

BUSINESS AVIATION LAW IN EUROPE

A PRACTICAL GUIDE



2019

AUSTRIA, BELGIUM, FRANCE, GERMANY, ISLE OF MAN, ITALY,
LUXEMBOURG, MALTA, SAN MARINO, SWITZERLAND, TURKEY AND UNITED KINGDOM

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INTRODUCTORY NOTE

We are very proud to present the Second edition of this Business Aviation Law in Europe booklet.

In 2016 the AMAC Subcommittee Legal and European Affairs decided to create a tool offering an overview of the key areas of legislations applicable to business aviation throughout the main jurisdictions within Europe.

The main purpose of this tool is to help the members of the Business Aviation community, including manufacturers, civil aviation authorities, operators and prospective buyers to have a first outlook of the legal and tax framework applicable in different European countries. This booklet shall also allow to have a comparative overview of the implementation in different jurisdictions of European regulations applicable to business aviation.

As the First Edition has been extremely well received by the whole Business Aviation Community, it appeared very quickly that there was a need for a Second Edition with a broadened scope that would encompass general business aviation law, tax and registration of aircraft.

For this 2019 Edition, we have therefore maintained the original business aviation law questionnaire, but we have been fortunate enough to be able to broaden the number of jurisdictions to cover, in addition to those covered by the 2016 edition, also Austria, Malta, San Marino and Turkey.

We have also added two brand new parts to this booklet: a tax part as well as a comparison table concerning formalities for aircraft registration in Europe.

We are very pleased that the goal to develop and finalize this tool by the AMAC Convention scheduled for March 2019 has been achieved thanks to the very valuable input of the contributing attorneys and the tremendous support of the EBAA secretariat.

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FOCAL POINT

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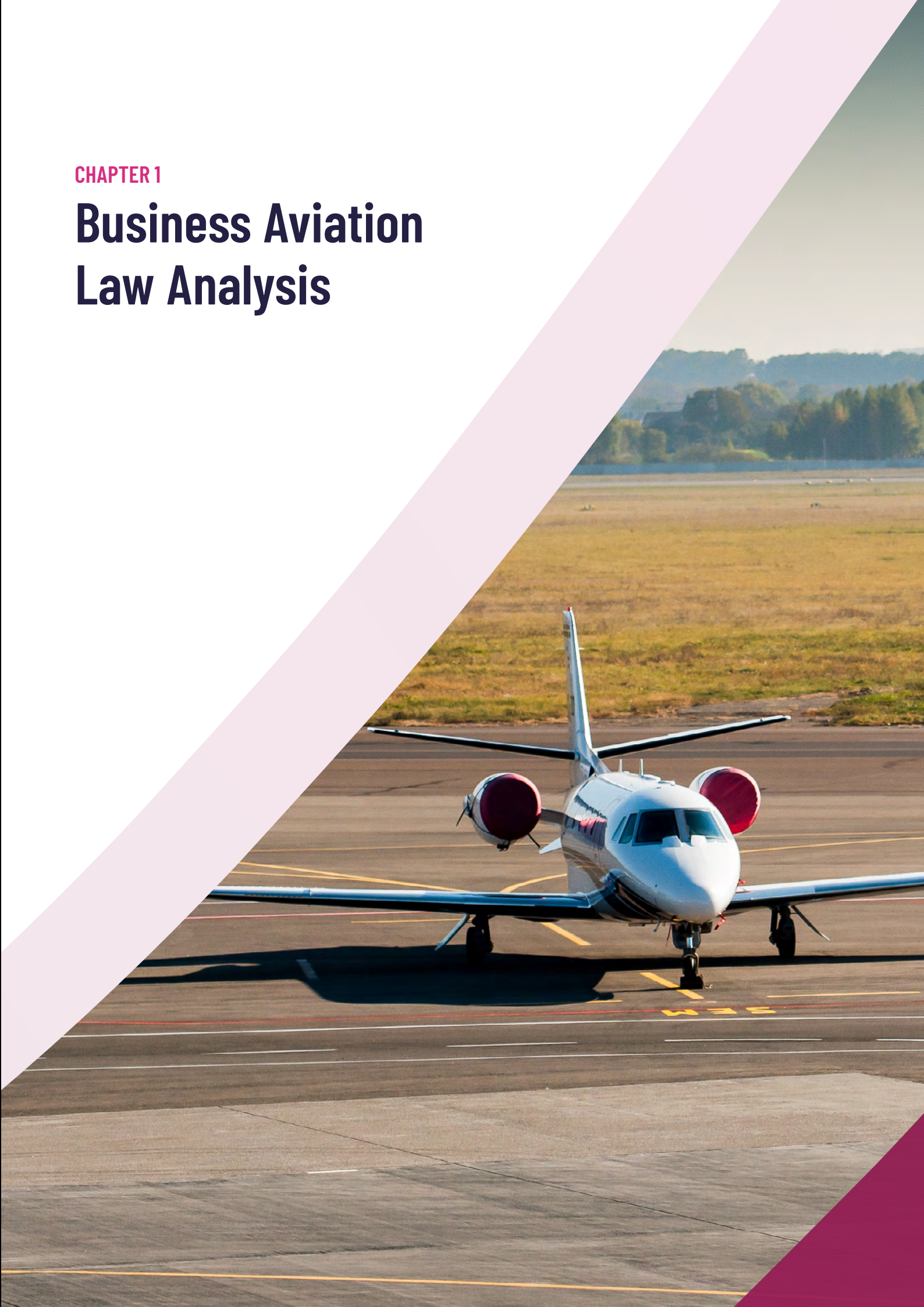
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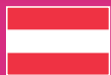
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CHAPTER 1

Business Aviation Law Analysis





INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952		
Geneva Convention 1948	Ok	Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001		

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

There is no registry in Austria where rights over aircraft can be registered as per the Geneva Convention 1948.

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (eg case of Switzerland)

N/A

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

The main law on a national level is the Austrian Aviation Act (*Luftfahrtgesetz – LFG*). The law does not distinguish between commercial and non-commercial air transport.

Non-commercial air transport is mainly regulated in Austria in relation to safety and technical requirements in the Austrian Civil Aircraft and Aviation Instrument Regulation (*Zivilluftfahrzeug und Luftfahrgerät-Verordnung 2010*). In addition to the relevant EASA rules and regulations applicable to non-commercial operations, the Air Operator Certificate Regulation (*Luftverkehrsbetreiberzeugnis-Verordnung*) has to be considered.

6. What are the main national laws applicable to commercial air transport in your country?

Along with the EU regulations, commercial air transport in Austria is essentially regulated by the laws and regulations mentioned under clause 5 above.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☐ Yes
☒ No

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

Name of the CAA: Austro Control GmbH

Phone: +43 5 1703-0

Website: www.austrocontrol.at

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

Name: None

Phone: None

Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

https://www.austrocontrol.at/luftfahrtbehoerde/formulare__serviceinfo/formulare

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

Name: Austro Control GmbH

Phone: +43 5 1703-0

Website: www.austrocontrol.at

Link where forms can be found: https://www.austrocontrol.at/luftfahrtbehoerde/formulare__serviceinfo/formulare

12. Is the registry:

- ☒ An operator one (commercial)
☐ An owner one (non-commercial)
☐ Both?

13. Which contractual documents need to be submitted to the registry (eg dry lease)?

To register an aircraft in Austria, the following documents must be submitted:

- An application form provided by Austro Control (in which the names and addresses of owner/operator have



to be included)

- Proof of ownership of the aircraft (e.g. bill of sale)
- Proof of nationality requirements of the operator (eg excerpt of the company register)
- Documents regarding the manufacturer of the aircraft
- Documents regarding the type of the aircraft
- Tax confirmation for the aircraft if acquired within the EU (issued by the Austrian tax authorities)
- Proof of non-registration or deregistration of the aircraft (e.g. certificate of deregistration)
- Noise certificates
- Authorisation of disposal of the operator (if the aircraft is not operated by the owner)

An airworthiness certificate is not required for registration of the aircraft.

14. Who has the right to register aircraft on your national registry?

The Austrian registry is an 'operators' registry'. This means that only the operator will be registered; they also have to fulfil the legal requirements and file the application for registration/deregistration. The owner has to give their consent for registration/deregistration. Registration in the Austrian aircraft register is an administrative requirement and does not affect the legal ownership of an aircraft. In accordance with this, a registration does not legally prove or constitute a valid ownership title to an aircraft.

According to section 16 of the Austrian Aviation Act (*Luftfahrtgesetz*), an operator must be either a citizen of an EU member state or a third country considered equal (if a natural person), or a company established under the laws of an EU member state or a country considered equal. Either way, if the operator is not located in Austria, an Austrian processing agent must be appointed. A special purpose company, established for the purpose of operating an aircraft, will be accepted by Austro Control.

There are no specific requirements for the owner if the aircraft is operated by an operator who fulfils the requirements above.

15. Is registration equivalent to legal title?

- ☐ Yes
☒ No

16. Who is entitled to be mentioned on the registration certificate?

The Austrian registry is an 'operators' registry'. This means that the registration certificate indicates the operator of the aircraft and not the owner of the same, unless there is no operator.

17. Are mortgages or other security on aircraft registered:

- ☐ On the same registry
☐ On a different registry

A registration is not possible.

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

Under Austrian law, the only available form of security over an Austrian-registered aircraft is a non-registered pledge.

To perfect an Austrian pledge, the pledgor cannot be in possession of the aircraft. This means that to finance an aircraft by way of a loan secured by a pledge, the borrower or the owner can never actually be in possession of the aircraft. The structure that may be used if the parties wish to use a pledge is that of a loan to a borrower who then transfers the possession of the aircraft to the operator. The borrower will grant a pledge in favour of the lender and the operator will agree to act as third-party pledge-holder.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
☐ No

If yes, under what circumstances?

The Austrian authorities (Austrian Federal Ministry for Transport, Innovation and Technology — BMVIT) usually concludes with the state where the aircraft is registered a so-called 'Article 83bis Agreement' for the division of regulatory and oversight power over the aircraft and the operator between the state of operation and the state of registration of the relevant aircraft. Currently, there are such Article 83bis agreements in place with Germany, Belgium, Italy, Spain, Switzerland and Russia.

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Austro Control must conclude an agreement with the foreign CAA about the safety supervision of the relevant aircraft.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process?

The aircraft can be deregistered upon application by (i) the operator with the consent of the owner or (ii) the owner, who does not need the consent of the operator.



The form provided by Austro Control has to be used (https://www.austrocontrol.at/jart/prj3/austro_control/data/dokumente/q8xgA_FO_LFA_ACE_281_DE.pdf).

Austro Control requires certain original documents to be attached to the application for deregistration: (i) certificate of registration, (ii) certificate of airworthiness, (iii) review certificate (*Nachprüfungsbescheinigung*), (iv) qualification certificate (*Verwendungsbescheinigung*) and (v) the noise certificate. As soon as all attachments are submitted, the deregistration is carried out within one or two working days.

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

If yes, under what circumstances?

See above.

An aircraft can be automatically deregistered in the circumstances set forth in section 10 of the Austrian Civil Aircraft and Aviation Instrument Regulation (*Zivilluftfahrzeug und Luftfahrgerät-Verordnung 2010*), e.g. when certain documents were not submitted within the timeframe or when the aircraft is declared not airworthy any more.

23. If available, please give the contact details of the relevant civil servant.

Name: Mag. Hans-Jürgen Altmann
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AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☐ Loan
☐ Mortgage
☐ Loan+Mortgage
☒ Leasing
☐ Pledge
☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

Private aircraft are usually financed in Austria under a finance lease or a hire-purchase agreement. Under Austrian law, the only available form of security interest over an Austrian-registered aircraft is an Austrian pledge (see our answer to question 18.)

26. Are there any retention rights for unpaid debts ?

- ☒ Yes
☐ No

If yes, please specify them.

Under Austrian law, repairmen have a right to retain an aircraft if (i) the aircraft is in their possession, (ii) they have a claim against the owner or the operator of that aircraft and (iii) that claim is linked to the aircraft.

There are no rights in Austria that allow the detention of an aircraft in respect of unpaid airport charges, air navigation charges or other unpaid debts. In such cases the respective creditor has to obtain a judgment that can be enforced against the aircraft.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
☐ Cooperative
☐ Club
☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

The most common type of legal entity in Austria is the *Gesellschaft mit beschränkter Haftung (GmbH)*. A GmbH can be founded for (almost) any legal purpose.

Any legal entity – whether an international company or a natural person – may set up a GmbH. There are no restrictions regarding the nationality of the shareholders. Once established, the GmbH is fully recognised as a legal entity as well. A GmbH may be set up by a single shareholder.

The costs of establishing a GmbH are rather low. The formation costs usually rank between €3000 and €5000 (including court fees, lawyer and notary fees), depending on the complexity of the articles of association.

The GmbH comes into legal existence upon its registration in the company register. In the company register, relevant information about the GmbH is publicly made available (e.g. name of the shareholders, management of the company, share capital).

The overall time frame for setting up a GmbH is two or three weeks.



The following steps have to be taken:

- Execution of the articles of association (*Gesellschaftsvertrag*) in form of a notarial deed
- Appointment of managing directors
- Opening a bank account
- Payment of the share capital
- Application for registration

The minimum share capital is €35,000, half of which has to be paid in at the time of foundation. However, this minimum share capital may be as low as €10,000 for the first ten years after establishment.

The corporate bodies of the GmbH are (i) the shareholders' assembly (*Generalversammlung*) and (ii) the managing directors/management board (*Geschäftsführung*). A supervisory board (*Aufsichtsrat*) is only necessary if the GmbH meets specific criteria.

There are no restrictions on the qualifications or number of managing directors. Furthermore, there is no legal requirement that one or

more managing directors must be domiciled in Austria.

The shareholders' assembly has to be convened from time to time to decide upon important matters. Shareholders' resolutions can also be passed in writing.

The corporate income tax (*Körperschaftsteuer*) that the GmbH has to pay amounts to 25%. The dividend tax (*Kapitalertragssteuer*) is 27.5%, which adds up to a total tax burden of 45.625%.

Annual statements have to be made for each year. An audit of the annual statements is only mandatory under special circumstances.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

None

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+43 676 957 3840

Website:

www.weisenheimer.law



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	Ok
Geneva Convention 1948	Ok	Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001		

Other (please specify) : Rome Convention 1933 on precautionary arrest

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

Belgium does not have a registry for rights over aircraft as per the Geneva Convention 1948. In its implementing Act, Belgium has extended the scope of the Rome Convention 1952 to aircraft registered in Belgium.

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (eg case of Switzerland)

Not applicable

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

Non-commercial air transport is only regulated in Belgium in relation to safety and technical requirements. In addition to the relevant EASA rules and regulations applicable to non-commercial operations, the Royal Decree of 9 January 2005 establishes operational technical requirements for general aviation aircraft. In light of the ICAO definition, a general aviation flight is defined as one that is not commercial or for aerial work.

A flight in Belgium is considered to be commercial if it carries passengers, freight or mail for remuneration or by virtue of a hire contract. Anything outside this definition is considered to be non-commercial.

6. What are the main national laws applicable to commercial air transport in your country?

Along with the EU regulations, commercial air transport in Belgium is essentially regulated by the 27 June 1937 Act regarding the regulation of air navigation and its implementing 1954 Royal Decree.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☐ Yes
☒ No

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

- Name of the CAA: Direction Générale du transport aérien
 Phone: +32 2 277 43 11
 Website: www.mobilit.belgium.be

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: None
 Phone: None
 Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

- Website: www.mobilit.belgium.be/fr/transport_aerien/formulaires

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

- Name: Direction Générale du Transport Aérien
 Phone: + 32 2 277 43 70
 Website: www.mobilit.belgium.be
 Link where forms can be found: www.mobilit.belgium.be/fr/transport_aerien/formulaires/immatriculation_et_licences



12. Is the registry:

- ☒ An operator one (commercial)
- ☐ An owner one (non-commercial)
- ☐ Both

13. Which contractual documents need to be submitted to the registry (eg dry lease)?

To register an aircraft in Belgium, the following documents must be submitted:

- Certificate of nationality;
- Articles of association (in the case of companies);
- Title over the aircraft (invoice, lease etc);
- Custom duties conformity DL2 certificate;
- The expired registration certificate if the aircraft was registered in Belgium in the past or deregistration certificate from another country if the aircraft was previously registered abroad;
- The log book in case of change of holder.

