

A quick overview of aircraft importation issues

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Operating inside the European Union?

If you as a non-EU company operate inside the European Union (EU) with a non-EU registered aircraft, you may have to import the aircraft into the EU and manage your exposure to EU VAT (Value Added Tax) and customs duty. You may already know this and you probably also know that the old aircraft importation regimes in the United Kingdom and Denmark offering VAT exemptions ceased in January 2011 and 2010, respectively, and the customs procedures related to customs duty (end-use exemption) changed drastically in 2015-16. VAT treatment has also changed recently primarily in relation to leasing structures.

This continues to leave many operators without a clear view of current EU aircraft importation issues and without the necessary knowledge to choose the most effective procedure for unrestricted access to enter into and operate within the EU. As VAT rates are between 15% and 27% and customs duty rates are between 2.7% and 7.7%, this is a very important aspect to consider before commencing or continuing EU operations.

What to do?

When importing an aircraft, you have the following options: A) Temporary Admission (TA) or B) permanent full importation into free circulation.

An operator does not have to file any paperwork if the aircraft is used by a third person established outside the EU and the aircraft does not carry any EU residents, conditioned upon the operator having full knowledge of the authorities' practical usage and understanding of the TA Regulation in the various EU member states they plan to visit.

If the aircraft has a more complex flight pattern or carries EU residents or you just want to avoid any uncertainty when flying in the EU, inclusive of any uncertainty of the character (private vs commercial use of aircraft), we recommend using TA backed by local customs advice or a full importation.

Please note: if the aircraft is not fully imported, the TA Regulation must be observed. It is an either-or situation. There are only these two options. See figure 1 below.

Figure 1: Flying in the European Union

Importation status versus privileges and restrictions for flying within the EU.

Entity responsible for aircraft	Importation status of aircraft	
	Imported into the EU	Not imported into the EU
Established in the EU customs territory	Flying not restricted Aircraft is in free circulation	Flying not allowed in the EU
Not Established in the EU customs territory Aircraft with EU registration	Flying not restricted Aircraft is in free circulation	Flying not allowed in the EU
Not Established in the EU customs territory Aircraft with non-EU registration	Flying not restricted Aircraft is in free circulation	Flying regulated by the Temporary Admission (TA) regulation

A. Temporary Admission

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be registered outside the EU and – as a basic rule – be used privately by a non-EU resident. TA involving EU residents and/or commercial activities comes with certain restrictions and limitations.

The primary intention of the relief is to grant the private user free access to fly unhindered in the EU member states. If the conditions are met, TA is a paperless routine and admission is granted automatically when crossing EU borders. See figure 2 on page 3.

Some of the common issues surrounding the use of TA are discussed on the following pages. Please note that our Secure TA procedure addresses most of the issues mentioned below.

Private or commercial use of aircraft

The definitions of 'private use' and 'commercial use' are specific definitions used by the EU customs authorities in relation to TA and should not be compared with similar definitions used by aviation regulators, as these definitions are used in a different context.

A flight deemed as 'private use' basically comes with a lot of privileges when flying in the EU, whereas 'commercial use' may be restricted.

The usual 'safe' 'private-use' definition is an aircraft owned by a private individual where the usage of the aircraft is solely private; like flying with family and friends for visits and holidays and where the purpose of the flight is never commercially oriented.

The definition of private vs commercial use of aircraft has historically given rise to discussions within member states and within the EU Commission. However, in 2014, the EU Customs Code Committee took a stand and published a working paper with samples of 'private' vs 'commercial'. The conclusions were as follows:

- Corporate flights may be considered private use.
- Group charters may be considered private use under certain circumstances.
- Marketing material and corporate documents on board are acceptable and are not considered to be freight/cargo and thus commercial use of the aircraft.
- EU residents are allowed on board but with certain restrictions.

The working paper was based on 4 different cases and consisted of a description of the case supported by the EU Customs Code Committee's comments and recommendations, respectively. Please note that the working paper is only an opinion from the EU Customs Code Committee and thus not binding on the EU member states or the European Court of Justice.

Figure 2: Flying in the European Union

Is the use of Temporary Admission possible?

Entity responsible for aircraft	Aircraft Registration	EU Registration ¹⁾	Non EU Registration ²⁾
	Established in the EU customs territory		No
Not Established in the EU customs territory		No	Yes

1) 28 EU member states and Isle of Man and Guernsey/Jersey.

