users – by fully paying the import VAT
- 2 For business aircraft owners, as Part 91 – by reclaiming/deferring the import VAT
- 3 For international airlines, as Part 135 – the import VAT is exempted (0%)

Who can use full importation?

All private individuals and corporations regardless of nationality and residency can use full importation (hereafter importation) and act as the importer. Options 1-3 described below are available in all 28 EU member states, but the practical handling and preconditions are often different. Importation is mandatory for EU insiders which means that the aircraft is either owned/registered/operated/based and mainly used within the EU (just one criterion must be fulfilled). On the other hand, importation is optional for EU outsiders, where the aircraft is both owned/registered/operated/based outside the EU (all criteria must be fulfilled). The only alternative for EU outsiders is to use the [Temporary Admission regulation](#).

[KNOW MORE:](#) [See the quick overview: What to do?](#)

Advantages

Importation will bring an aircraft into free circulation which means that it can fly freely within the EU in any private/corporate operation and with any passenger or crew on-board regardless of nationality and residency.

Disadvantages

There are many preconditions, potential liabilities and consequences of using the airline VAT exemption as well as reclaiming or deferring the VAT (Value Added Tax) and there are numerous elements to check and secure before choosing. The important matter is whether or not you will be able and willing to comply and thereafter set up a system to document and ensure compliance with the preconditions for the importation and continuously be able to detect any changes that may happen.

[KNOW MORE:](#) [See the quick overview: Risks and liability](#)

The VAT handling

Local VAT is imposed during the importation. The local rates are between 17-27% depending on the EU member state.

[KNOW MORE:](#) [OPMAS Review: A brief introduction to VAT in the European Union](#)

The customs duty handling

The customs duty is equal to zero (0%) if the aircraft has a civil registration which basically means that nobody should pay the customs duty unless the aircraft is 'smuggled in'. An aircraft is 'smuggled in' if an EU insider simply does not declare the importation at the first port of entry.

Until the year of 2018 only EU insiders were allowed the 0% customs duty.

[KNOW MORE:](#) [See the quick overview: Customs duty and end-use exemption](#)

[KNOW MORE:](#) [Significant change for EU aircraft importations and the EU customs duty](#)

Know when to import?

EU insiders must import the aircraft at the first port of entry within the EU (first port of call) unless some kind of approved customs transit or customs warehousing is activated.

EU insiders will for instance not need to import an aircraft as long as the aircraft is solely operated outside the EU.

EU outsiders do not necessarily have to import the aircraft as long they are not violating the Temporary Admission regulation when flying within the EU.

Preconditions: for the VAT handling

- ! The actual economic owner must be the importer on-record according to guidelines published in [working paper 762](#) from the [European Commission VAT Committee](#). A lessee will therefore not be allowed to reclaim/defer any VAT.

The importer must use the aircraft for business purposes or as a business.

- ! The importer is only allowed to reclaim/defer the VAT 100% if the aircraft is used 100% for correct business use on a continuous basis

If the importer does not meet the preconditions for option 2+3, then option 1 is left and must be used.

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

[KNOW MORE:](#) [SURVEY 4: Has a lessee been denied the right to reclaim/recover the VAT imposed during an importation in various EU member states?](#)

[KNOW MORE:](#) [ALERT: interesting and positive news about the EU airline exemption with 0% VAT](#)

Preconditions: what is meant by correct use?

The aircraft must be used solely for correct business use which is often referred to as 'VAT taxable economic activities'. These activities represent general business use, but different exceptions occur.

The following activities are NOT considered correct VAT taxable economic activities: selected real estate activities, banking/finance, insurance, gaming and holding companies, etc. The list is not complete and approved activity can often change as it depends on judgements and interpretations from the European Court of Justice (ECJ).

Commercial charter activity by an AOC holder is not correct business use as this activity is VAT exempted.

Any non-business use is NOT correct business use.

Preconditions: what about non-business use?

All non-business use must be handled the correct way and the importer must be compensated directly by receiving a direct payment based on market rate. Imputed income as a compensation is not acceptable as the option is not a direct payment to the importer.