14. Who has the right to register aircraft on your national registry?

As per the 1954 Royal Decree regulating air navigation, only aircraft fully owned by EU or EEA nationals having their residence in Belgium, or by a Belgian company having EU or EEA directors, may be automatically registered in Belgium. The Royal Decree provides, however, that with ministerial authorisation other aircraft may be registered in Belgium. These are:

- Aircraft partly owned by EU or EEA nationals having their residence in Belgium;
- Aircraft partly owned by a Belgian company having EU or EEA directors;
- Aircraft partly or fully owned by a Belgian citizen who although living abroad has an elected domicile in Belgium;
- Aircraft partly or fully owned by a Belgian company that does not have EU or EEA directors;
- Aircraft partly or fully owned by an EU or EEA company that has their operational centre or a desk in Belgium;
- Aircraft partly or fully owned by non-EU or EEA nationals authorised to have their residence in Belgium and effectively living in Belgium for an uninterrupted period of one year;
- Aircraft partly or fully owned by a non-EU or EEA company having its operational centre or office in Belgium for an uninterrupted period of one year;
- Aircraft subject to a finance lease and leased to one of the abovementioned entities;
- Aircraft subject to a lease of a minimum period of six months to one of the abovementioned entities.

15. Is registration equivalent to legal title?

- ☐ Yes
- ☒ No

16. Who is entitled to be mentioned on the registration certificate?

The Belgian registry is an 'operators' registry'. This means that the registration certificate is requested by, and indicates, the operator of the aircraft and not the owner of the same, unless there is no operator.

17. Are mortgages or other security on aircraft registered:

As of 1 January 2018, a pledge over aircraft may be registered in the national electronic registry over movable goods.

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

Under Belgian law, the most common form of security over a Belgian registered aircraft is a Belgian pledge.

The law on security interests over moveable goods has recently been changed in Belgium. This new legislation came into effect on 1 January 2018. This new law introduces for the first time a national electronic register for all security interests on moveable goods, including aircraft pledges. Under this new legislation, a Belgian pledge can be registered in the national registry to be perfected, and therefore the owner of the pledged asset may remain in possession of the aircraft. The applicable fee for registration of a pledge over an aircraft is EUR 500 for a period of 10 years, and EUR 200 for the deregistration.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
- ☐ No

If yes, under what circumstances?

The Belgian CAA usually concludes with the State where the aircraft is registered a so-called 'Article 83bis Agreement' for the division of regulatory and oversight power over the aircraft and the operator between the state of operation and the state of registration of the relevant aircraft.



20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Given that the Belgian registry is an operator-based registry, this case does not apply in Belgium.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process.

To deregister an aircraft, the person mentioned on the registration certificate should contact by letter the registration service (details given in answer to question 23).

If the information regarding the new operator and/or the new owner are transmitted, the Belgian registration service will confirm the deregistration to the new registration service concerned. The deregistration process is free of cost.

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

If yes, under what circumstances?

An aircraft can be automatically deregistered in the following circumstances:

- When the aircraft can no longer be used;
- Whenever there has been no news of the aircraft; for six months since the day the aircraft left or since the aircraft was last seen;
- When the conditions for registration (mentioned under question 14) are no longer fulfilled.

23. If available, please give the contact details of the relevant civil servant.

Name: Service Licences
 Phone: +32 2 277 43 70
 Email: bcaa.registration@mobilite.be
 Website: http://mobilite.belgium.be/fr/transport_aerien/aeronefs/immatriculation
 Website: http://mobilite.belgium.be/sites/default/files/resources/files/matricule_fr.pdf

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☐ Loan
☐ Mortgage
☐ Loan+Mortgage
☒ Leasing
☒ Pledge
☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

Private aircraft are usually financed in Belgium under a finance lease or a hire-purchase agreement, which are not, strictly speaking, security interests. Under Belgian law the only available form of security interest over a Belgian-registered aircraft is a Belgian pledge. (See our answer to question 18.)

26. Are there any retention rights for unpaid debts?

- ☒ Yes
☐ No

If yes, please specify them

Under Belgian law, the most common retention right for unpaid debts is that of the repairman. Repairmen have a right of retention on an aircraft if the aircraft is in their possession, if they have a claim against the owner or the operator of that aircraft and if that claim is linked to the aircraft. It should be noted that once the new law on security interests comes into force, repairmen will enjoy a preferential right similar to the pledgee's right.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
☒ Cooperative
☐ Club
☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

At the time of writing this article, there are two types of legal entities commonly used in corporate aircraft transactions:

- The first is a limited liability company: *Société Anonyme/ Naamloze vennootschap (SA/NV)* (an alternative



to the SA/NV is the *société privée à responsabilité limitée/Besloten vennootschap met beperkte aansprakelijkheid* (SPRL/BVBA).

- The other one is a limited liability cooperative: *Société Coopérative à Responsabilité limitée/ coöperatieve vennootschappen met beperkte aansprakelijkheid* (SCRL/CVBA).

The *société anonyme/naamloze vennootschap* (SA/NV) is mainly used in corporate aircraft transactions by the buyer/future owner of the aircraft. An alternative to the SA/NV is the *société privée à responsabilité limitée/ Besloten vennootschap met beperkte aansprakelijkheid* (SPRL/BVBA), which has lower minimum capital requirements, but more stringent provisions on free sale of its shares.

- Minimum capital requirement: For an SA/NV €61,500 (this amount must be fully paid at the company's incorporation). The minimum capital requirement for an SPRL/BVBA is €18,550 (€6200 must be paid at the company's incorporation).
- Number of directors: For an SA/NV, at least three directors, unless there are only two shareholders, then at least two directors. For an SPRL/BVBA, one or more directors.
- Nationality of directors: There are no specific requirements for the nationality of directors.
- Location of the registered offices: Belgium.
- Average timing required for incorporation: No specific waiting time for incorporation. Once the text of the Act of Association has been written, just the time to go to a notary.

- Average costs for incorporation: Notarial costs are usually €1500/3000.

Another form of limited liability company often used in Belgium for private operations is the *Société Coopérative à Responsabilité limitée/coöperatieve vennootschappen met beperkte aansprakelijkheid* (SCRL/CVBA).

However, a Bill revamping the entire Belgian Company Code is currently under discussions. If approved in its current form, the Bill will completely change the structure of the SPRL/BVBA so as to provide that, amongst others, no minimal capital requirements for this type of company will be required. Moreover, the use of SCRL/CVBA will be extremely limited so that existing SCRL/CVBA will most likely need to be converted into other types of companies and their use in aircraft finance structure will most likely disappear. The intent of the Belgian legislator is that the new SPRL/BVBA will become the most used corporate vehicle under Belgian law.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

None

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France



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	
Geneva Convention 1948	Ok	Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001	Ok	

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

None

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (eg case of Switzerland)

Not applicable

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

Part VI of the Code of Transport + Annex VI to Regulation (EU) 965/2012 (on part NCC)

6. What are the main national laws applicable to commercial air transport in your country?

- Regulation (EC) No. 1008/2008 dated 24 September 2008, Part VI of the Code of Transport;
- Regulation (EU) No. 965/2012 relating to commercial air transport;
- Order (Arrêté) dated 9 February 2015 implementing Regulation 965/2012;
- Regulation (EC) No. 216/2008 dated 20 February 2008.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

Various guidelines and publications are available on the website of the French Ministry of Environment (Civil Aviation).

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

There is no separate body or agency regulating business aviation. Business and general aviation are regulated by the French civil aviation authority (Direction Générale de l'Aviation Civile – DGAC).

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: Direction Générale de l'Aviation Civile (DGAC)
 Phone: +33 1 58 09 43 21
 Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

Air operator certificate: www.ecologique-solidaire.gouv.fr/guides-exploitants-daeronefs*

Part NCC: www.ecologique-solidaire.gouv.fr/reglementation-exploitation-des-aeronefs-air-ops#e2*

Civil aviation registry: www.ecologique-solidaire.gouv.fr/immatriculation-des-aeronefs*

*Subject to change.

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

Bureau Immatriculation (Registration Office) of the Direction Générale de l'Aviation Civile (DGAC)

12. Is the registry:

- ☐ An operator one (commercial)
☒ An owner one (non-commercial)
☐ Both?

Whether for commercial or non-commercial operation, the French registry is a registry of title.



France



13. Which contractual documents need to be submitted to the registry (eg dry lease)?

- To record ownership: contract of sale or bill of sale;
- To record a lease: lease agreement and certificate of acceptance;
- To record a mortgage: mortgage deed.

(Note: all documents must be originals and submitted with supporting documents (POAs, etc) and registration request that can be downloaded from the DGAC's website (see above).)

14. Who has the right to register aircraft on your national registry?

- Nationals (natural persons) of the EU and EEA;
- Corporate entities incorporated in the EU or the EEA;
- Any other person or entity if the aircraft is operated by a the holder of a French AOC;
- Any person not meeting the above conditions upon delivery of an exemption from the DGAC.

15. Is registration equivalent to legal title?

- ☒ Yes
☐ No

16. Who is entitled to be mentioned on the registration certificate?

Owner, operator (optional) and mortgagee

17. Are mortgages or other security on aircraft registered:

- ☒ On the same registry
☐ On a different registry?

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

A deed of mortgage (acte d'affectation hypothécaire) can be entered into between the owner and a mortgagee creditor in accordance with articles L 6122-1 et seq. of the French Code of transport and an original must be registered in the registry to ensure priority. Priority is based on the date of entry. Several mortgages entered the same day will have equal ranking.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
☐ No

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

The conditions are to be checked with the CAA of the operator. In the case of an aircraft registered in another EU Member State and operated by a French AOC holder, the DGAC must have agreed with the CAA of the state of registration an allocation of responsibilities for the supervision and control of the airworthiness of the aircraft.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process?

An aircraft may be deregistered upon the request from the owner of the aircraft, provided all recorded rights have been released and deregistered (including mortgages and leases).

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

If yes, under what circumstances?

If declared a total loss or if the conditions for the registration of the aircraft (see 14 above) are no longer met.

23. If available, please give the contact details of the relevant civil servant.

None



France



AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☒ Loan
- ☒ Mortgage
- ☒ Loan+Mortgage
- ☒ Leasing
- ☐ Pledge
- ☒ Other (please specify) :
Conditional sale
(vente avec clause de réserve de propriété)

25. What are the main security interests required by financiers to finance private aircraft?

Mortgage, personal/corporate guarantee, tripartite agreement with AOC holder, lien on insurance policy (sole payable clause)

26. Are there any retention rights for unpaid debts?

- ☒ Yes
- ☐ No

If yes, please specify them

Creditors having possession of the aircraft (such as MROs and operators) may retain, under certain conditions, the aircraft or aircraft parts in respect of unpaid debts.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
(SAS or SARL – note that banks sometimes use a GIE structure)
- ☐ Cooperative
- ☐ Club
- ☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital requirement: None.
- Number of directors: One (for an SAS or a SARL).
- Nationality of directors: EU or EEA.
- Location of the registered offices: Anywhere in France.
- Average time required for incorporation: Two weeks.
- Average costs for incorporation: circa €3000.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

None

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ODI-SÉ AVOCATS

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Germany



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	Ok
Geneva Convention 1948	Ok	Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001	Ok	

Other (please specify) : -

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

The conventions have to be ratified to become applicable. If so, they are at the same level as national federal law in the hierarchy of applicability.

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (eg case of Switzerland)

Not applicable.

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws applicable to non-commercial air transport in your country?

LuftVG, LuftVO, LuftPersV.

6. What are the main national laws applicable to commercial air transport in your country?

LuftVG, mainly referring to EASA regulations.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

The Civil Aviation Authority (Luftfahrt Bundesamt; LBA) has published a NCC Guideline, describing the required organisation of the operator's company.

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

Name of the CAA: Luftfahrt Bundesamt (LBA)
 Phone: +49 531 23 550
 Website: www.lba.de

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

Name: None
 Phone: None
 Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

Website: http://www.lba.de/DE/Service/Formulare/Formulare_node.html

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

Name: LBA
 Phone: +49 531 23550
 Website: www.lba.de
 Link where forms can be found:
 Website: www.lba.de/DE/Service/Formulare/T/Verkehrszulassung/Formulare_Tabelle.html

12. Is the registry:

- ☐ An operator one (commercial)
☒ An owner one (non-commercial)
☐ Both?

13. Which contractual documents need to be submitted to the registry (eg dry lease)?

The bill of sale and application for registration are required and the purchase agreement is optional but good to include.



Germany



14. Who has the right to register aircraft on your national registry?

An EU entity or EU citizen.
Exemption for commercially operated aircraft.

15. Is registration equivalent to legal title?

- ☐ Yes
☒ No

16. Who is entitled to be mentioned on the registration certificate?

The owner.

17. Are mortgages or other security on aircraft registered:

- ☐ On the same registry
☒ On a different registry?

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

A lien (Pfandrecht). It has to be filed by a German notary. The procedure has to be in accordance with the Law about Rights on Aircrafts (Gesetz über Rechte an Luftfahrzeugen; LuftFzgG). The cost for registration of the lien depend on the value of the lien.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
☐ No

If yes, under what circumstances?

As each case is different due to import regulations, commercial aviation law requirements, cabotage etc, an individual consultation case by case is required.

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

The conditions are to be checked with the CAA of the operator. In the case of an aircraft registered in another EU Member State and operated by a German AOC holder, the LBA must have agreed with the CAA of the state of registration an allocation of responsibilities for the supervision and control of airworthiness of the aircraft. Agreements on the implementation of Article 83bis ICAO apply.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process?

The aircraft will be deregistered after the registered owner files a deregistration application.

22. Can an aircraft be automatically deregistered?

- ☐ Yes
☒ No

If yes, under what circumstances?

23. If available, please give the contact details of the relevant civil servant.

- Name: None
 Phone: None
 Email: None
 Fax: None
 Link where forms can be found: None

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☒ Loan
☒ Mortgage
☐ Loan+Mortgage
☒ Leasing
☒ Pledge
☒ Other (please specify) (Lease-Purchase Agreement)

25. What are the main security interests required by financiers to finance private aircraft?

Loan and mortgage, leasing agreement, lease-purchase agreement, personal guarantee by the owner.

26. Are there any retention rights for unpaid debts?

- ☒ Yes
☐ No

If yes, please specify them

Contractual rights and rights by law but they require a legal title.



27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
- ☐ Cooperative
- ☐ Club
- ☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital requirement: €25,000.
- Number of directors: A minimum of one director is required.
- Nationality of directors: The nationality of the directors does not matter theoretically. However, there are some hurdles if a director is not an EU citizen.
- Location of the registered offices: Germany.
- Average timing required for incorporation: Two weeks.
- Average costs for incorporation: About €4000.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

The implementation of Part-NCC requires a restructuring of the operator's organisation.

Contact Information for the contributors:

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INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	
Geneva Convention 1948	Ok	
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001	Ok	Ok

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

The Cape Town Convention 2001 was implemented in the Isle of Man with effect from 1 January 2018. The Isle of Man Applied the UK International Interests in Aircraft Equipment (Cape Town Convention) Regulations (SI 2015/92) with modifications to reflect its more creditor friendly insolvency laws. The Isle of Man has no international status as a country and conventions are only extended by the United Kingdom as contracting state after discussion between the governments of the United Kingdom and the Isle of Man.

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

Applied in part. The Isle of Man is not a member state of the EU.

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

- ☒ Yes
☐ No

If yes, please specify them

The Isle of Man Civil Aviation Administration (the Administration) chooses to apply certain norms and protocols of EASA. The Administration also has in place, or is negotiating, letters of understanding with European member states' national aviation authorities in respect of operating approvals issued by the authority to assist with Part-NCC compliance.

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

- Civil Aviation Act 1982 (as extended to the Isle of Man by Order in Council)
- Airports and Civil Aviation Act 1987
- Air Navigation (Isle of Man) Order 2015 (an order in Council) (the ANO)

6. What are the main national laws applicable to commercial air transport in your Country?

Not applicable

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

If yes, please specify them and explain

The Administration has adopted the content of a UK CAA Civil Aviation Publication (UK CAA CAPs) where regulations and the instructions for continued airworthiness do not address a topic in sufficient detail for aircraft owners and their contracted organisations.