2) San Marino is outside the EU Customs territory.

An operator should be very careful using the guidelines in the working paper without consulting customs authorities in the various EU member states they plan to visit and should also take the new EU customs regulations into account. These regulations entered into force after the publication of the working paper.

Passenger and crew allowed on board

The rule of thumb is still that a TA aircraft on an internal EU flight should not carry any EU residents on board except for the exemptions quoted from the EU Union Customs Code (2016) below:

'Natural persons who have their habitual residence in the customs territory of the Union shall benefit from total relief from import duties in respect of means of transport which they use commercially or privately provided that they are employed by the owner, hirer or lessee of the

An aircraft registered with Isle of Man (M) registration is only allowed to fly in the EU with a full importation

means of transport and that the employer is established outside that customs territory.

Private use of the means of transport is allowed for journeys between the place of work and the place of residence of the employee or with the purpose of performing a professional task of the employee as stipulated in the contract of employment.

At the request of the customs authorities, the person using the means of transport shall present a copy of the contract of employment.'

It is not set in stone who is – according to the EU Union Customs Code – deemed a 'user' of an aircraft and whether there is any difference between EU resident passengers and the crew.

Particularly with respect to EU residents, some member states within the EU may have limitations and restrictions as to who may be carried within their borders and how.

Entity responsible for EU flight

The entity responsible for the TA entry is called the declarant and should normally be the operator. The operator is, in general, the entity which employs the crew and provides services to keep the aircraft flying. If the aircraft is managed by a third party, the management company should be the operator. This is often a situation with a lot of pitfalls, as most aviation structures include many different entities like user, owner, operator, lessee and lessor, etc. and we regularly see that a declarant is nominated by random and is not the real operator and is sometimes chosen only because it is the only non-EU entity in the owner/operator/user structure. It is important the real operator is the declarant and can prove this fact. The declarant must, of course, be a non-EU resident entity.

UPDATED: FEBRUARY 2017

The 28 European Union member states marked with red.

EU - special member state territories:

Dots and areas marked with blue have special rules regarding vat.

The following countries and territories are not a part of the EU:

- Greenland together with a series of British, French and Dutch overseas territories, e.g. New Caledonia, the Netherlands Antilles and the British Virgin Islands
- Faroe Islands
- The Channel Islands, including Jersey, Guernsey, Alderney and Sark
- Andorra, San Marino and the Vatican City
- Monaco
- Isle of Man

EU member states territories outside the VAT area but inside the customs territory:

- Finland: Åland Islands
- France: The overseas departments, including the French Guiana, Martinique, Guadeloupe and Réunion
- Greece: Mount Athos
- Italy: Livigno, Campione d'Italia and The Italian part of Lake Lugano
- Spain: Ceuta, Melilla, The Canary Islands, including Gran Canaria, Tenerife, Fuerteventura, Lanzarote and Gomo
- Germany: Helgoland and Büsingen

EU member states territories outside the VAT area and the customs territory:

- The Great Britain: Gibraltar
- Cyprus: North Cyprus

Countries and territories outside the EU but within the VAT area(*) and the customs territory:

- Monaco*
- Isle of Man*
- Cyprus: The base areas of the United Kingdom*
- The Channel Islands, including Jersey, Guernsey, Alderney and Sark



Brexit areas

United Kingdom including:

- England
- Scotland
- Northern Ireland
- Isle of Man
- Channel Islands including Jersey, Guernsey, Alderney and Sark

ICELAND

NORWAY

DENMARK

IRELAND

UNITED KINGDOM

NETH.

GERMANY

BELGIUM

LUX.

CHANNEL ISLANDS

SWEDEN

FINLAND

NORWAY

DENMARK

ESTONIA

LATVIA

LITHUANIA

RUSSIA

BELARUS

UKRAINE

POLAND

CZECH REP.

SLOVAKIA

HUNGARY

ROMANIA

MODOVA

FRANCE

SWITZ.

AUSTRIA

SLOVENIA

CROATIA

BOS. & HER.

SERBIA

BULGARIA

MAC.

ALB.