The US SIFL compensation rates will often not solve the compensation problem as these values are often too low to be considered market rate

The following activities are considered non-business use: entertainment, hobby, personal/recreational travel, commuting, and travel in furtherance of another business than importer.

Most EU member states will include all worldwide non-business use of the aircraft during an audit. This means that any non-business legs flown locally in the USA by an American Part 91 operator will actually have an impact on the EU VAT assessment.

! The term 'predominately used for business' is often used in [EU tax havens](#) by their service providers but is not officially recognized by any VAT, tax authorities or by the EU Commission.

! The importer is not allowed to reclaim/defer 100% of the import VAT up-front if the importer is anticipating non-business use or have a history of non-business use. This will rule out the use of the Capital Goods Scheme for most importers.

If the importer is anticipating a 15% non-business use without proper compensation, the importer should only reclaim/defer 85% of the import VAT. The importer has an obligation to adjust and report any increase in the non-business use.

[KNOW MORE: SURVEY 1: Is the term "predominately used for business" accepted by various EU VAT authorities?](#)

[KNOW MORE: SURVEY 3: Does the flight pattern/geography and size/type of compensation matter?](#)

What is the demand for documentation of the aircraft usage on a continuous basis?

The importer must be able to document that all worldwide trips are used for the correct activity for the first 5 years after the importation.

The importer must be able to document the correct business use of the aircraft per flight and provide specific use-data for all passengers on-board such as 1. list of passengers on the aircraft, 2. purpose of flight per passenger, 3. documentation for any stops en-route such as the purpose of a meeting including a list of all participants (also external participants) and emails to document the actual purpose of the meeting.

Validity

The importation is in general valid as long the aircraft is owned by the importer. A sale to an EU based buyer will require a sale handled correctly within the EU in order to retain the free circulation status.

If the preconditions for the importation is no longer fulfilled the importer must immediately export the aircraft or ask for a reassessment which involves a full payment of the correct VAT .

The importation will no longer be valid if an aircraft has been outside the EU continuously for more than 3 years

The importation will no longer be valid if an imported aircraft is sold/delivered outside the EU.

Statute of limitations

The limitation period is normally 5 years in most EU member states including 7 years of record-keeping of correct activity. In cases of serious abuse, the limitation period is prolonged to 10 years.

Are there other pit falls?

Avoid using any disposal agreements with any EU insiders during or after the importation as this will be seen as a separate economic transaction and will attract local VAT both when giving and taking back the right of disposal.

How to be ready to use full importation?

The importer will initially need to have a thorough dialogue with an importation expert in order to clarify the case details fully and look at the options.

Everyone must know the exact preconditions and consequences of reclaiming the VAT or using the airline VAT exemption before a choice is made.

How can an operator secure all positions?

OPMAS can help operators to check how an aircraft can be imported. Send us an email with a short case description in order to start the dialogue.

Points marked with !

We see it as pure gambling to perform an importation without a binding advance tax ruling especially where the importation is performed in EU member states with lower standards than described in the guidelines published by the European Commission VAT Committee or where other EU standards are not followed. We have marked selected points with ! to indicate where EU tax havens are known to have a lower standard or do not follow the guidelines.

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. Many of the above-mentioned points/uncertainties could easily be covered by simply asking and you should walk away from any service provider that refuses to provide a binding advance tax ruling.

Tax havens and the Paradise Papers

A few [EU member states](#) handle aircraft admission/importation differently. These 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. The Paradise Papers have highlighted some of these EU tax havens. These jurisdictions and related industries will without any doubt have the full attention of several national and EU authorities in the future. We will see many changes and audits of the regulation in the future thus no one should import an aircraft without a binding advance tax ruling.

Denmark as a jurisdiction

Denmark has the very best reputation both within the EU and worldwide and is the number one on the Transparency List over the least corrupt nations in the world. We are known always to implement all EU-directives promptly and 100% by the book without any bending of the rules in favor of local companies. Denmark is the only EU member state that is known to facilitate aircraft importation and admission for non-EU operators where the member state is not considered a tax haven.

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