The UK CAA CAPs that are currently adopted are listed on the Administration's website

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

- Name of the CAA: Isle of Man Civil Aviation Administration
 Phone: +44 1624 682358
 Website: www.gov.im/ded/Aircraft

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: Simon Williams, Director of Civil Aviation
 Phone: +44 1624 682358
 Email: caa@gov.im



10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc

www.gov.im/ded/Aircraft/forms.xml

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

Name: Isle of Man Aircraft Registry (IOMAR)

Phone: +44 1624 682358

Website: www.gov.im/ded/Aircraft

Link where forms can be found: www.gov.im/ded/Aircraft

12. Is the registry:

- ☐ An operator one (commercial)
☒ An owner one (non-commercial)
☐ Both?

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

The ANO permits a registered owner to be registered as a charterer by demise and IOMAR may require production of the dry lease to evidence the same.

14. Who has the right to register aircraft on your national registry?

- The Crown in right of the Isle of Man, the United Kingdom or any part of the United Kingdom.
- Commonwealth citizens.
- Nationals of any EEA state or Switzerland.
- British protected persons.
- Bodies incorporated in some part of the Commonwealth or having their registered office, central administration or principal place of business in a part of the Commonwealth.
- Undertakings formed in accordance with the law of the Isle of Man, an EEA state or Switzerland and having their registered office, central administration or principal place of business within the Isle of Man, an EEA state or Switzerland.

15. Is registration equivalent to legal title?

- ☐ Yes
☒ No

16. Who is entitled to be mentioned on the registration certificate?

The registered owner. If an aircraft is registered by way of charterer by demise, then a statement that the aircraft is registered under article 5(3) of the ANO in the name of the charterer will appear on the registration certificate. However, only the name of the registered owner will appear on the registration certificate and the publicly available record.

17. Are mortgages or other security on aircraft registered:

- ☒ On the same registry
☐ On a different registry

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

The only security interest that may be registered in the Isle of Man Register of Aircraft Mortgages is an aircraft mortgage. The aircraft mortgage may extend to any store of spare parts for that aircraft but does not otherwise include a mortgage created as a floating charge. Form 26 and a certified true copy of the mortgage must be submitted, both of which can be submitted by email. The fee for registering a mortgage is £425.

The mortgagee can also enter a priority notice by filing Form 25 to ensure that a contemplated mortgage has priority. A priority notice is valid for 14 working days and the fee for filing is £150. Mortgage services are carried out on request and are ordinarily completed on the day of submission.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☐ Yes
☒ No

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Not applicable



21. How does the aircraft deregistration process work?

Please describe the classical deregistration process.

First, it should be established whether the new state of registry requires an export certificate of airworthiness. If required, Form 10 must be filed. IOMAR advises that to process the application and survey the aircraft can take between a minimum of 10 working days and a maximum of 15 working days. There is a fee of £500 for issuing the certificate, plus the surveyor's costs for preparation, conducting the survey and their travel to and from the aircraft will be charged by IOMAR.

To deregister the aircraft, the registered owner must file Form 11 and where the registered owner is a company, an up to date list of directors. IOMAR advise that processing a deregistration application can take a maximum of two working days. There is a fee of £250 for deregistering an aircraft.

If there is a mortgage registered, Form 28 and the document of discharge must be filed. There is a fee of £300 to discharge a registered mortgage.

Once the deregistration process has been completed, the registry will send a notification to the new state of registry. More detailed guidance can be found in registry publication number 12:

www.gov.im/lib/docs/ded/Aircraft/Registration/rp12deregistrationofaircraftfrm.pdf

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

If yes, under what circumstances?

It is standard to include in a security package a deregistration power of attorney, which grants the mortgagee the power to deregister the aircraft if an event of default occurs. However, Form 11 and if applicable, Form 10 and Form 28, would still have to be submitted.

23. If available, please give the contact details of the relevant civil servant.

- Name: All applications should be submitted to the general mailbox, which is continuously monitored during office hours.
 Phone: +44 1624 682358
 Email: aircraft@gov.im
 Link where forms can be found: www.gov.im/ded/Aircraft.forms.xml

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☐ Loan
☐ Mortgage
☒ Loan and mortgage
☐ Leasing
☐ Pledge
☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

- Mortgage of aircraft
- Security assignment of lease
- Tripartite agreement (operator, registered owner as borrower, lender)

26. Are there any retention rights for unpaid debts ?

- ☒ Yes
☐ No

If yes, please specify

- Common law liens in respect of improvements to the aircraft
- Isle Of Man airport charges
- Contractual liens in respect of work done to the aircraft not within common law rights of lien.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
☐ Cooperative
☐ Club
☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital requirement: None
- Number of directors: One
- Nationality of directors: Any
- Location of the registered offices: Isle of Man
- Average timing required for incorporation: Five days
- Average costs for incorporation: from £1500



MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

There is uncertainty regarding the impact Brexit will have upon the Island's aviation offering; the Isle of Man is not a member state of the EU, but has a relationship which is governed by Protocol 3 to the Act of Accession forming part of the UK's Treaty of Accession. Under Protocol 3, the Isle of Man is part of the customs territory of the Union. There is free movement of industrial and agricultural goods in trade between the Island and the Union.

In addition, a VAT regime is operated that is essentially identical to, and interlinked with, that of the UK by virtue of the Customs and Excise Agreement with the UK, so that the Isle of Man is treated as part of the European Single Market for customs and excise purposes. The extent to which the regime will change after Brexit is, as yet, unknown.

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Italy



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	Ok
Geneva Convention 1948	Ok	Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001	Ok	

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

None

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

Not applicable

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

At national level, the Italian Navigation Code (Royal Decree no. 327/1942, as subsequently amended and supplemented from time to time), applies. At European level, the EU Regulations on the subject (including Regulations Regulation (UE) 800/2013 and Reg. (UE) 1199/2016) have direct force of law in Italy.

6. What are the main national laws applicable to commercial air transport in your country?

At national level, the Italian Navigation Code (Royal Decree no. 327/1942, as subsequently amended and supplemented from time to time), applies. At European level, the EU Regulations on the subject (including Regulations (EC) 1008/2008, (UE) 800/2013 and (UE) 1199/2016) have direct force of law in Italy.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

If yes, please specify them and explain.

ENAC (the Italian CAA) has issued two information notices (Note informative) (NI-2013-014 and NI 2016/006) summarizing the structure and main implications of the EU Regulations regarding NCC and NCO operations. The notices are accessible on the ENAC website.

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

- Name of the CAA: ENAC (Ente Nazionale per l'Aviazione Civile)
 Phone: +39 06 445961
 Website: www.enac.gov.it

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: Marco Silanos (current director of Flight Operations)
 Phone: +39 06 44596690
 Email: m.silanos@enac.gov.it; operazioni.volo@enac.gov.it

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

Air transportation licences (relevant link including links to forms):
www.enac.gov.it/La_Regolazione_Economica/Trasporto_Aereo/Licenze_di_Esercizio/Licenza_di_trasporto_aereo/index.html

Aircraft Operator Certificate (AOC) (relevant link including link to forms)
www.enac.gov.it/La_Regolazione_per_la_Sicurezza/Operazioni_di_volo/Certificato_di_Operatore_Aereo/index.html

NCC (relevant link)
www.enac.gov.it/La_Regolazione_per_la_Sicurezza/Operazioni_di_volo/Operazioni_non_commerciali_-_aeromobili_complessi/index.html



Italy



NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

Name of the CAA: ENAC (Ente Nazionale per l'Aviazione Civile)

Phone: +39 06 445961

Website: www.enac.gov.it

Link where forms can be found: http://www.enac.gov.it/La_Regolazione_per_la_Sicurezza/Navigabilit-13-/Registro_Aeromobili/index.html

12. Is the registry:

- ☐ An operator one (commercial)
- ☐ An owner one (non-commercial)
- ☒ Both

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

Generally speaking contractual documents relating to the aircraft ownership (eg deed of transfer of title) and the aircraft use (eg dry lease, financial lease) need to be submitted to the registry.

14. Who has the right to register aircraft on your national registry?

Aircraft can be registered on the Italian registry in the name of the owner if they meet the so-called 'nationality requirements' provided by article 756 of the Italian Navigation Code. These requirements are met when an aircraft is the whole or major property of: (i) state, regions, provinces, municipalities or any other Italian or other EU member state's public or private body; (ii) Italian citizens or other EU member state's citizens; (iii) companies established or with registered offices in Italy or other EU member states, whose share capital is the whole or major property of Italian or other EU member state's citizens, or Italian or other EU member state's companies with the same characteristics of shareholding and whose president and most part of the directors, including the managing director, are Italian or other EU member state's citizens.

On the contrary, if the abovementioned 'nationality requirements' are not satisfied, pursuant to the second paragraph of article 756 of the Italian navigation Code ENAC may allow (by grounded decision) the registration of aircraft operated by, but not property of, companies holding a EU air carrier license. In such cases, an aircraft can be registered in the name of the EU-licensed operator and details of the aircraft owner are also recorded in the registry and noted on the certificate of registration of the aircraft.

15. Is registration equivalent to legal title?

- ☒ Yes
- ☐ No

16. Who is entitled to be mentioned on the registration certificate?

The aircraft owner and the aircraft operator (if different from the owner).

17. Are mortgages or other security on aircraft registered:

- ☒ On the same registry
- ☐ On a different registry

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

The sole voluntary security interests that can be taken on an aircraft and registered in the aircraft registry are Italian law mortgages. In order to perfect an Italian law mortgage the following documentation must be filed with ENAC: (i) notarial mortgage deed; (ii) application for the mortgage registration in the aircraft registry; (iii) two registration notes in respect of the mortgage perfection; (iv) the original certificate of registration of the concerned aircraft; (v) evidence of the payment of ENAC fees, ranging from €104 to €1328 on the basis of the amount secured by the mortgage, plus a stamp duty of €16.

In financing transactions it is also common practice to have the Italian operator/lessee execute an acknowledgement of the lease security assignment by the lessor/borrower to a lender (or a pool of lenders usually represented by a trustee).

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
- ☐ No

If yes, under what circumstances?

Foreign-registered aircraft can be operated by Italian-licensed operators to the extent that the civil aviation authority of the foreign country of registration has entered into an ICAO 83-bis agreement with ENAC, for the delegation of functions and responsibility of oversight over the operations, personnel and continuing airworthiness of the relevant aircraft.



Italy



Under certain circumstances, requirements and limits, Italian-licensed operators can also operate foreign-registered aircraft under wet lease/ACMI agreements with foreign lessors (so called wet lease in).

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Likewise, the operation of an Italian-registered aircraft by foreign operators is permitted on the basis of an ICAO 83-bis agreement between ENAC and the foreign civil aviation authority and/or wet lease/ACMI agreements with Italian lessors (so called wet lease out).

21. How does the aircraft deregistration process work? Please describe the classical deregistration process.

To deregister an aircraft from Italy, the following documents must be filed with ENAC:

- The ENAC application for the aircraft deregistration;
- Ancillary documents, depending on the specific reason behind the aircraft deregistration among the ones listed by article 760 of the Italian Navigation Code (eg for an event of loss; when registered in the aircraft registry of an extra-EU state or an EU member state; if redelivered by the EU-registered operator to the extra-EU owner);
- The original certificate of registration of the aircraft;
- The original certificate of airworthiness of the aircraft;
- Evidence of payment of the ENAC fees for the deregistration, equal to €206.

22. Can an aircraft be automatically deregistered?

- ☐ Yes
☒ No

23. If available, please give the contact details of the relevant civil servant.

Name: Ms Antonella Burtone (Head of the Italian Aircraft Registry)

Phone: +39 06 44596743

Email: a.burtone@enac.gov.it

Link where forms can be found: www.enac.gov.it/La_Regolazione_per_la_Sicurezza/Navigabilit-13-/Registro_Aeromobili/index.html

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☐ Loan
☐ Mortgage
☒ Loan+Mortgage
☒ Leasing
☐ Pledge
☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

The main security interest is the aircraft mortgage, to be established by way of notarial deed and registered in the Italian Aircraft Registry kept by ENAC. The existence of a mortgage would also result as an annotation on the aircraft's certificate of registration.

A lender/mortgagee has no self-remedies and mortgage enforcement requires a court-supervised procedure.

Engines are treated as separate assets from the aircraft. For ownership or a contractually established security interest to be valid and enforceable against third parties, it needs to be in notarial form (to ensure that the relevant ownership/security title has a date certain).

Under leasing arrangements, it is common to have contractual arrangements (including tri-party arrangements: lessor, lessee, operator) aimed at facilitating repossession of the aircraft by the owner/lessor. These arrangements include notarised powers of attorneys in favour of the lessor.

26. Are there any retention rights for unpaid debts?

- ☒ Yes
☐ No

If yes, please specify them.

Pursuant to article 2756 of the Italian Civil Code, unpaid debts of a nonfinancial nature arising from services and expenses in connection with the conservation and improvement (including maintenance) of movable assets (including aircraft) are secured by way of a right of retention of the service supplier on the relevant movable asset.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited Liability company
☐ Cooperative
☐ Club
☐ Other (please specify)



28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital requirement: S.p.A.: €50,000; S.r.l.: in principle €10,000).
- Number of directors: At least one.
- Nationality of directors: For Italian-registered aircraft owned by Italian corporate entities, certain nationality requirements must be satisfied both with regard to directors and shareholders. Under art. 756 of the Italian Navigation Code, the chairman, the managing director and the majority of the board members must be Italian or citizens of EU member states. Under the art. 756 of the Italian Navigation Code, the Italian corporate register owner must be a company of whose share capital the majority belongs to Italian or EU corporate entities having the same features (ie the majority of whose share capital belongs to another Italian or EU company and/or individuals).

As an exception, ENAC can accept - based on a motivated decision - that an aircraft be registered in the name of an AOC holder having actual availability of the aircraft. The relevant title/ agreement supporting such availability would need to be produced. In these circumstances, the owner's obligations regarding the aircraft's airworthiness will be transferred to the AOC holder.

- Location of the registered offices: Municipality where the corporate entity has its seat.
- Average timing required for incorporation: At least a week.
- Average costs for incorporation: Nominal stamp duties and notarial fees.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

There are two different Italian taxes having an impact on the business aviation sector:

Tax on private aircraft

- It is charged yearly to the owners (or financial lessees) of private aircraft registered with the Italian registry.
- The charge is assessed on the basis of the aircraft MTOW (ranging from €0.75/kg for aircraft up to 1 tonne; to €7.60/kg for aircraft of more than 10 tonnes).
- A tax exemption is granted to: state aircraft; aircraft owned by, or leased to, carriers operating scheduled or nonscheduled flights; aircraft engaged in firefighting, rescue operations and medical or emergency services and historical aircraft (having been registered for more than 40 years).
- The tax is charged also to foreign-registered aircraft, to the extent that they remain in the Italian territory for more than 6 months (consecutive or otherwise) within a timeframe of 12 months.
- The tax exemptions provided for Italian-registered aircraft apply also to foreign-registered aircraft.

Since it is a very onerous tax, it is uncommon for business jets to be operated privately in Italy. Instead, the common scheme is to have them operated commercially under a certified AOC so that they can benefit from the tax exemption.

Aerotaxi passengers tax

- This is charged on each passenger of aerotaxi flights, for each single route departing from, or arriving to, an Italian airport.
- According to the interpretation given by the Italian Tax Authority, the concept of aerotaxi flights includes 'flights operated for the transport of passengers under charter agreements, for the entire capacity of the aircraft'. At a European legislation level (as acknowledged also by ENAC), aerotaxi flights are those carried out with aircraft having a seating capacity of up to 19 seats.
- The charge on each passenger is equal to: (i) €10 for routes of less than 100km; (ii) €100 for routes of less than 1500km; (iii) €200 for routes exceeding 1500km.
- The passengers are liable for payment of the tax to the aircraft operator, which in turn is liable for payment of the collected tax to the Italian state.

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INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	Ok
Geneva Convention 1948		Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001		Ok

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

Concerning the Cape Town Convention 2001, for the purpose of Article XXX (3) of the Aeronautical Protocol, Luxembourg applies in full Variable A of Article XI; the waiting period for the purpose of Article XI (3) is set at 60 (sixty) days. In addition, it is important to note that Article 17 of the law of 9 December 2008 amending the law dated 29 March 1978 concerning the recognition of the rights on aircrafts sets out that the international interest registered with the International Register are not outdone by any privileges, including those reserved in Article 12 of the same law (ie legal costs, remunerations owed for rescue of the aircraft, expenses made for its preservation).