GREECE

TURKEY

CYPRUS

ISRAEL

ITALY

PORTUGAL

SPAIN

MOROCCO

ALGERIA

TUNISIA

MALTA

LIBYA

EGYPT

Aircraft registration

The aircraft must be registered outside the EU customs territory. The Isle of Man and the Channel Islands are part of the EU customs territory and, for that reason, aircraft registered there (M and 2/ZJ) are considered 'registered in the EU'. Aircraft registered in the EU are not eligible for TA and are thus not allowed to fly in the EU customs territory without the payment of customs duty and VAT – not even a single entry into the EU is allowed. All aircraft using an aircraft registration within the EU customs territory must be fully imported at the first port of call in the EU if not already imported. San Marino (T7) is not inside the EU customs territory and thus TA may be used.

Period of stay in the EU

An aircraft assigned to the 'private-use' category will be allowed a stay up to 6 months at a time in the EU. When the aircraft crosses EU's external borders, a new 6-month period will begin. The TA regime cannot be used if the aircraft has its base in a hangar in the EU. This would be considered circumvention and will result in the payment of customs duty, VAT and a fine.

An aircraft assigned to the 'commercial-use' category will be allowed to stay for the time required to carry out the transport operation, which is often referred to as the 'period of discharge'.

An EU form is available for documentation purposes. This form is called the 'Supporting document for an oral customs declaration' and you can [download the form from our LINKS page](#). Please be informed that very few customs officials are familiar with this form and lack experience in handling the form. You should make arrangements well in advance with a local handling agent if you want to use this form.

NBAA notes the following: 'While the process is voluntary, operators should request that customs officials stamp a European Community Temporary Admission form upon arrival. Operators must remember to have the form stamped again upon their departure from the EU. If the form is not stamped on departure, it could appear that the aircraft was in the EU continuously, which would violate the temporary admission conditions.'

B. Full importation – only for EU established companies

Many operators usually prefer to fully import an aircraft into one of the EU member states and settle VAT and customs duty (the latter through an end-use exemption) in order to be able to fly unrestricted in the EU. The conditions for the end-use exemption have been discussed thoroughly in the EU Customs Committee, which has resulted in a stringent regime. The conditions for applying and legally obtaining an end-use exemption are EU wide and cannot be met legally by non-EU entities anywhere in the EU. Please see the specific description below. End-use is a regime only for EU established companies having the de facto right of disposal of the relevant aircraft.

Importing does not entail having to pay VAT and customs duty. Either the import VAT can be 1) set off or 2) the import is VAT exempt - at zero rate. See figure 3 below.

Figure 3: Flying in the European Union

How the VAT may be handled during a full importation?

Type of operation	Remarks	VAT handling used	Preconditions
Procedure 1: Operated as a corporate aircraft		VAT is calculated at local rate and set off without any cash payment	<ul style="list-style-type: none"> - Importer must be the legal owner - Aircraft must be used as a business tool - No use of circular leasing
Procedure 2: Operated by an international airline		VAT is exempt = 0% VAT	<ul style="list-style-type: none"> - Importer must be a holder of an AOC/charter certificate issued by an internationally recognized civil aviation authority - Aircraft must be used for charter in pursuit of business for the airline

End-use is based on EU law and is the same everywhere. Please note that any customs debt related to customs duty is owed to the EU – not to a member state.

1) The first procedure setting off the VAT is available for aircraft owned and utilized by a company or as a business.

As a rule of thumb - if it is a company generating a turnover at arm's length prices and it will make a profit in the long term, the VAT due on the aircraft may be set off upon importation. Set-off is conditioned upon the company being subject to VAT and the use of the aircraft being linked to the company's taxable activity. No payment of VAT or customs duty is made.

The VAT procedure is the same for any EU established company in any member state. It is all based on national legislation; however, the procedure requires paperwork which differs from member state to member state. Written approvals by local customs authorities or legal opinions are available and recommended in most cases.

2) The second procedure with VAT exemption is available for aircraft used by companies with an international airline (AOC or charter certificate holder).

Some providers also offer a procedure where one company is established to act as lessor and another company to act as lessee creating lessee 'airlines' without an AOC. However, that solution is not in line with EU regulations. In the latest decision by the European Court of Justice in a case referred by the Finnish courts, a charter operator with an AOC was approved for 0% VAT. It follows from this judgement that an AOC is generally a requirement to be recognized as an airline in the EU. Non-AOC holders cannot be considered airlines.

Using the international airline procedure, no VAT is calculated, as the rate is 0%. Most EU member states, including Denmark and the UK, require the aircraft to be used for charter. Since the judgement by the European Court of Justice in the A Oy case, it has been widely accepted that a leasing company leasing an aircraft to an airline may also benefit from the VAT exemption as a supplier. The exemption is not limited to the immediate supplier. The entire chain of lessors/lessees, etc. will qualify if the end-user is an international airline.

