

## Importation of private aircraft into the EU by a non-EU resident



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An individual who has been normally resident outside the EU for the last ten continuous years intends to import a private jet into the UK. The aircraft is owned by a BVI company and is currently based in North America. The individual is a director and majority shareholder of the BVI company and, by virtue of his office, has had sole possession and use of the aircraft. The individual now intends to transfer his normal place of residence to the UK. What are the tax consequences of importing the aircraft into the EU?

As soon as a private jet lands in the UK, it is imported into the UK and, therefore, the EU (CEMA 1979 s 5(2)(b)). This then gives rise to customs duty and VAT considerations, which in turn are dependent upon whether the aircraft is permanently or temporarily imported.

Permanent importation of an aircraft into the EU requires that the aircraft is declared for free circulation in the EU, which subjects the aircraft to customs duty and VAT. As the VAT treatment follows the customs duty treatment (VATA 1994 s 16(1)), notwithstanding that the applicable rate of customs duty in respect of civil aircraft is 0%, any civil aircraft permanently imported into the UK will *prima facie* be subject to VAT at 20%.

For completeness, note that under the temporary admission relief scheme, temporary importation (i.e. up to six months), could benefit from total relief from customs duty and VAT.

### Transfer of residence relief

A non-EU resident intending to transfer his place of normal residence to the UK from outside the EU will not qualify for temporary admission relief in respect of a private aircraft. If temporary admission relief was initially claimed in respect of an aircraft, the importation of the aircraft into the UK will now attract a charge to VAT and customs duty unless transfer of residence relief applies.

Transfer of residence relief is only available to persons transferring their normal residence from outside the EU (SI 1992/3192, art 11). A person entering the UK is not required to pay VAT or customs duty chargeable on 'property' imported into the UK, provided the following conditions

are satisfied:

- he has been 'normally resident' outside the EU for a continuous period of at least 12 months;
- he intends to become normally resident in the UK;
- the 'property' (which includes private aircraft) has been in his possession and used by him in the country where he has been normally resident for at least six months before importation;
- the property is intended for his personal or household use in the UK;
- the property is declared for relief not earlier than six months before the date of becoming normally resident in the UK and not later than 12 months after that date; and
- HMRC is satisfied that the property has borne all duties and taxes normally applicable in its country or origin or exportation.

The test of 'normally resident' has three limbs (SI 1992/3192, art 3). An individual is treated as 'normally resident' in the country where he usually lives:

- for a period of, or periods together amounting to, at least 185 days in a period of 12 months;
- because of his occupational ties; and/or
- because of his personal ties.

If the individual has no material occupational ties to the UK, he will need to show close personal ties (which means family or social ties) to the UK. The date on which the individual becomes normally resident in the UK is the date when, having given up his normal residence in a third country, he is in the UK intending to become normally resident. More detailed rules govern the classification of a person's normal country of residence when that person's occupational and personal ties each

show close links with different countries respectively (SI 1992/3192, arts 3(4), (5)).

In order to be in a position to apply for transfer of residence relief, the individual must be able to demonstrate with supporting evidence that the aircraft has been in his possession and used by him in the country where he has been normally resident for at least six months before importation into the UK. 'Possession' means 'to have', rather than 'to own' (HMRC *Notice* 3, September 2004, para 5.1). Helpful supporting evidence of possession and use would include any purchase invoices, foreign registration papers and insurance policies.

It would also be useful to know the ownership structure of the aircraft, including whether the aircraft is owned by a company; and, if so, the corporate group structure and the basis on which the individual has possession and use of the aircraft.

Assuming the above conditions are satisfied, a declaration for relief on HMRC form C3 will have to be made to HMRC within 12 months of the date of a person becoming UK resident.

### Benefits in kind

Where the aircraft being imported into the UK is owned by a corporate entity, the individual importing the aircraft will have use and possession of the aircraft by virtue of his office. This will give rise to additional income tax liabilities in respect of his private use of the aircraft on becoming UK tax resident. Private use of the aircraft will be taxed as a benefit provided by an employer 'by reason of the employment'.

The benefit in kind charge could give rise to a substantial annual tax liability. It is based on the number of days the aircraft is made available for an individual's personal use. The amount of the benefit chargeable is the amount of the cash equivalent of the benefit, that being the annual value of the aircraft plus additional running expenses (ITEPA 2003 s 205(2)-(5), HMRC's *Employment Income Manual* at EIM 21638).

### Conclusion

Although generous reliefs from customs duty and VAT are available to non-EU residents importing their private aircraft into the UK, the rules governing the application of these reliefs are highly prescriptive. Any application for transfer of residence relief should be supported by sufficient evidence that each limb of the relevant conditions has been met. The often complex ownership structure of private aircraft could also give rise to potentially hefty income tax charges on an individual becoming UK tax resident. ■