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

Not applicable

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

The main national law is the law of 31 January 1948 relating to regulation of air navigation, as amended (the 'Air Navigation Law'), which is applicable to both non-commercial and commercial air transport.

6. What are the main national laws applicable to commercial air transport in your country?

The Air Navigation Law and the Grand-Ducal Regulation of 8 August 1985 concerning the authorisations to operate air transport constitute the main national legislation in Luxembourg in addition to Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast). ('Regulation (EC) 1008/2008')

7. Are there any guidelines from your national authority on non-commercial flights?

- ☐ Yes
☒ No

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

Name of the CAA: Direction de l'Aviation Civile
 Phone: +352 247 74900
 Email: info@dac.public.lu

9. If these information may be disclosed, please give the contact details of relevant civil servants

Name: Pierre Jaeger (Directeur de l'Aviation Civile)
 Phone: +352 247 74900
 Email: info@dac.public.lu

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc

Website : www.dac.public.lu/formulaires/index.html



NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

- Name: Direction de l'Aviation Civile
- Phone: +352 247 74900
- Website: www.dac.public.lu
- Link where forms can be found:
www.dac.public.lu/formulaires/aeronefs/index.html

12. Is the registry:

- ☐ An operator one (commercial)
- ☒ An owner one (non-commercial)
- ☐ Both

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

The financial lease agreement shall be annexed to the form of registration request on the *relevé luxembourgeois des aéronefs*, which shall be lodged with the Luxembourg Direction de l'Aviation Civile.

For example, in accordance with AMC1 ORO.AOC.110, any Luxembourg-based operator intending to lease-in an aircraft needs to submit a copy of the lease agreement to the Luxembourg Direction de l'Aviation Civile for prior approval.

14. Who has the right to register aircraft on your national registry?

Without prejudice of Article 12 of Regulation (EC) 1008/2008, The Grand-Ducal Regulation of 27 July 1961 concerning air transport, the registration and the identity of aircrafts, as amended (the '1961 Grand-Ducal Regulation') sets the requirements to register an aircraft in the *relevé des immatriculations des aéronefs*. Private aircraft owned by Luxembourg nationals or by Luxembourg law-governed companies are registered in the *relevé des immatriculations des aéronefs* upon request. According to Article 3 of the 1961 Grand-Ducal Regulation concerning other aircraft (i.e. aircraft other than private aircraft owned by Luxembourg nationals or Luxembourg companies, or aircraft owned by the Luxembourg State), a special authorisation delivered by the Ministry of Transports is required to register such aircraft in the *relevé des immatriculations des aéronefs*. In practice, for all registration requests, the applicant needs to fill out Form 101-1 and file it with the Luxembourg Direction de l'Aviation Civile together with the documentation mentioned in Form 101-1.

15. Is registration equivalent to legal title?

- ☐ Yes
- ☒ No

16. Who is entitled to be mentioned on the registration certificate?

The owner of the aircraft is mentioned on the registration certificate. If the owner is not the operator of the aircraft, the operator needs to be mentioned as well as long as they both agree that the operator should be mentioned on the certificate.

17. Are mortgages or other security on aircraft registered:

- ☐ On the same registry
- ☒ On a different registry

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

An aircraft registered in Luxembourg can be subject to an aircraft mortgage. This mortgage covers the airframe, the engines (unless they are registered separately, in which case they will be subject to a separate mortgage), the accessories, spares and equipment, the manuals, data and related registers. The mortgage can be granted in favour of a person acting for the account of the beneficiaries of the mortgage, a fiduciary or a trustee, to secure the claims of third-party beneficiaries, present or future, provided that such third-party beneficiaries are determined or determinable. Without prejudice to their duties towards the third party beneficiaries of the mortgage, the fiduciary or the trustee enjoys the same rights as those granted to direct beneficiaries of a mortgage. The mortgage shall be enacted by a civil-law notary except if it is put in place exclusively for the purpose of an international interest (in that case a private deed will be sufficient). The registration of the mortgage with the *Bureau de la conservation des hypothèques aériennes* secures the capital for ten years from its registration plus three years of interest. Of course, the registration of the mortgage can be renewed.

As Luxembourg has approved and ratified the Cape Town Convention 2001, financiers can also benefit from an international interest.

The enactment of the mortgage by a civil law notary triggers costs in the region of €5000.



19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
☐ No

If Yes, under what circumstances?

In application of Article 12 of Regulation (EC) No. 1008/2008, Luxembourg requires that an aircraft operated by a Community air carrier be registered in Luxembourg, except if the concerned states have entered into an agreement in accordance with the provisions of Article 83bis of the Chicago Convention 1944, allowing the transfer of certain oversight responsibilities from the state of registry to the state of the operator (i.e. Luxembourg).

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

In application of Article ARO.OPS.110 (d) of Regulation (EC) No. 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No. 216/2008 of the European Parliament and of the Council, when asked for the prior approval of a dry-lease out agreement in accordance with ORO.AOC.110(e), the Luxembourg Direction de l'Aviation Civile must ensure (i) that there is proper coordination with the competent authority responsible for the continuing oversight of the aircraft, in accordance with Regulation (EC) No 2042/2003, (ii) that the aircraft is timely removed from the operator's AOC.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process.

To deregister an aircraft, the owner or its attorney-in-fact shall lodge with the Luxembourg Direction de l'Aviation Civile a signed request for deregistration (*demande de radiation du relevé luxembourgeois des aéronefs*) including the original of the certificate of registration, the airworthiness certificate, the certificate of deregistration of the registration with the register of aircraft mortgages (if applicable), the power of attorney granted by the owner to the attorney-in-fact (if applicable). Concerning aircraft registered with the register of aircraft mortgages (*registre des hypothèques aériennes*) maintained by the Administration de l'Enregistrement et des Domaines, the deregistration of the aircraft from the *relevé luxembourgeois des aéronefs* implies the prior deregistration of the aircraft from the register of aircraft mortgages (*registre des hypothèques aériennes*). If the aircraft is subject to a mortgage or a seizure, it is mandatory that

the mortgage or the seizure be lifted to deregister the aircraft from the *relevé luxembourgeois des aéronefs*.

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

If yes, under what circumstances.

As The Cape Town Convention 2001 is applicable in Luxembourg, a creditor holding an irrevocable deregistration and export request authorisation (IDERA) duly registered with the Luxembourg Direction de l'Aviation Civile can ask the Luxembourg Direction de l'Aviation Civile to deregister the aircraft. For this purpose, the creditor needs to lodge a Form 101-2 with the Luxembourg Direction de l'Aviation Civile to be authorised to deregister and export the aircraft.

Please note that the Luxembourg Direction de l'Aviation Civile may require the creditor to certify that any guarantees ranking senior towards its own guarantee have been lifted or that the beneficiaries of these guarantees have approved the deregistration and exportation of the aircraft.

23. If available, contact details of the relevant civil servant

- Name: None
 Phone: None
 Email: None
 Link where forms can be found: www.dac.public.lu/formulaires/aeronefs/index.html

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☒ Loan
☒ Mortgage
☒ Loan + Mortgage
☒ Leasing
☒ Pledge
☐ Other (please specify)

**25. What are the main security interests required by financiers to finance private aircraft?**

Financiers usually require a mortgage over the aircraft, an international interest (in accordance with the Cape Town Convention 2001), an assignment of insurances and a pledge over the shares of the SPC. Financiers may also require a pledge over the bank accounts respectively over the receivables of the SPC. In addition, the granting of a personal guarantee by the UBO is also generally required.

26. Are there any retention rights for unpaid debts ?

- ☒ Yes
☐ No

If yes, please specify them.

A retention right is the faculty for a creditor who materially holds a good belonging to his debtor to retain it until the creditor receives payment. The retention right is not specifically regulated by the Luxembourg Civil Code but it results from various articles allowing its application in diverse situations; however, it does not exist as such in the Luxembourg Civil Code for aircraft. Nevertheless, this does not mean that an aircraft cannot be subject to retention rights at all.

Indeed, according to Article 38 of the Air Navigation Law (i) when on-board documents prescribed by the regulations are not produced or the registration mark of the aircraft does not match those mentioned on the certificate of registration, the aircraft can be retained (to the expenses and risks of the operator) by the authorities in charge of supervision and policing of aeronautical airworthiness until the identity of the aircraft or of the operator is established; (ii) aircraft that do not satisfy the prescriptions related to airworthiness or for which tolls, taxes, fees or statutory rights have not been paid can also be retained by the authorities until payment in full.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
☒ Cooperative
☐ Club
☒ Other (please specify)

A *société coopérative* organised as a *société anonyme* (COOPSA) is also an efficient tool to operate a corporate jet privately. Fractional ownership (*propriété partagée*) for aircraft in Luxembourg is legally recognised by the Grand-Ducal regulation dated 27 July 1961 concerning air transport, registration and identity of aircraft, as amended.

28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital requirement: S.à.r.l.: €12,000 / S.A.: €30,000 / COOPSA: Variable — no minimum capital required.
- Number of directors: S.à.r.l.: at least one (1) / S.A.: at least three (except S.A. formed with just one shareholder or if a shareholders' meeting acknowledges that there is only one shareholder) / COOPSA: requirements applicable to S.A. are also applicable to COOPSA.
- Nationality of directors: No legal requirements, but in practice, the majority of the members of the board of directors are Luxembourg residents.
- Location of the registered offices: Grand-Duchy of Luxembourg.
- Average timing required for incorporation: Incorporation can be completed within two days if all documents and required information are available.
- Average costs for incorporation: Between €2000 and €4000.

MISCELLANEOUS**29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.**

None

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Malta



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties ?

	Signed	Ratified
Warsaw Convention 1929		Ok
Chicago Convention 1944		Ok
Geneva Convention 1948		
Rome Convention 1952		
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001		Ok

Other (please specify) :

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

Malta adopted Alternative A under Article XI of the Protocol to the Cape Town Convention.

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

N/A

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

The principal legislation regulating non-commercial air transport in Malta consists of:

- Aircraft Registration Act (Chapter 503 of the Laws of Malta);
- Civil Aviation Act (Chapter 232 of the Laws of Malta);
- Eurocontrol Act (Chapter 333 of the Laws of Malta);
- Airports and Civil Aviation (Security) Act; (Chapter 405 of the Laws of Malta);
- Authority for Transport in Malta Act; (Chapter 499 of the Laws of Malta).

6. What are the main national laws applicable to commercial air transport in your country?

In addition to the above, the Civil Aviation (Air Operators' Certificates)

Act (Chapter 218 of the Laws of Malta) applies to commercial air transport.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☐ Yes
☒ No

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

Civil Aviation Directorate within the Authority for Transport in Malta.

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: Transport Malta (Civil Aviation Directorate)
 Phone: +356 2555 5653
 Email: civil.aviation@transport.gov.mt

10. If available, please give the CAA website page link where relevant forms may be found. Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

- <http://www.transport.gov.mt/aviation/aircraft-flight-standards/air-services>
 <http://www.transport.gov.mt/organisation/forms/aviation-forms>
 <http://www.transport.gov.mt/aviation/aircraft-flight-standards/camo-applications-and-forms>
 <http://www.transport.gov.mt/aviation/aircraft-flight-standards/flight-operations/forms>

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

The National Aircraft Register is maintained by the Director General for Civil Aviation, within the Civil Aviation Directorate.

12. Is the registry:

- ☐ An operator one (commercial)
☐ An owner one (non commercial)
☒ Both?

It is an operator registry however the owner of a private aircraft may be the registrant (in its capacity as owner-operator).



13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

The contractual documentation required to be submitted for registration depends on title and includes:

- i. The Bill of Sale or other proof of ownership;
- ii. A copy of the lease or operating agreement if the aircraft is leased;
- iii. Irrevocable de-registration power of attorney or any other power attorney.

14. Who has the right to register aircraft on your national registry?

- i. An owner of the aircraft who operates the said aircraft;
- ii. An owner of an aircraft under construction or temporarily not being operated or managed;
- iii. An operator of an aircraft under a temporary title who satisfies the conditions as may be prescribed;
- iv. A buyer of an aircraft under a conditional sale or title reservation agreement which satisfies the conditions which may be prescribed and who is authorised to operate the aircraft.

The persons who are qualified to register an aircraft in Malta vary according to whether the aircraft is used in air service or is a private aircraft. If the aircraft is intended to provide air services the registrant must be a qualified person (as set out hereunder).

The following persons (each a “qualified person”) are entitled to register any aircraft in the National Register:

- i. The Government of Malta;
- ii. A citizen of Malta or a citizen of a Member State of the E.U. or of an EEA State, or Switzerland, having a place of residence or business in Malta, the E.U., the EEA, or Switzerland, including a person sharing in the ownership of such aircraft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered;
- iii. An undertaking formed and existing in accordance with the laws of Malta, of a Member State of the E.U., of an EEA State, or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the E.U., or the EEA, or Switzerland, whereof not less than 50% of the undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the E.U. or by persons referred to above, whether directly or indirectly through one or more intermediate undertakings.

An aircraft in construction (as soon as it is uniquely identifiable) and an aircraft not used to provide air services may be registered by a citizen of a qualifying state but not having a place of residence

or business in a qualifying state or an undertaking established in a qualifying state, but with less than 50% of its ownership held by citizens of a qualifying state, provided however that each of its shareholders and directors are a citizen of, or an undertaking established in, an ‘approved jurisdiction’ in terms of the Aircraft Registration (Approved Jurisdiction) Regulations (2011). For the purposes of the Act, such person or undertaking is referred to as an ‘international registrant’.

15. Is registration equivalent to legal title?

- ☐ Yes
☒ No

A certificate of registration signed by the Director General or other authorized officer constitutes *prima facie* evidence that it has been so issued, and of its contents.

16. Who is entitled to be mentioned on the registration certificate?

- i. The owner (ownership rights) in relation to the aircraft or the engine;
- ii. The lessor in relation to the aircraft or the engine when the lessor is a person different from the owner although the same person may appear on the register as lessee;
- iii. The lessee (lessee rights) in relation to the aircraft or the engine and all matters relating thereto;
- iv. The resident agent when the registrant is an international registrant;
- v. The various owners of the aircraft; or the engine including when either is held by a trustee
- vi. The constructor of the aircraft;
- vii. The manufacturer of the aircraft;
- viii. Any mortgagee;
- ix. Any creditor with respect to his privilege or charge on any part, appurtenance or accessory of an aircraft.

17. Are mortgages or other security on aircraft registered:

- ☒ On the same registry
☐ On a different registry?

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

- i) Mortgage: it is possible to register a mortgage in the National Aircraft Register over an aircraft by means of a statutory form executed by the mortgagor in favour of the mortgagee in the presence of, and attested by, a witness and submitted for registration to the Civil Aviation Directorate. If the mortgage form is being signed by an authorised attorney in Malta, an original power of attorney



granted by the mortgagor must also be submitted for registration. Other formalities (such as certification of copies, notarisation and legalisation) are required in connection with documents executed outside of Malta. The charge for the registration of a mortgage is €500 whilst an amendment to a mortgage costs €250.

ii) **International Interests:** in addition to the registration of a mortgage, creditors and debtors may also create international interests over airframes, aircraft engines or helicopters ("aircraft object") and register such interests in the International Registry.

iii) **Irrevocable De-Registration and Export Request Authorisation:** The Cape Town Convention and its Aircraft Protocol entitles registrants of aircraft in their capacity as debtors to grant an Irrevocable De-Registration and Export Request Authorisation (IDERA) in favour of an authorised party or any certified designee in order to acquire the de-registration and export of the aircraft. The IDERA must be in the form found in the Second Schedule to the Maltese Aircraft Registration Act (Chapter 503 of the Laws of Malta) and can be submitted for recordation at the National Civil Aviation Directorate.

iv) **Irrevocable Power of Attorney:** It is also possible to register an irrevocable power of attorney in the National Aircraft Register.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
☐ No

If there is an Article 83-bis agreement in place, the Civil Aviation Authority

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

If the foreign operator is an EU AOC holder, the same conditions applicable to a Maltese AOC holder would apply.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process?

The cancellation or de-registration of an aircraft from the Maltese Aircraft Register takes place on the return of the certificate of registration by the registrant to the Director General. The registrant must make a written request to the Director General for its cancellation of registration and closure of register.

The cancellation of an aircraft may also take place following a decision of the Director General for a number of reasons as delineated in the Aircraft Registration Act (Chapter 503 of the Laws of Malta). The Director General shall give all registrants and any mortgagees at least fifteen working days' notice of any intent to close the register. In such notice, the Director General shall specify the reason for the proposed closure and the expiry date for the issue to be addressed, in default of which, closure will be effected.