Aircraft using either procedure – full importation or TA – may be used partly for recreation or pleasure. If the aircraft is owned by the leasing company, this company could undertake the import as per option 1 above – or if the usage is fully compensated for. Most privately owned aircraft can use the TA instead though.

Risks when using leasing agreements

A recent EU Council directive has questioned the lessee's possibility to reclaim VAT calculated upon importation and, consequently, some EU member states decline EU domiciled lessees access to deduct import VAT, arguing that the lessees have not incurred the costs of acquisition and do not, in fact, own the imported aircraft. This directive has already been implemented in some EU member states.

The risk of being denied access to reclaim VAT should also be taken into consideration if using circular leasing agreements. Circular leasing agreements that do not, in fact, change the ownership or do not, in fact, imply any transfer of the right of disposal of the aircraft have been banned and may be considered as circumvention 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 of the aircraft?

Customs duty and end-use exemption

An end-use exemption granted by way of a full importation means that the customs duty is 0%, but the importer and disposing party must be established in the EU in order to benefit from the end-use regime. As per May 1st 2016, at which date the new EU Union Customs Code came into effect, the definition of an established legal person was clarified ensuring that the term corresponded to the term used in the Value Added Tax Directive. As per May 1st 2016, a legal person is established in the EU only when having in the EU its registered office, central headquarters or a permanent business, where both the necessary human and technical resources are permanently present. Thus, local representation cannot be organized by proxy.

Watch a short presentation on how we can assist you...



If you want to know how to fly inside the European Union (EU) without problems please have a look at this new short video we have produced.

Scan and view the video on your smartphone/tablet or go to our website: www.opmas.dk



If established in EU, the importer must also have a factual or legal right of disposal of the aircraft. Going forward, the consequence is that a representative established in the EU, like for example a fiscal representative, cannot legally import an aircraft of which a non-EU established owner or operator has the right of disposal and cannot legally obtain an end-use exemption for the customs duty.

Our opinion is that the above is a very clear signal from the EU on how to handle these customs duty (end-use exemption) situations. We realize that not all EU member states have aligned their procedures at present, but all EU member states will eventually have to do so.

Again: end-use is based on EU law and is the same everywhere. Please note that any customs debt related to customs duty is owed to the EU – not to a member state. See figure 4 below.

Figure 4: Flying in the European Union

When is full importation possible with VAT and customs duty at 0% exemption?

Entity responsible for aircraft \ Procedure	VAT may be cleared ¹⁾	Customs duty = 0% end-use exemption may be granted
EU established company	YES	YES ²⁾
Non EU established company	YES	NO ³⁾

1) See preconditions in figure 3.

2) Importer must have full legal/factual right to dispose over the aircraft.

3) The 2,7%/7,7% customs duty may be paid if the end-use exemption cannot not be granted.

Conclusion

Many non-EU operators can benefit from TA without any help from customs experts. We will, of course, be glad to assist in more complex cases and you are always welcome to contact us and hear about the options at no charge. We will send you our input to any questions the same day and quite often within 1-2 hours.

Full importation is now only possible if the importer and the disposing party is, in fact, established in the EU in accordance with the criteria mentioned above, as the customs duty and VAT will have to be accounted for otherwise. An authorization for end-use exemption based upon false or hidden facts may be invalidated and disregarded as circumvention.

Extra Resources

Online resources to cover Temporary Admission and full importation

HM Revenue & Customs (UK) – guideline to Temporary Admission and full importation

The best and most detailed guide – covering the UK way of doing it.

- [Temporary Admission introduction](#)
- [Notice 3001: customs special procedures for the Union Customs Code](#)

EU Commission

- [EU Union Customs Code](#)
- [Supporting document for an oral customs declaration](#)
- [About Temporary Admission \(importation\)](#)

NBAA (USA)

- [Aircraft Operations to Europe](#)
- [International Customs Duties and Taxes: Know Before You Go](#)



Thus, we recommend using TA and, if your intended flights involve multiple legs inside the EU and you want to carry EU residents on board, we have a procedure, Secure TA, whereby we can eliminate all risks. Please enquire.

