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AIRCRAFT IMPORT AND VAT

Customs and tax authorities are increasing their compliance checks throughout Europe. Anticipate to avoid any unpleasant surprises.

BY PHILIPPE RENZ

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As Switzerland is not a member of the European Union, it has its own customs and tax regime. Thus, in customs matters, an aircraft released for free circulation in Europe does not automatically acquire the same status in

Switzerland and will have to be imported separately if it fulfils the conditions. Since 1st January 2018, Switzerland has applied VAT at the standard rate of 7.7%, independent of European VAT. This applies equally to the sale, lease, import, and maintenance of an aircraft, as well as any transportation carried out using it.

Since the beginning of 2016, the Swiss customs have carried out increasingly frequent checks on business aircraft that are frequently based in Switzerland but are not in free circulation, in order to determine whether they should be imported. They have recently extended these checks to confirm that the temporary admission rules for aircraft that do not fulfil the conditions for definitive importation are being respected. In recent months, many owners and operators have been subject to investigations, tax reassessments, and/or criminal proceedings due to ►

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Aircraft acquisition:

During the process of acquiring a business aircraft, the question of its customs status in the countries in which it will be used, and the one of the VAT related to this status, are often dealt with at the last minute, not always adequately.

Attorney-at-law Philippe Renz takes stock of the situation in Switzerland..



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► not having ensured that they are in good standing. This article will address some specific issues that many owners and operators often face.

THE PLACE OF RESIDENCE IS A CRUCIAL FACTOR

Switzerland, like the EU member states, has ratified the Istanbul Convention on Temporary Admission, which grants facilities to the owner and the user of a means of transport when it is used outside their country of residence and outside the country where the means of transport is registered. For example, this enables holidaymakers who travel abroad by car to be exempt from any customs formalities and not have to import their vehicles into the country they are visiting.

The situation is very different if the person entitled to the means of transport resides in the country of temporary admission. In principle, and to take a typical example, a person fiscally resident in Switzerland and who is the beneficial owner, through a foreign company, of a business aircraft registered abroad must import the aircraft into Switzerland if the latter stays for more than three days at a time in the country. Or if it crosses the Swiss border more than 12 times in one year (the “12x3-day” rule). If the aircraft is used for commercial purposes – a concept that differs from the concept of ‘commercial’ operation in aviation – the rules are even stricter: in principle, to avoid being imported, the aircraft must leave Switzerland within 24 hours of the loading or unloading of passengers.

However, they do not apply when the aircraft is sent to Switzerland for maintenance purposes only.

ATTORNEY AT-LAW

Philippe Renz is a partner in the Renz & Partners law firm in Bern (Switzerland), which specializes in aviation and sports. Renz & Partners is very active in business aviation and recently partnered with Wealthings SA in Geneva to set up Aircraft Import Switzerland, an advice and assistance portal in the very specific areas of customs and tax laws as pertains to aviation: www.aircraft-import.ch

IMPORT VAT AND VAT RECOVERY

In principle, an aircraft is imported into Switzerland by its owner, who must pay import VAT of 7.7% calculated on the market value of the aircraft at the time of import, as well as customs duties, calculated on the aircraft’s weight. The value of the maintenance contracts (MSP, etc.) and of the maintenance work performed abroad must also be imported. It is wise to analyse in advance and in detail to what extent a part (or even all) of this tax can be deducted as input tax, depending on the business and/or private use that will be made of the aircraft and the holding and operating structure put in place for the aircraft. The owner will often be well advised to request a ruling from the tax authorities to ensure that he has a clear picture of what deductions he can claim.

TEMPORARY ADMISSION UNDER CONDITION

There are some obligations which are not well known, but are increasingly being controlled by the customs authorities. These concern the beneficiaries of aircraft fulfilling the conditions of a temporary admission regime in Switzerland under the 12x3-day rule. The beneficial owner, or the operator on behalf of the latter, is required to fill out a ‘temporary admission procedure form’ and to deposit with the customs authority a financial security of between 20% and 100% of the VAT that would be due if the aircraft were definitively imported. All this must be done prior to the arrival in Switzerland of the aircraft in question. Failing to do this, the customs authorities may not consider the application for temporary admission as being valid. The harshest penalty would require the automatic import of the aircraft and payment of the full VAT.

THINK AHEAD OR COMPLY

In view of the rigorous controls that business aircraft are currently subject to in Switzerland, their owners and operators must plan ahead for the temporary admission or the definitive import of their aircraft into Switzerland. Any beneficiaries who have not yet performed all the necessary steps according to the rules have an obvious interest in complying very quickly to avoid criminal sanctions. If the authorities catch up with them, they will decide unilaterally what measures to take. ⚡



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