Finally, de-registration could also take place in an enforcement scenario pursuant to the IDERA or irrevocable power of attorney.

22. Can an aircraft be automatically deregistered?

- ☐ Yes
☒ No

If yes, under what circumstances?

N/A

23. If available, please give the contact details of the relevant civil servant.

- Name: Transport Malta (Civil Aviation Directorate)
 Phone: +356 2555 5653
 Email: civil.aviation@transport.gov.mt

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☐ Loan
☐ Mortgage
☒ Loan + Mortgage
☒ Leasing
☐ Pledge
☐ Other (please specify)

AIRCRAFT FINANCING

25. What are the main security interests required by financiers to finance private aircraft?

The main security interests are Maltese law mortgages, registered in the national register and international interests which are registered in the International Registry in accordance with the Cape Town Convention and the Protocol on Matters Specific to Aircraft Equipment.

26. Are there any retention rights for unpaid debts ?

- ☒ Yes
☐ No

If yes, please specify them.

An aircraft repairer, aircraft manufacturer or other creditor into whose



care and authority an aircraft has been placed for the execution of works or other purposes has a possessory lien on the aircraft as security for the works done to the extent of the service performed on and value added to the aircraft. A possessory lien entitles the creditor to retain possession on the aircraft on which he has worked or carried out activity until such creditor is paid the debts due to him for such building, repairs or activity.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
- ☐ Cooperative
- ☐ Club
- ☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

A limited liability company may be either a public or a private limited liability company. A private limited liability company may be formed with a minimum of one director and one shareholder, provided that in the case of a single member company, certain conditions must be satisfied.

The memorandum or articles of association of a private limited liability company must, *inter alia*, restrict the right to transfer its shares, limit the number of members to fifty and prohibit the invitation to the public to subscribe for any shares of the company. A private limited liability company must have an authorised share capital of at least €1,165 of which at least 20% must be paid up. A private limited liability company is regulated less strictly than a public limited liability company.

The Memorandum of Association of the company must contain, as a minimum, the name of the company, an indication that the company is a private company, the objects of the company, personal details of the shareholders, the registered address of the company in Malta, information on the directors and company secretary and further information on the issued share capital of the company and the division of the company's shares. If the private limited liability company is set up for a fixed, specified period of time, this must also be specified in the Memorandum of Association of the company. Following registration and on an on-going basis, a private limited liability company must prepare individual accounts which must give

a fair, accurate view of the company's assets, liabilities and financial position. Once the accounts are approved by means of a general meeting of the company, they must then be submitted to the Registrar of Companies for registration.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

A number of highly anticipated amendments to Maltese laws pertinent to the aviation sector were introduced in April 2017. Act number LII of 2016 amended the Aircraft Registration Act (Chapter 503 of the Laws of Malta), the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) (the "COCP"), the Civil Code (Chapter 12 of the Laws of Malta) (the "Civil Code"), the Financial Institutions Act (Chapter 376 of the Laws of Malta) (the "FIA") and the Interest Rate (Exemption) Regulations (the "IRR").

The provisions of the COCP were revised to reflect certain changes deemed necessary in the aviation sector. In particular, the COCP was amended to extend the jurisdiction of the Maltese courts for proceedings *in rem* to include aircraft engines in respect of claims set out therein and to provide for the possibility of requesting the issue of a warrant of arrest in respect of an aircraft to which an aircraft engine is attached to secure a debt or claim subject to the limitation provided therein.

The Civil Code was revised to better reflect the needs of the aviation industry. In particular, the sale or purchase of aircraft, including aircraft engines, as well as the promise to sell and lease an aircraft, are now governed, *inter alia*, in accordance with the terms and conditions of the relevant agreement entered into between the parties and international usages of trade applicable in the context. Should there be a conflict with the provisions of the Civil Code, the terms and conditions of such agreements shall prevail.

The FIA has been amended to cater for an exemption for finance leasing of ships and aircraft. This exemption is applicable in specified circumstances. The IRR has also been amended to remove limits on interest rates in respect of debts and other obligations that are secured by a mortgage over or due under the lease of an aircraft or aircraft engine whether registered in Malta or otherwise, and whether governed by Maltese law or otherwise.

Contact Information of the Contributors:

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CAMILLERI PREZIOSI
ADVOCATES

Name : Steve DECESARE;
Malcom FALZON; Kirsten CASSAR

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www.camilleripreziosi.com



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

Signed	Ratified
Warsaw Convention 1929	
Chicago Convention 1944	Ok
Rome Convention 1952	Ok
Geneva Convention 1948	
Montreal Convention 1999	
Cape Town Convention 2001	Ok

Other (please specify) : - The New York Convention of 1958 on the recognition and enforcement of foreign arbitral awards;

- Multilateral Agreement on Commercial rights of non-scheduled air service in Europe signed at Paris on 30 April 1956.

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

None

3. Does your country apply EASA regulations?

- ☐ Yes
☒ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

Yes, San Marino has ratified the Multilateral Agreement on Commercial rights of non-scheduled air service in Europe signed at Paris on 30 April 1956.

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

The principal domestic applicable rules are:

- Law No. 125 of 29 July 2014;
- Civil Aviation Regulation OPS 2 (General Aviation) issued by the San Marino Civil Aviation Authority.

6. What are the main national laws applicable to commercial air transport in your country?

The principal domestic applicable rules are:

- Law No. 125 of 29 July 2014;
- Delegate Decree No. 153 of 13 October 2015;

- Delegate Decree No. 54 of 26 May 2017;
- Civil Aviation Regulation OPS 1 (aeroplanes) and Civil Aviation Regulation OPS 3 (Helicopters) issued by the San Marino Civil Aviation Authority.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

- Name of the CAA: Autorità per l'Aviazione Civile e la Navigazione Marittima
 Phone: +378 (0549) 887061
 Website: www.caa-mna.sm

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: Capt. Dennis Michelotti
 Phone: +378 (0549) 882929
 Email: dennis.michelotti@caa-mna.sm

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

Website: www.smar.aero/regulations.php

Website: www.smar.aero/air_operator.php

Website: www.caa-mna.sm/forms.php

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

- Name: San Marino Aircraft Registry (SMAR)
 Phone: +378 (0549) 941539
 Website: www.caa-mna.sm
 Link where forms can be found: www.caa-mna.sm/forms.php



12. Is the registry:

- ☐ An operator one (commercial)
☐ An owner one (non-commercial)
☒ Both?

Is an owner registry both for commercial and non-commercial.

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

Proof of Ownership: Bill of Sale notarized (authentication of signature) and apostilled or legalized.

Security documents: Mortgage or financial lease (authentication of signature) and apostilled or legalized.

Aircraft operation: lease agreement or management agreement (no execution formalities required).

14. Who has the right to register aircraft on your national registry?

The following shall be qualified to hold ownership of an aircraft registered in San Marino:

- A foreign citizen or a foreign company or Trust of another State that has elected domicile with a representative residing or legally established in the Republic of San Marino, who is responsible for direct communication and notifications with the CAA;
- A Company or Trust established under San Marino Law;
- San Marino public authorities;
- A San Marino citizen or a resident in the Republic of San Marino.

15. Is registration equivalent to legal title?

- ☒ Yes
☐ No

16. Who is entitled to be mentioned on the registration certificate?

The owner

17. Are mortgages or other security on aircraft registered:

- ☒ On the same registry
☐ On a different registry?

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

The typical form of a security document over a San Marino registered aircraft is the mortgage.

In order to perfect the security in San Marino the CAA requires the filing of: the mortgage agreement notarized (authentication of signature) and apostilled or legalized; a specific CAA form (SM-81) to reflect the main terms of the security document; and the payment of the security registration fee, equal to €550,00.

Generally speaking the registration process with the CAA takes one business day. Registrations of securities do not require renewals.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
☐ No

If yes, under what circumstances?

Foreign registered aircraft can be operated by San Marino operators if an ICAO 83-bis agreement is in place between San Marino and such foreign country.

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

As above, the condition is that San Marino has entered into an ICAO 83-bis agreement with the relevant foreign country.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process?

To de-register an aircraft from the San Marino Aircraft Registry a specific application (Form SM11) for de-registration must be filed with the CAA.

The CAA also requires:

- The payment of all costs and fees concerned by the aircraft de-registration;
- The return of the Certificate of Registration and any other certificates/approvals issued by the CAA.

Once the aircraft is de-registered a confirmation is forwarded to the new State of registration (with copy to the aircraft owner).

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

If yes, under what circumstances?

In case of serious violation of San Marino Laws and regulations.



23. If available, please give the contact details of the relevant civil servant.

Name: Michela Pesaresi
 Phone: T. +378 (0549) 941539
 Email: mpesaresi@smar.aero
 Link where forms can be found: None

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☐ Loan
- ☐ Mortgage
- ☒ Loan+Mortgage
- ☒ Leasing
- ☐ Pledge

25. What are the main security interests required by financiers to finance private aircraft?

The aircraft Mortgage, see answer 18 above.

26. Are there any retention rights for unpaid debts?

- ☒ Yes
- ☐ No

If yes, please specify them

In case of unpaid debts by the aircraft owner/operator the provider of maintenance and repair services has a retention right over the aircraft.

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
- ☐ Cooperative
- ☐ Club
- ☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital: €25,500.
- Number of directors: One or more, no nationality requirements are provided.
- Location of the registered offices: Republic of San Marino.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

No VAT applies on aircraft importation if the owner is a foreign individual or entity.

Contact Information for the contributors:

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 STUDIO LEGALE
 BECCARI PODESCHI

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 www.studiolegale.sm



Switzerland



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952		Ok
Geneva Convention 1948	Ok	Ok
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001		Ok

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

None

3. Does your country apply EASA regulation?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

- ☒ Yes
☐ No

If yes, please specify them.

The European Community and the Swiss Confederation signed an Agreement on Air Transport on 21 June 1999 in Luxembourg. The agreement entered into force on 1 June 2002.

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

National law replaced by Commission Regulation (EU) No. 965/2012.

6. What are the main national laws applicable to commercial air transport in your country?

National law replaced by Commission Regulation (EU) No. 965/2012.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

If yes, please specify them and explain.

Guidance material adopted by the Federal Office of Civil Aviation (FOCA) to fulfil EASA Air Operations Part-NCC (Non-commercial).

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

- Name of the CAA: Federal Office of Civil Aviation (FOCA)
 Phone: +41 58 465 80 39
 Website: www.bazl.admin.ch/bazl/en/home.html

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: None
 Phone: None
 Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

- Commercial operations:
Website: www.bazl.admin.ch/bazl/en/home/specialists/air-transport/operation/aircraft-companies/complex-aeroplanes/commercialflight-operators.html
- Non-commercial operations:
Website: www.bazl.admin.ch/bazl/en/home/specialists/air-transport/operation/aircraft-companies/complex-aeroplanes/non-commercialoperators.html



NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

- Name: Federal Office of Civil Aviation (FOCA)
- Phone: +41 58 465 35 35
- Website: www.bazl.admin.ch/bazl/en/home/specialists/aircraft/swiss-aircraft-registry.html
- Link where forms can be found: www.bazl.admin.ch/bazl/en/home/specialists/aircraft/swissaircraft-registry/hb-aircraft-register--overview-of-procedures.html

12. Is the registry:

- ☐ An operator one (commercial)
- ☐ An owner one (non-commercial)
- ☒ Both

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

Leasing or management agreement.

14. Who has the right to register aircraft on your national registry?

The owner.

15. Is registration equivalent to legal title?

- ☒ Yes
- ☐ No

16. Who is entitled to be mentioned on the registration certificate?

The owner(s) and operator(s) of the aircraft.

17. Are mortgages or other security on aircraft registered:

- ☐ On the same registry
- ☒ On a different registry

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

A) Available security interests over aircraft under Swiss law
Aircraft registered in the Swiss aircraft records register may be subject to a mortgage (Article 26 ff. of the Swiss Federal Aircraft Records Register Act (SARA; RS 748.217.1). Such a mortgage may be secured over one or various aircraft (Article 27 § 1 SARA) as well as extended over replacement parts if (a) there is a fixed warehouse in Switzerland or abroad, (b) the replacement parts subject of the mortgage are clearly separated from other replacement parts and (c) there is a visible sign warning of the existence of the mortgage, showing the name and address of the creditor and mentioning the mortgage registration within the Swiss aircraft records register (Article 29 SARA).

Aside from the mortgage, there exist statutory liens over aircraft to secure (a) claims related to assistance or rescue of the aircraft and (b) claims related to extraordinary yet compulsory costs incurred to keep the aircraft in good standing or assert rights against third parties in case of confiscation, damage, destruction or any kind of loss of the aircraft whatsoever (Article 47 SARA). These two security interests are the only provided for by Swiss law for aircraft registered in the Swiss aircraft records register (Article 51 SARA).

B) Procedures and costs to take and register a mortgage
The mortgage agreement must be established in writing and must be registered with the Swiss aircraft records register to become enforceable (Article 28 SARA).

An aircraft mortgage can only be registered on an aircraft registered with the Swiss aircraft records register. The registration of a mortgage can be requested simultaneously with the registration of the aircraft with the Swiss aircraft records register.

In addition to specifying the obligation of the mortgagor to grant a security interest, the mortgage agreement must clearly specify the relevant aircraft which will be subject to the mortgage (typically its registration mark, type and manufacturer's number). The nature and extent of the secured obligations - in Swiss Francs - must also be specified (an aircraft mortgage can secure any present, future or possible obligation, even if the secured amount is undetermined or floating). In such a case, a maximum amount must be stated though (Article 26 § 2 SARA).

The registration costs depend on the aircraft's value. They are CHF 2 per thousand for a value up to the amount of CHF 2 million and of CHF 1 per thousand above. The costs are at least CHF 385 and up to a maximum of CHF 17,200 (Article 24 of the Ordinance on the fees of the FOCA; RS 748.112.11).

**19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?**

- ☒ Yes
☐ No

If yes, under what circumstances?

Under certain conditions and after an authorization process, Swiss AOC holders can operate foreign-registered aircraft. Swiss non-commercial operators can operate foreign-registered aircraft with no restriction.

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Foreign operators can operate Swiss-registered aircraft on the basis of an ICAO 83-bis agreement concluded between FOCA and the foreign civil aviation authority responsible for the oversight of the aircraft's operations.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process.

If the aircraft is sold to an operator outside the country or is definitively taken out of operation, the entry in the Swiss aircraft register has to be deleted. For this purpose, the corresponding application form has to be submitted.

An entry in the Swiss aircraft register may only be deleted after the certificate of registration and the airworthiness certificate/permit to fly have been returned to FOCA.

22. Can an aircraft be automatically deregistered?

- ☒ Yes
☐ No

23. If available, please give the contact details of the relevant civil servant.

Name: None
 Email: aircraftregistry@bazl.admin.ch
 Phone: +41 58 465 35 35
 Link where forms can be found: None

AIRCRAFT FINANCING**24. What are the main security interests required by financiers to finance private aircraft?**

- ☐ Loan
☐ Mortgage
☒ Loan+Mortgage
☒ Leasing
☐ Pledge
☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

Although Swiss law is flexible, the main and most usual options for financing the purchase of an aircraft are:

- A finance lease, eg structured as a sale and lease back or with pre-delivery financing under assignment of the purchase agreement to the financing institution;
- A bank loan coupled with an aircraft mortgage (registered in the relevant register/international registry under the Cape Town Convention 2001);

The financing institution will require a security package, which usually further include:

- Personal or corporate guarantee;
- Security assignments;
- Assignment of insurances and requisition compensation;
- Pledge of liquid assets (bank account with the lender);
- Pledge of shares in the company owning the aircraft;
- Tripartite agreement to be entered with the operator/manager, the owner and the financial institution.

26. Are there any retention rights for unpaid debts?

- ☐ Yes
☒ No

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited Liability company
☐ Cooperative
☐ Club
☐ Other (please specify)



28. What are the requirements for incorporation for the most common type of legal entity?

If it is a Swiss company:

- Minimum capital requirement: CHF 100,000 (of which CHF 50,000 must be paid up).
- Number of directors: At least one managing director residing in Switzerland.
- Nationality of directors: No requirement as to citizenship.
- Location of the registered offices: Wherever in Switzerland.
- Average timing required for incorporation: 15 days (after the appointment with a notary).