Many non-EU operators will have the same flying privileges under TA as under full importation, as the limitations do not influence the typical flight pattern. TA will offer the declarant more flexibility and extra advantages like unrestricted personal/family/guest use without consequences and no tax/VAT liability anywhere. Please see a list of benefits below:

- No cash payment of VAT or customs duties is required.
- No VAT liability anywhere in the EU.
- No customs duty liability anywhere in the EU.
- No VAT and import registration is required anywhere in the EU.
- No bond/security for import duties is required.
- No economic activity or activity subject to VAT required anywhere in the EU.
- No fiscal liability anywhere.
- No tax/VAT consequences when visiting other EU member states – you can fly freely in the EU.
- No need for a formal export of aircraft when eventually sold or lease/operating agreement is terminated.
- No VAT consequences when corporate aircraft are used for non-business activities (entertainment or personal use).
- No need for due diligence to verify the ownership structure of the aircraft.
- No change of the current aircraft registration or set-up of other contractual agreements like circular leasing structures etc.
- Less record-keeping compared to a full importation based on an EU VAT and import registration.

Many of the above points are often an issue when using full importation.

Our advice has always been to ask for a ruling from the customs authorities before an importation in order to eliminate any doubt, as the details of all cases are different and EU member states may have a different opinion. This applies whether you intend to do a full importation or use TA with a complex flight pattern: ALWAYS ASK FOR AN ASSESSMENT NOTICE FROM THE AUTHORITIES!

The NBAA has published some recommendations about TA and full importation. Please see the below text taken from the NBAA website:

About Temporary Admission

'In many cases, temporary admission is a legal, compliant means of accounting for customs and tax obligations when operating in the EU, assuming your company and operations meet the temporary-admission thresholds.'

About full importation

'In another recent development, the Customs Code Committee released meeting minutes that describe certain options for full aircraft importation. According to these documents, to achieve "end-use authorization" and relief from customs duties, the aircraft must be on a civil registry, and the responsible party for the aircraft needs to be established in the EU. These requirements may pose challenges for certain full-importation methods, and NBAA members are encouraged to carefully review service offerings if full importation is necessary.'

The bottom line is that aircraft can still be flown into and inside the EU without paying VAT and duty!



If you have any questions or comments, please do email me directly: lr@opmas.dk

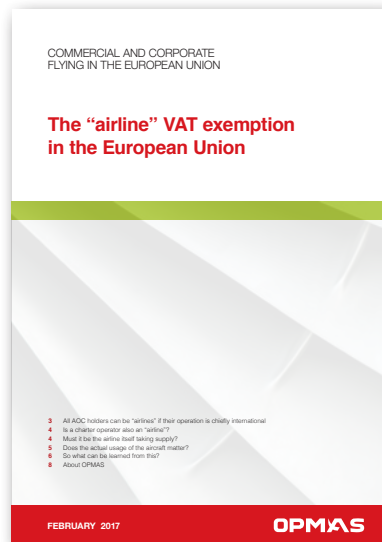
Best regards
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**Please do contact us if you want us to explain your options
should you consider flying your aircraft into the EU**

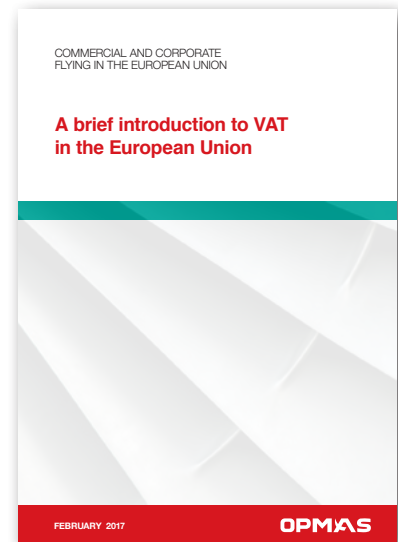
Want to know more?

All PDF's can be downloaded from
www.opmas.dk



About the “airline” VAT exemption

Our interpretation of the judgement from the European Court of Justice which allows 0% VAT full importation for international charter operators.



About EU VAT

Read this brief if you want to get a quick overview over the European Union VAT system.

ABOUT OPMAS

Our team has more than 20 years of cumulative experience. We developed the original 0% VAT "Danish Route" and have processed more than 2,000 aircraft over the years. We are dedicated to aviation with extensive legal and aviation experience, specializing in minimizing VAT exposure for aircraft owners and operators flying into and within the EU.

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