- Average costs for incorporation: Fees for advice on setting up the LLC (between CHF 600 and CHF 2000), notary fees (between CHF 700 and CHF 2000), fees for incorporation with the business registry (CHF 600 if the amount of capital does not exceed CHF 200,000).

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

None

Contact Information of the Contributors

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www.swlegal.ch



INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929		Ok
Chicago Convention 1944		Ok
Rome Convention 1952		Ok
Geneva Convention 1948		
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001	Ok	Ok

Other (please specify) : -

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

None

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

Not applicable.

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

The principal domestic legislation applicable to non-commercial air transport under Turkish law is as follows:

- The Turkish Civil Aviation Law (CAL), No. 2920, dated 14 October 1983, as published in the Official Gazette dated 19 October 1983, No. 18196;
- The Law on the Organisation and Duties of the Civil Aviation Directorate General of Turkey, No. 5431, dated 10 November 2005, as published in the Official Gazette dated 18 November 2005, No. 25997;
- The Turkish Civil Law, No. 4721, dated 22 November 2001, as published in the Official Gazette dated 8 December 2001, No. 24607 ;
- The Turkish Code of Obligations, No. 6098, dated 11 January 2011, as published in the Official Gazette dated 4 February 2011, No. 27836.

6. What are the main national laws applicable to commercial air transport in your country?

The principal domestic legislation applicable to commercial air transport under Turkish Law is as follows:

- The Turkish Civil Aviation Law (CAL), No. 2920, dated 14 October 1983, as published in the Official Gazette dated 19 October 1983, No. 18196;
- The Law on the Organisation and Duties of the Civil Aviation Directorate General of Turkey, No. 5431, dated 10 November 2005, as published in the Official Gazette dated 18 November 2005, No. 25997;
- The Law on Financial Leasing Factoring and Financing Companies (Leasing Law), No. 6361, dated 21 November 2012, as published in the Official Gazette dated 13 December 2012, No. 28496;
- The Regulation on the Establishment and Operating Conditions of Financial Leasing, Factoring and Financing Companies, as published in the Official Gazette dated 24 April 2013, No. 28627;
- The Circular on the Procedures and Principles of the Cross Border Leases, dated 31 July 2013, which entered into force with the Letter of the Banking Regulation and Supervision Agency;
- The Circular on Value Added Tax, No. KDVK-60/2011-1, dated 8 August 2011;
- The Council of Ministers Decree published in the Official Gazette dated 4 July 2011, No. 27984 on entry into force of the Cape Town Convention;
- The Directive on the Irrevocable Deregistration and Export Request Authorisation (IDERA) Form Registration, Cancellation and Execution, dated 9 July 2014;
- The Communique on the Offering Circular and the Uniform Accounting Plan to be applied by the Financial Leasing, Factoring and Financing Companies as published in the Official Gazette dated 24 December 2013, No. 28861;
- The Bankruptcy and Enforcement Law, No. 2004, dated 9 June 1932, as published in the Official Gazette dated 19 June 1932, No. 2128;
- The Turkish Civil Law, No. 4721, dated 22 November 2001, as published in the Official Gazette dated 8 December 2001, No. 24607 ;
- The Turkish Code of Obligations, No. 6098, dated 11 January 2011, as published in the Official Gazette dated 4 February 2011, No. 27836;
- The Turkish Commercial Code, No. 6102, dated 13 January 2011, as published in the Official Gazette dated 14 February 2011, No. 27846;
- The Omnibus Bill, No. 6518, as published in the Official Gazette dated 19 February 2014, No. 28918;
- The Stamp Tax Law, No. 488, dated 1 July 1964, as published in the Official Gazette dated 11 July 1964, No. 11751;
- The Corporate Tax Law, No. 5520, dated 13 June 2006, as published in the Official Gazette dated 21 June 2006, No. 26205;



- The Value Added Tax Law, No. 3065, dated 25 October 1984, as published in the Official Gazette dated 2 November 1984, No. 18563;
- The Motor Vehicles Law, No. 197, dated 18 February 1963, as published in the Official Gazette dated 23 February 1963, No. 11342;
- The International Civil Law and International Procedural Law, No. 5718, dated 27 November 2007, as published in the Official Gazette dated 12 December 2007, No.26728.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

- Name of the CAA: Republic of Turkey Ministry of Transport, Maritime Affairs and Communications, Directorate General of Civil Aviation
 Phone: +90 444 60 01
 Website: web.shgm.gov.tr

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

- Name: None
 Phone: None
 Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

- Website: web.shgm.gov.tr/en/formlar/3910-index

NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

- Name: Republic of Turkey Ministry of Transport, Maritime Affairs and Communications
 Phone: +90 444 24 07
 Website: www.udhb.gov.tr

12. Is the registry:

- ☒ An operator one (commercial)
☐ An owner one (non-commercial)
☐ Both?

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

- Issuance of certificate of registration for aircraft to be initially registered to the Turkish Civil Aircraft Registry

In the event that the acquisition is performed through a purchasing method, then:

- The original copy of the agreement;
- The original copy of the bill of sale;
- A copy of the receipt of stamp duty arising from the agreement;
- The notarised translation of the agreement and bill of sale, in case they have been drawn up in any language other than Turkish;
- The original copies of the lists of authorised signatories of the parties executing the agreement;
- Delivery of the original copies of the certificate of authorisation bearing the apostille thereon, stating that parties executing the agreement are authorised, to our Directorate General, before sending the letter of "technical conformity regarding importation".

In the event that the acquisition is performed through rental method, then:

- The original copy of the rental agreement;
- The notarised translation of the agreement into Turkish, in case it has been drawn up in any language other than Turkish;
- The original copies of the lists of authorised signatories of the parties executing the agreement, and the certificates of authorisation bearing the apostille thereon.

In the event that the acquisition is performed through leasing method, then:

- The lease agreement approved by FIDER, as well as the following documents are required to be sent completely to our Directorate General with a cover letter;
- A petition signed by the owner of the aircraft or by the person to whom a notarised power of attorney is granted;
- The registration application form;
- The original copy of the letter of conclusive aircraft importation sent by the customs offices addressed to our Directorate General;
- Bill of entry of the relevant aircraft;
- A certificate of deregistration;
- A certificate of export;
- A copy of the letter of conformity for importation of the aircraft;
- The relevant page of the flight manual on which maximum take-off weight is specified;
- The sales agreement and bill of sale;
- The original copy of the lease agreement executed by and between the leasing companies situated in Turkey and the lessee;
- Front-view and side-view photographs of the aircraft, with the registration mark and flag visible on the aircraft;
- A copy of the certificate of airworthiness;
- The service fee published in the service tariff.

**14. Who has the right to register aircraft on your national registry?**

The Republic of Turkey Ministry of Transport, Maritime Affairs and Communications Director General of Civil Aviation

15. Is registration equivalent to legal title?

- ☒ Yes
☐ No

16. Who is entitled to be mentioned on the registration certificate?

The aircraft's owner and operator

17. Are mortgages or other security on aircraft registered:

- ☒ On the same registry
☐ On a different registry?

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

The only registrable security interest with the Aviation Registry under Turkish law is the aircraft mortgage. Under Turkish law, a mortgage must be established with a mortgage contract in the Turkish language and should be drawn up by a Turkish notary public.

Mortgage contracts on the aircraft must, as a minimum, contain descriptions of the mortgagor, the mortgagee, the property to be mortgaged, the credit being secured by the mortgage and the degree (rank) of the mortgage.

Mortgage contracts to be established for an aircraft must be registered with the Aviation Registry to become valid and effective. The mortgage contracts on aircraft must contain the amount of the debt together with the interest if applicable, or the maximum amount as guaranteed under the mortgage contract in the event that the amount of the debt is not certain or is subject to a change.

To establish a mortgage on an aircraft registered with the Aviation Registry as maintained by the CAD, the mortgage agreement must be registered with the CAD for perfection purposes. The CAD charges 300 Turkish lira (TRY300) as a service fee for registration of mortgages.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☐ Yes
☒ No

If yes, under what circumstances?

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Not applicable.

21. How does the aircraft deregistration process work? Please describe the classical deregistration process?

There are two ways to deregister an aircraft: (i) ex officio deregistration and (ii) deregistration upon request.

i) Ex Officio Deregistration

If the qualifications of the aircraft that must exist to be considered as a Turkish civil aircraft, disappear, or the aircraft passes to the ownership of any person who doesn't have these qualifications, pursuant to Article 49:

- The registration of the relevant aircraft is deleted from the Turkish Civil Aircraft Registry by our Directorate General, without requiring any application, upon proving that the natural or legal persons who as the owner of the aircraft in our registration records are no longer of Turkish nationality, specified under Article 49, through the documents (Turkish Trade Registry Gazette, List of Attendees, ID card of the Republic of Turkey).

If the aircraft is registered to the registry of any foreign state or is not deregistered from a foreign registry although it is registered to the Turkish registry:

- Any aircraft registered to the Turkish Civil Aircraft Registry may not be registered to the registry of any other country. A certificate of deregistration, issued by the civil aviation authority of the country the aircraft is currently registered to, is needed to register into the registry of the relevant country by its civil aviation authority. A certificate of deregistration or certificate of non-registration must definitely be submitted while registering any aircraft to the Turkish Civil Aircraft Registry. The registration procedure will not be carried out if this document is not available. If this happens, the relevant aircraft is deregistered ex officio from the Turkish registry, without requiring any application, upon proving the relevant situation with the official documents.

ii) Deregistration Upon Request

In case of actual or nominal destruction or total loss of any Turkish civil aircraft, the relevant aircraft is deleted from the registry upon request of the owner and the certificate of registration is cancelled.

Although this provision is limited to the actual or nominal destruction or total loss of any aircraft, in practice it can apply to any and all processes for deregistration carried out upon application of the owner.



Turkey



This application can be for the following reasons:

- The actual or nominal destruction of the aircraft;
- Complete damage of the aircraft;
- The aircraft's becoming actually unusable for any reasons whatsoever (e.g. the fact that the aircraft used for agricultural spraying becomes idle due to prohibition of the flights for aerial agricultural spraying in accordance with the instruction of the Ministry of Agriculture);
- Overseas sale of the aircraft;
- By request of the Banking Regulation and Supervision Agency as a consequence of return of an aircraft that has been acquired through a leasing method or default of the aircraft agreement because of expiration of that method.

22. Can an aircraft be automatically deregistered?

- ☐ Yes
☒ No

If yes, under what circumstances?

23. If available, please give the contact details of the relevant civil servant.

Name: Ms. Havva Ustun
 Phone: +90 (312) 203 60 90
 Email: hustun@shgm.gov.tr
 Fax: None
 Link where forms can be found: None

AIRCRAFT FINANCING

24. What are the financing structures mainly used in your country for the financing of private jets?

- ☒ Loan
☒ Mortgage
☒ Loan+Mortgage
☒ Leasing
☐ Pledge
☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

See answer 18

26. Are there any retention rights for unpaid debts?

- ☒ Yes
☐ No

If yes, please specify them

- Contractual rights and rights by law (but they require a legal title)

27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company (Joint Stock Company)
☒ Cooperative
☐ Club
☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

The most common type of legal entity in Turkey is a joint stock company. There must be at least one shareholder (a real person or a legal entity) and minimum capital of TRY50,000 is mandatory. The initial capital in non-public joint stock companies with a registered capital system cannot be less than TRY100,000, and value per share in both cases cannot be less than TRY0.01. At least 25% of the nominal value of the shares subscribed in cash must be paid before registration with the Trade Registry.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

None.

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INTERNATIONAL CONVENTIONS

1. Is your country a signatory to any of the following treaties?

	Signed	Ratified
Warsaw Convention 1929	Ok	Ok
Chicago Convention 1944	Ok	Ok
Rome Convention 1952	Ok	
Geneva Convention 1948	Ok	
Montreal Convention 1999	Ok	Ok
Cape Town Convention 2001	Ok	Ok

2. Is there any specific information about how these conventions apply in your domestic law that you would like to share?

None

3. Does your country apply EASA regulations?

- ☒ Yes
☐ No

4. In case your country is not a member state of the EU, are there any specific relationships or agreements with the EU in relation to aviation? (e.g. case of Switzerland)

Not applicable

NATIONAL LAWS AND INTERPRETATIONS

5. What are the main national laws that apply to non-commercial air transport in your country?

The main national laws applicable to all civil aviation in the UK are the Civil Aviation Act 1982 and the Air Navigation Order (ANO) of 2016. The ANO 2016 very recently replaced the ANO 2009. European legislation directly applies to the UK and The Cape Town Convention has also been implemented in UK law though the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

6. What are the main national laws applicable to commercial air transport in your country?

The main national laws applicable to all civil aviation in the UK are the Civil Aviation Act 1982 and the Air Navigation Order (ANO) of 2016. The ANO 2016 very recently replaced the ANO 2009. European legislation directly applies to the UK and The Cape Town Convention has also been implemented in UK law though the International

Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

7. Are there any guidelines from your national authority on non-commercial flights?

- ☒ Yes
☐ No

If yes, please specify them and explain.

The CAA has issued a note 'Summary of the Meaning of Commercial Air Transport & Aerial Work'.

NATIONAL AUTHORITIES

8. Which national body is in charge of supervising and regulating business aviation?

Name of the CAA: Civil Aviation Authority

Phone: +44 1293 567171

Website: www.caa.co.uk

9. If this information may be disclosed, please give the contact details of the relevant civil servants.

Name: None

Phone: None

Email: None

10. If available, please give the CAA website page link where relevant forms may be found.

Please also insert links, if any, to available forms relating to AOC requests, operating licence, aerotaxi, Part NCC, etc.

Commercial operations:

Website: www.caa.co.uk/Commercial-Industry/Airlines/Airline-licensing/

Non commercial operations:

Website: www.caa.co.uk/Commercial-industry/Aircraft/Operations/Types-of-operation/Part-NCC/Part-NCC/



NATIONAL REGISTRY

11. Which entity is in charge of the civil aviation registry?

- Name: Civil Aviation Authority
- Phone: +44 1293 567171
- Website: www.caa.co.uk
- Link where forms can be found: www.caa.co.uk/Aircraft-register/Registration-information/Registration-forms-and-fees/

12. Is the registry:

- ☐ An operator one (commercial)
- ☐ An owner one (non-commercial)
- ☒ Both ?

13. Which contractual documents need to be submitted to the registry (e.g. dry lease)?

To register an aircraft in the UK Register of Civil Aircraft, form CA1 needs to be submitted alongside evidence that the aircraft is insured or a declaration stating that the aircraft will not fly until proof of insurance is provided. The appropriate fees for the type of aircraft must also be paid.

14. Who has the right to register aircraft on your national registry?

Registrations can be made by either an individual owner or by an aircraft operator. The operator registers an aircraft as a 'charterer by demise' and this status is recorded in the Certificate of Registration.

Everyone registering an aircraft must fulfil the requirements of being a 'qualified person'. The requirements for a 'qualified person' can be found in Article 26 (1) of ANO 2016 and are:

- The Crown in right of Her Majesty's Government in the United Kingdom and the Crown in right of the Scottish administration;
- Commonwealth citizens;
- Nationals of any EEA state;
- British protected persons;
- Bodies incorporated in some part of the Commonwealth and having their principal place of business in any part of the Commonwealth;
- Undertakings formed in accordance with the law of an EEA state that have their registered office, central administration or principal place of business within the European Economic Area;
- Firms carrying on business in Scotland (and in this subparagraph, 'firm' has the same meaning as in the Partnership Act 1890(a)).

15. Is registration equivalent to legal title?

- ☐ Yes
- ☒ No

16. Who is entitled to be mentioned on the registration certificate?

The individual owner may either be mentioned on the registration certificate or in the case of an operator; it may have the operator's name alongside its status as a 'charterer by demise' (without the name of the actual owner appearing).

17. Are mortgages or other security on aircraft registered:

- ☐ On the same registry
- ☒ On a different registry

18. What security interests may be taken on an aircraft in your country? Please explain the procedures and costs to take and register such a security.

The most common security interest over an aircraft in the UK is a mortgage over the aircraft. It essentially comprises two elements:

- A personal contract to pay the debt;
- The creation of a security interest over the aircraft to secure the repayment of the debt.

There are no particular requirements for an aircraft mortgage and most are tailor-made to suit the needs of the client. Mortgages are registered in the Register of Aircraft Mortgages which is kept by the CAA and established by the Mortgaging of Aircraft Order 1972.

The fees for a mortgage differ for different types of aircraft and they, alongside the different forms can be found here: www.caa.co.uk/Aircraft-register/Aircraft-mortgages/Forms-and-fees/

Other forms of security available under the UK law are charges, pledges and liens.

19. Does your civil aviation authority authorise the operation of foreign-registered aircraft?

- ☒ Yes
- ☐ No

**If yes, under what circumstances?**

Details can be found in Article 250 of the ANO 2016 (previously Article 223 of the ANO 2009). Aircraft registered outside the UK and outside the states listed as exceptions in Article 250 must apply for a foreign carrier air transport permit. They must attain permission of either the CAA or the Secretary of State. The details for such an application can be found here:

Website: www.caa.co.uk/Commercial-industry/Airlines/Licensing/Foreign-carrier-permits/About-foreign-carrier-permits/

20. What are the conditions requested from a foreign operator (holding an AOC in another country) to operate an aircraft registered in your national registry?

Details can be found in Article 250 of the ANO 2016 (previously Article 223 of the ANO 2009). Aircraft registered outside the UK and outside the States listed as exceptions in Article 250 must apply for a foreign carrier air transport permit. They must attain permission of either the CAA or the Secretary of State. The details for such an application can be found here:

Website: www.caa.co.uk/Commercial-industry/Airlines/Licensing/Foreign-carrier-permits/About-foreign-carrier-permits/

21. How does the aircraft deregistration process work? Please describe the classical deregistration process.

An aircraft can be deregistered from the UK register using either the reverse side of the Certificate of Registration or using a Sale Notification Form. All details can be found here:

Website: www.caa.co.uk/Aircraft-register/Registration-information/Deregistration-of-aircraft/

For an aircraft to be deregistered, it must be clear of all registered mortgages or the mortgage lenders must give their consent to the aircraft being deregistered. In the case of an aircraft under an IDERA (Irrevocable Deregistration and Export Request Authorisation), this document must be revoked before deregistration can take place. Deregistration is free unless the same-day service is requested.

22. Can an aircraft be automatically deregistered?

☐ Yes

☒ No

23. If available, please give the contact details of the relevant civil servant.

Name: None

Phone: None

Email: None

Link where forms can be found: www.caa.co.uk/Aircraft-register/Registration-information/Registration-forms-and-fees/

AIRCRAFT FINANCING**24. What are the financing structures mainly used in your country for the financing of private jets?**

- ☐ Loan
- ☐ Mortgage
- ☒ Loan+Mortgage
- ☒ Leasing
- ☐ Pledge
- ☐ Other (please specify)

25. What are the main security interests required by financiers to finance private aircraft?

The common securities are:

- Assignment of insurances;
- Assignment of management agreement;
- Tripartite agreement with manager;
- Guarantee from HNWI;
- Mortgage;
- Assignment of warranties and maintenance contracts.

26. Are there any retention rights for unpaid debts?

☒ Yes

☐ No

If yes, please specify them

The main relevant liens are:

- Repairer's liens
- Eurocontrol liens
- EU ETS liens

For a more detailed explanation see McBain, Graham, 'Aircraft liens and detention rights', London, Sweet & Maxwell (2000)



27. What is the most common type of legal entity used in corporate aircraft transactions?

- ☒ Limited liability company
- ☐ Cooperative
- ☐ Club
- ☐ Other (please specify)

28. What are the requirements for incorporation for the most common type of legal entity?

- Minimum capital requirement: £1.
- Number of directors: One.
- Nationality of directors: There are no restrictions.
- Location of the registered offices: The UK.
- Average timing required for incorporation: Shelf companies are available within a day.
- Average costs for incorporation: £500.

MISCELLANEOUS

29. Please highlight any legal developments, trends or peculiarity affecting the business aviation sector in your jurisdiction and not covered under the preceding points.

Much of UK aviation law derives from European Union legislation. The United Kingdom will leave the European Union on March 29, 2019, subject to a transition/implementation period, which is likely to last until the end of December 2020. During the transition period, EU law will continue to apply in the UK. Current UK government policy is that after the UK's withdrawal, EU law will be transposed directly into the law of the UK, and that after the end of the transition period, ministers will have the power to adapt and remove laws that are no longer relevant. In aviation, EU law will therefore continue to apply post-Brexit, until repealed or amended. The results may be anomalous depending on the wording of the particular legislation. In addition, the status of much aviation law of great significance to UK aviation (such as Regulation 1008/2008 on the status and rights of a 'Community air carrier', and the EASA Basic Regulation (EU) 2018/1139 will depend post-Brexit on the trade relationship that is agreed between the UK and the EU.

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CHAPTER 2

Customs And Tax Issues When Importing An Aircraft

Irrespective of the type of transaction (ie a sale or a lease), and in the absence of any other relief, an aircraft crossing an external EU border is considered as being 'imported'. In this context, what generally are referred to as 'import duties' actually cover two areas of law: customs duty and VAT.

Customs duty is payable on the import of goods by the importer by reference to the Common Customs Tariff of the EU. VAT is due on the import of goods into the EU to put non-Community goods on the same footing as Community goods – the VAT is payable by the importer, who is liable to pay the customs duty under the Union Customs Code (UCC) and at the same time as the Customs Duty is due. The customs status of aircraft could have a major impact on the VAT treatment. This mainly depends on whether the aircraft is permanently imported or not.



PART I

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

CUSTOMS DUTIES

The new UCC became effective on 1 May 2016 and is an update to customs legislation across the EU and introduced revisions to existing requirements.

The UCC is formalised by:

- Council Regulation (EU) No. 952/2013, and associated Delegated and Implementing Acts;
- Regulation (EC) No. 2015/2447 (Implementing Regulation);
- Commission Regulation (EC) No. 2015/2446 (Delegated Regulation).

According to the UCC rules, all aircraft flying into or out of EU must fly into or from a designated customs airport. The importer shall:

- Either claim custom duty relief based on:
 - Temporary importation relief, or;
 - End-use relief, ie if imported by an EU-established importer with end-use authorisation from the customs authorities of the Member State in which the aircraft will be declared;
- Or pay duty on importation on the aircraft (rates between 2.7% and 7.7% within the EU), which will be permanently imported and put in 'free circulation'.

CUSTOM DUTY RELIEF

Temporary Admission (TA)

Under certain specific conditions and restrictions, the UCC permits a temporarily imported aircraft to enter the EU with no customs documentation and no requirement to pay VAT or import duties before departure.

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be all of the following:

- Registered outside the customs territory of the EU in the name of a person established outside that territory;
- Used privately by a non-EU resident;
- Not available to EU residents within the EU boundaries unless employed or authorised by the owner or lessee;
- Imported and used by people residing in its country of registration or by third parties authorised by the owner or lessee;
- Not in the EU for more than six months in a 12-month period.

Operators have been confused by differences in the meanings of the terms 'private use' and 'commercial use' as used by the international aviation community and as applied by customs authorities in the EU; besides, not all customs authorities in the EU apply the same meaning to these terms. Having as its objective to clarify and standardise terms such as 'private use' and 'commercial use', the European Commission published a working paper on November 23, 2014, regarding TA.

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 that would result in 'commercial' use of the aircraft;
- EU residents are allowed on board but with certain restrictions.

1. Are there any additional rules applied in your jurisdiction for the Temporary Admission procedure? Also, are there any particular local interpretations of the standard rules applied by your tax authority?

No

2. And more specifically how do your local customs authorities interpret 'private use' vs 'commercial use' in reference to the guidelines of the European Commission?

Who is considered as the holder of the TA authorisation from your local customs perspective in the following scenarios (eg passenger, pilot, operator, lessee):

- Privately used aircraft having non-EU passenger(s) on board;
- Privately used aircraft flying into the EU to pick up passenger(s);
- Chartered aircraft operated by a non-EU AOC holder where the operator provides pilots, crew and navigation services and the charterer exercise actual control over the aircraft.

The definition of private and commercial use is contained in Art. 207/4 of Reg. 2446/2015, where:

- Private use means the use of a means of transport other than the commercial use;
- Commercial use means the use of means of transport for the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration; There are in principle no reasons why the Italian authorities would not apply the legal definition and accordingly follow the guidelines of the European Commission.

End-use relief

End-use is a customs procedure whereby goods entered for free circulation in the EU may be given favourable tariff treatment or relief at a reduced or zero rate of duty on condition they are put to a prescribed use.

3. Can you describe what the procedure is to claim end-use relief for aircraft importation in your jurisdiction?

End-use relief is provided for by Art. 254 of Council Reg. 952/2013 and enables goods to enter into free circulation in France with a favourable tariff treatment or relief at a reduced or zero rate on condition they are put to a prescribed use.

Goods entered in free circulation remain subject to custom authorities' supervision and are given end-use status authorisation if the conditions set out in Art. 211 of Council Reg. 952/2013 are met.

End-use admission is approved by the competent local customs, typically within 30 days of an admission request being filed.

End-use admission procedures are carried out by professional customs operators.

The issue of a guarantee is also requested if custom duties may be due for the goods.

The period of validity of the end-use relief is five years from the effective date of the authorisation.

French Regulation: Circulaire du 19 mars 2018
(NOR :CPAD1807667C)

VAT EXEMPTION

No importation will be deemed to occur while the aircraft benefits from the TA regime for customs duties (see above). Importation will only occur at the time the aircraft is released from the suspension of duties under TA.

If an aircraft has not yet been imported for free circulation in the EU (see above) or has been released from the TA regime, it can still benefit from a VAT exemption contained in Article 148 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax Directive 2006/112/EC (the 'VAT Directive').

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment; incorporated or used in it;

- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

Therefore, the VAT exemption will apply to aircraft used by an airline operating 'chiefly for reward on international routes';

The Court of Justice of the European Union (CJEU) has clarified the scope of this VAT exemption in its decision of 19 July 2012 (C-33/11 A Oy case) by answering prejudicial questions submitted by the Finnish administrative courts.

What is the concept of an aircraft 'used by an airline operating for reward'?

In the A Oy case, the CJEU has ruled that:

- Legal or equitable ownership was not required by article 148(e); the legal right to operate the aircraft seems sufficient to satisfy the 'used by' test;
- The personal use of the aircraft by the owner — when operated by an airline in the meaning of the VAT Directive — does not jeopardise the exemption, provided that the aircraft is not solely or exclusively used by the owner of the aircraft;
- An international charter operator can be considered an 'airline operating for reward chiefly on 'international routes'. Thus an 'airline' can include an operator of business and private jets who holds an Air Operator's Certificate or equivalent;
- The exemption applied to all sales of aircraft purchased 'for the purpose' of supplying them to airlines operating chiefly on international routes. By this teleological approach, the court applies the look-through principle, whereby the use made of an aircraft by its final user is decisive in evaluating whether VAT is applicable on its sale.

4. Do the tax authorities in your jurisdiction recognize and apply the analysis from A Oy and the decisions mentioned above? If they do not apply all of the conclusions mentioned above, which do they not apply and what treatment do they apply instead? Is a lease agreement sufficient to satisfy the 'used by' criteria in your jurisdiction?

The analysis is applied by the French tax authorities. However, the tax administration will ensure that the operator charges a transport service to the owner; otherwise, the flight will be deemed 'private' and the operator will not be able to benefit from the VAT exemption for services rendered to the aircraft. A lease agreement is sufficient to satisfy the 'used by' criterion.

5. To what extent does the personal use of the aircraft by the beneficial owner impact the applicability of the VAT exemption in your jurisdiction? Are any specific tests or percentages applied to restrict this?

Also based on the further guidance provided by the European Court of Justice in C-33/11 A Oy, personal use by the beneficial owner would not in principle affect the VAT exemption, so long as the use is made on the basis of market charter rates from an

aircraft operator commercially operating on the basis of an aircraft operator's certificate (AOC).

There are no specific regulatory tests or percentages to restrict the exemption. A sound guiding principle would be that the beneficial owner has no exclusive use of the aircraft and that the aircraft operator should be entitled to charter it to other third parties.

6. Is it a requirement in your jurisdiction that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment? If so how are these tested, eg owner referred to in contract, preferential rates or availability etc?

It is a requirement that the aircraft qualifies as being operated under an AOC commercially and can in principle be made available to several parties. Some preferential terms (eg in terms of availability) can be granted to the beneficial owner so long as the aircraft is operated commercially under the operator's AOC.

What does 'chiefly on international routes' mean?

In the *Cimber Air* case (C-382-02), the CJEU decided on 16 September 2004 that the VAT exemption is linked to the overall status of the airline and not to the qualification of the specific flight, which may be domestic. It is for the national courts to establish, upon review of each individual case, whether an airline satisfies relevant conditions, although the proportion of the turnover related to international flights of the specific airlines may provide guidance.

7. Can you indicate what percentage of international traffic is required for an airline to qualify for the VAT exemption in your jurisdiction? If this is not tested by way of percentage, what alternative tests are applied? Do the tax authorities in your jurisdiction accept that 'international' includes flights to and from their home country rather than just flights to and from the EU territory as a whole?

The French tax authorities require a percentage of 80% of international flights, ie flights outside France.

The proportion of international flight thus results from the ratio between:

- In the numerator, the UDTKTs corresponding to the sum of international flights made to or from abroad or overseas territories (eg Réunion, Guadeloupe);
- In the denominator, the UDTKTs corresponding to the overall total of air transport generated by the target airline.

To calculate the ratio of 80% international traffic, domestic flights are not taken into account in the numerator, regardless of their VAT tax treatment. Therefore, flights departing from mainland France and bound for Corsica are entirely excluded from numerator.

Question 8: Can you indicate whether a qualifying airline can also benefit from VAT exemption for domestic flights (cf the *Cimber Air* case)?

Yes, as long as the 80% ratio is met.

PERMANENT IMPORTATION

An aircraft is fully/permanently imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country.

The result of permanent importation is that the aircraft has a free circulation status within the EU, ie there are no restrictions for the period of stay in the EU and no restrictions for carrying EU residents for flights within the EU). However, this free circulation status may be lost under certain conditions.

9. Can you indicate what customs duty rate is applicable in your jurisdiction to an aircraft's permanent importation?

Custom duties are specified in EU Regulation 2016/1821 of October 6, 2016, amending Annex I to EU Regulation 2658/87. Import duties exemption is provided for, inter alia:

- Civil aircraft;
- Certain products to be used in civil aircraft and incorporated during construction, refurbishment, maintenance, repair or transformation.

'Civil aircraft' are defined as those that are not used by the Member States military services or the likes or those having a military registration or the like.

Custom duties exemption is subject to the conditions set out with regards to custom control and products final use.

10. Can you indicate what VAT rate is applicable for a permanent importation in your jurisdiction and for reimportation?

20%

PART II

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

FUEL TAX EXEMPTION

Directive 2003/96/EC (Energy Tax Directive)

- Article 14(1)(b) provides that:

The Member States shall exempt energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

For the purposes of this Directive 'private pleasure-flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of

services for consideration or for the purposes of public authorities. Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21);

- Article 14 (2) provides that:

Member States may limit the scope of this exemptions to international and intra-Community transport (ie tax aviation fuel for domestic flight). In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in 14(1)(b) In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

- Article 15 (1) (j) provides that:

Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships.

In two decisions dated 1 December 2011 (C-79-10) and 21 December 2011 (C-250-10), the CJEU has given the following interpretation of these articles.

Article 14(1)(b) must be interpreted as meaning that the tax exemption on air fuel used for the purpose of air navigation other than private tourism cannot apply in the case of a company which, to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not directly used for the supply, by that company, of air services for consideration (C-79-10) when it leases or hires out under a charter an aircraft belonging to it with fuel to undertakings whose air navigation operations are not directly used for the supply, by those undertakings, of air services for consideration (C 250-10)

Article 15(1)(j) must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision. (C-79-10).

11. Can you explain how Article 14 (1)(b) of the ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

This article of the ETD Directive 2003/96/EC has been implemented into French law by Law No. 2007-1824 and codified in Article 265 bis, 1 b) of the Customs Code. This article states 'jetfuel used on board aircraft used by their owner or the person who is available for hire, chartering or otherwise for commercial purposes, including for the purpose of transport of persons, transport of goods and for the provision of services for consideration'.

12. How do your customs authorities interpret the concept of 'private pleasure flying'?

The French legislation distinguishes commercial flights from other flights and does not distinguish 'private pleasure flights' from the other flights.

The French ministerial order dated 17 December 2015 states that the exemption of fuel tax applies to airlines carrying out a public transport activity, whose status is presumed by the production of

the AOC.

The AOC does not prohibit the customs administration from controlling the commercial nature of the flight. Therefore, the operator will have to demonstrate that they are carrying out a commercial activity characterised by the supply of services for consideration by means of the aircraft. This criterion is always appreciated with regard to the activity realised by the end user of the aircraft, whether they are the owner, tenant or user in any other capacity.

French customs seem to consider that when the owner is on board, they must be considered a charterer and not a passenger, including when the aircraft is operated by a company holding an AOC, when that company invoices the flight to the owner. In these circumstances, the customs consider that the tax is due, since the owner does not perform a service for remuneration with the aircraft. This position is actually challenged by the EBAA.

13. Can you indicate whether a tax on aviation fuel is applied for domestic flight/intra-EU flight ?

Taxes on aviation fuel for domestic flight/intra-EU flight do not exist in the French tax system.

14. Can you explain how Article 15(1)(j) ETD Directive 2003/96/EC exemption is implemented in your jurisdiction ?

This article of the ETD Directive 2003/96/EC has been implemented into French law by Law No. 2007-1824 and codified in Article 265 bis, 2 of the Customs Code.

To benefit from this exemption, it is necessary to produce either a permit to fly, a design organisation approval (for the manufacturer) or a production organisation approval (production flight testing of new production aircraft). Pilot maintenance flights cannot benefit from the exemption.

VAT EXEMPTION

International passenger transport services

Art. 371 of the Directive 2006/112/EC ('the VAT Directive') provides for the extension of the existing VAT exemption or being 'zero-rated' for VAT to international passenger transport services, where:

- International' includes intra-EU flights;
- The qualification of the flight as commercial or non-commercial is not relevant.

15. How is this VAT exemption for international passenger transport applied in your jurisdiction and what conditions are imposed, if any?

In France:

- The air transport of passengers coming from or going abroad or to overseas departments are exempt from VAT, even for the part of

the flight over French territory, when the departure or arrival points are located abroad or in overseas departments. The same applies to transport in transit;

- Transportation whose points of departure and arrival are located in France is taxable in France for the distance travelled over French territory. However, the production on French territory of part of an international air transport by a company other than that which insures the international flight does not give place to payment of the VAT;
- Transport between mainland France and Corsica is exempt from VAT, for the fraction of the route located outside the continental territory.

Supply of goods and services

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
 - The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
 - The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.
- On the concept of 'aircraft used by airlines operating for reward chiefly on international routes', see questions 4 to 7.

16. Do the VAT authorities in your jurisdiction consider management charges to fall under the scope of article 148 of the VAT Directive? If so, are there any particular supplies that they include or exclude from this exemption?

The list of services performed for the direct needs of aircraft and their cargo is mentioned in Articles 73 D and 73 E of Annex III to the General Tax Code. 'Management charges' are not listed in these articles.

17. Do the VAT authorities in your jurisdiction consider that intermediaries in the supply chain should recover VAT on supplies they receive?

The persons providing exempt services to the airlines, as well as their subcontractors, may purchase, free of VAT, the goods and services necessary for the airlines' aircraft.

18. Do the tax authorities in your jurisdiction expect that the recipient of the supplies of goods and services in the scope of article 148 of the VAT Directive should be a VAT-taxable entity?

The recipient of the supplies of goods and services must necessarily be a taxable entity or person.

VAT REFUND

Directive 2008/9/EC (VAT Refund – EU business) and Directive 86/560/EEC (VAT Refund – non-EU business)

When no exemption applies and VAT has been paid, input VAT may be refunded. A taxable entity is allowed to deduct the VAT paid on deliveries (purchases) insofar as the goods or services are used for its business activities.

The EU directive that became effective on 1 January 2010 (ie Directive 2008/09/EC) introduced a new procedure for businesses established and registered for VAT purposes within the EU to request a refund of VAT incurred in other EU member states.

The changes made by Directive 2008/09/EC do not affect refund claims by businesses that are not established or VAT-registered in an EU member state. Such businesses still recover VAT incurred in EU member states according to the procedure in the 13th VAT Directive.

19. Can you describe how the VAT refund directive provisions are implemented in your jurisdiction and what evidence the tax authorities require to make the repayment?

For a foreign company established in a Member State of the European Union (articles 242-0 M to 242-0 Z ter of annex II to the General tax Code).

For persons established in the territory of the European Community to be eligible for repayment, they must:

- Be a taxable person in the state of residence;
- Submit, along to the application for repayment, the certificate issued by the competent tax authority of its Member State;
- Not have a tax identification in France;
- Attach, electronically, a dematerialised copy of the original invoices or import documents;
- Not make a request that covers a period greater than one calendar year (minimum threshold €50) or less than three calendar months (minimum threshold €400); it cannot straddle two calendar years.

For a foreign company not established in a Member State of the European Union (articles 242-OZ quater to 242-OZ decies of annexe II to the General Tax Code).

This refund is reserved for taxable persons established outside the European Union who are not established in France and who do not make deliveries of goods or services, whose place of taxation is located in France.

These persons to be eligible for repayment must especially:

- Show on the invoices the mandatory information in France (in

particular the amount excluding VAT, the VAT number of the supplier, the date of the operation);

- Fill out a claim for reimbursement no. 3559 SD in French and in euros;
- Give mandate to a tax representative registered for VAT in France.

PART III

SPECIFIC NATIONAL TAXES APPLICABLE TO BUSINESS AVIATION ACTIVITIES

20. Could you indicate what other specific national taxes are applicable to business aviation in your jurisdiction (eg luxury tax in Italy, APD in the UK), if any, and what are the rules for applying these taxes?

These aeronautical taxes apply:

- i. Civil aviation tax and air ticket solidarity levy (article 302 bis K of the General Tax Code)

These taxes are levied on all public air transport companies, whatever their nationalities and juridical forms, on which passengers and freight (or mail) are embarked from French territory.

For charter flights, code share flights or, for capacity reservation agreements, joint services or services ensured by rented aircraft, the person liable for the payment of the tax is the company whose flight number is used for air traffic control.

These taxes are due for each commercial flight (ie each revenue-generating flight), whether the flight is a scheduled or a chartered one. Charter flights, taxi flights and business flights are commercial flights, so they lead to the application of the civil aviation tax.

Flights performed in NCC are not considered to be public air transport flights. Therefore, the flight is considered to be private if the transport is not invoiced to the passenger.

These taxes are calculated according to the number of passengers carried departing from a French airport, excluding passengers below two years old, crew members, transit passengers (arriving and departing from the same airport by the same aircraft with the same flight number) and passengers taking their flight again after a forced landing on a French airport for a technical reason.

The amount of these taxes depends on the destination airport (France, EU, EEA, Switzerland or other territories) and the fare category of each passenger (economy, business and first class).

- ii. Airport tax (article 1609 quatervicies of the General Tax Code)

This tax is due from public air transport companies, whatever their nationalities and their legal forms.

The rate of the tax varies from €4.30 to €14 depending on the size of the airport (number of passengers, tons of freight), with a reduction for passengers in transit. This rate is multiplied by the number of passengers carried departing from the airport concerned.

- iii. Tax on air transport noise pollution (article 1609 quatervicies A of the General Tax Code)

The aircraft concerned by this tax are those whose maximum take-off weight is greater than or equal to two tons on take-off from the aerodromes concerned.

The rate of the tax varies from €0 to €40 depending on the size of the airport. This rate is multiplied by a coefficient that depends on the weight of the aircraft, its take-off time (morning/afternoon/night) and its acoustic characteristics.

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GERMANY

PART I

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

CUSTOMS DUTIES

The new UCC became effective on 1 May 2016 and is an update to customs legislation across the EU and introduced revisions to existing requirements.

The UCC is formalised by:

- Council Regulation (EU) No. 952/2013, and associated Delegated and Implementing Acts;
- Regulation (EC) No. 2015/2447 (Implementing Regulation);
- Commission Regulation (EC) No. 2015/2446 (Delegated Regulation).

According to the UCC rules, all aircraft flying into or out of EU must fly into or from a designated customs airport. The importer shall:

- Either claim custom duty relief based on:
 - Temporary importation relief, or;
 - End-use relief, ie if imported by an EU-established importer with end-use authorisation from the customs authorities of the Member State in which the aircraft will be declared;
- Or pay duty on importation on the aircraft (rates between 2.7% and 7.7% within the EU), which will be permanently imported and put in 'free circulation'.

CUSTOM DUTY RELIEF

Temporary Admission (TA)

Under certain specific conditions and restrictions, the UCC permits a temporarily imported aircraft to enter the EU with no customs documentation and no requirement to pay VAT or import duties before departure.

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be all of the following:

- Registered outside the customs territory of the EU in the name of a person established outside that territory;
- Used privately by a non-EU resident;
- Not available to EU residents within the EU boundaries unless employed or authorised by the owner or lessee;
- Imported and used by people residing in its country of registration or by third parties authorised by the owner or lessee;

- Not in the EU for more than six months in a 12-month period. Operators have been confused by differences in the meanings of the terms 'private use' and 'commercial use' as used by the international aviation community and as applied by customs authorities in the EU; besides, not all customs authorities in the EU apply the same meaning to these terms. Having as its objective to clarify and standardise terms such as 'private use' and 'commercial use', the European Commission published a working paper on November 23, 2014, regarding TA. 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 that would result in 'commercial' use of the aircraft;
- EU residents are allowed on board but with certain restrictions.

1. Are there any additional rules applied in your jurisdiction for the Temporary Admission procedure? Also, are there any particular local interpretations of the standard rules applied by your tax authority?

While making a flight that enters into Europe via Germany, the operator is obliged to make use of an airport that has a permanent presence of custom authority. In Germany, only a limited number of airports are under customs supervision permanently.

2. And more specifically how do your local customs authorities interpret 'private use' vs 'commercial use' in reference to the guidelines of the European Commission?

Who is considered as the holder of the TA authorisation from your local customs perspective in the following scenarios (eg passenger, pilot, operator, lessee):

- Privately used aircraft having non-EU passenger(s) on board;
- Privately used aircraft flying into the EU to pick up passenger(s);
- Chartered aircraft operated by a non-EU AOC holder where the operator provides pilots, crew and navigation services and the charterer exercise actual control over the aircraft.

Customs is not obliged to interpret 'private use' vs 'commercial use'. Importation free of VAT is granted for AOC holders listed in §8 Umsatzsteuergesetz (UStG) only. You can apply for reimbursement of paid VAT under certain conditions at the competent tax office.

End-use relief

End-use is a Customs procedure whereby goods entered for free circulation in the EU may be given favourable tariff treatment or relief at a reduced or zero rate of duty on condition they are put to a prescribed use.

3. Can you describe what the procedure is to claim end-use relief for aircraft importation in your jurisdiction?

The importer, usually the operator, is obliged to have an EORI number (Economic Operators' Registration and Identification number) and to make an entry summary declaration first. Furthermore, a special permit for the importation of halon (fire-extinguishing agent) and a customs declaration (the so-called ATLAS) are needed. The aircraft will be under customs control and must stay on the airport until final release by the relevant authority. The importer is normally obliged to pay VAT within 10 days of clearance by the custom authority. The custom authority has the right to retain the aircraft under its control until final payment.

VAT EXEMPTION

No importation will be deemed to occur while the aircraft benefits from the TA regime for customs duties (see above). Importation will only occur at the time the aircraft is released from the suspension of duties under TA.

If an aircraft has not yet been imported for free circulation in the EU (see above) or has been released from the TA regime, it can still benefit from a VAT exemption contained in Article 148 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax Directive 2006/112/EC (the 'VAT Directive').

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
 - The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
 - The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes
- Therefore, the VAT exemption will apply to aircraft used by an airline operating 'chiefly for reward on international routes'.

The Court of Justice of the European Union (CJEU) has clarified the scope of this VAT exemption in its decision of 19 July 2012 (C-33/11 A Oy case) by answering prejudicial questions submitted by the Finnish administrative courts

What is the concept of an aircraft 'used by an airline operating for reward'?

In the A Oy case, the CJEU has ruled that:

- Legal or equitable ownership was not required by article 148(e); the legal right to operate the aircraft seems sufficient to satisfy the 'used by' test;
- The personal use of the aircraft by the owner — when operated by an airline in the meaning of the VAT Directive — does not

jeopardise the exemption, provided that the aircraft is not solely or exclusively used by the owner of the aircraft;

- An international charter operator can be considered an 'airline operating for reward chiefly on 'international routes'. Thus an 'airline' can include an operator of business and private jets who holds an Air Operator's Certificate or equivalent;
- The exemption applied to all sales of aircraft purchased 'for the purpose' of supplying them to airlines operating chiefly on international routes. By this teleological approach, the court applies the look-through principle, whereby the use made of an aircraft by its final user is decisive in evaluating whether VAT is applicable on its sale.

4. Do the tax authorities in your jurisdiction recognize and apply the analysis from A Oy and the decisions mentioned above? If they do not apply all of the conclusions mentioned above, which do they not apply and what treatment do they apply instead? Is a lease agreement sufficient to satisfy the 'used by' criteria in your jurisdiction?

Yes, the A Oy decision of the CJEU is recognised by the tax authorities in Germany. The guiding principles of the ruling in the aforementioned decision have been transformed into the respective Fiscal Code Application Decree (Umsatzsteueranwendungserlass). This decree has to be considered by German tax authorities when applying the German provisions of Sec. 4 No. 2 in connection with Sec. 8 para. 2 German VAT Act, the corresponding provisions to Art. 148 e) – g) European VAT Directive.

The tax authorities do not require that the benefiting airline has an ownership position. An international charter operator can also be considered an airline in the sense of Art. 148 European VAT Directive. Furthermore, the tax authorities do not explicitly exclude personal use by the owner. The look-through principle was adopted; the operations performed by a lessee are accepted too.

Eventually, it is crucial and for assessment purposes sufficient that the aircraft in question is in principle rendered to a VAT-taxable entity (Unternehmer). Furthermore, it has to be designated for operations for reward predominantly in international air traffic. This specific function must be final at the time of the supply and verifiable by the tax authorities. If an intermediary is involved, it must purchase the aircraft to hand it over to the operator for the operator's exclusive use.

5. To what extent does the personal use of the aircraft by the beneficial owner impact the applicability of the VAT exemption in your jurisdiction? Are any specific tests or percentages applied to restrict this?

We have no indication that such personal use of the aircraft in general would exclude a tax exemption. Nevertheless, in case this personal use encourages the assumption that the operating airline does not qualify as an airline in the sense of Art. 148 VAT Directive any longer, eg because the personal use can be considered as predominant purpose of the airline or hinders the condition of operating predominantly on international routes, this may have to be reconsidered.

As a consequence, there are no specific tests or rules to restrict the applicability of the VAT exemption apart from the concrete evidence as set out in question 7.

6. Is it a requirement in your jurisdiction that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment? If so how are these tested, eg owner referred to in contract, preferential rates or availability etc?

As now, in Germany, there is no necessity that such an arm's length principle be identifiable to gain the tax exemption. There is only a general rule in Sec. 10 para. 5 German VAT Act demanding an objective pricing for deliveries or supplies to related parties. But this provision only refers to the valuation of the underlying basis of assessment, rather than to the question of tax exemption.

What does 'chiefly on international routes' mean?

In the *Cimber Air* case (C-382-02), the CJEU decided on 16 September 2004 that the VAT exemption is linked to the overall status of the airline and not to the qualification of the specific flight, which may be domestic. It is for the national courts to establish, upon review of each individual case, whether an airline satisfies relevant conditions, although the proportion of the turnover related to international flights of the specific airlines may provide guidance.

7. Can you indicate what percentage of international traffic is required for an airline to qualify for the VAT exemption in your jurisdiction? If this is not tested by way of percentage, what alternative tests are applied? Do the tax authorities in your jurisdiction accept that 'international' includes flights to and from their home country rather than just flights to and from the EU territory as a whole?

According to the German Fiscal Code Application Decree, there is a certain percentage only for pure domestic flights that applies to transportation of injured or ill persons. Such flights are tax exempted due to Sec. 4 No 17 German VAT Act but not according to the provisions deriving from Art. 148 European VAT Directive. The tax exemption presumes that transportation charges or numbers of such ambulance flights in the previous year remain below 1% of all flights.

With regard to the tax exemption in question, there is no certain percentage within German jurisdiction but particular proportions are assessed. The proportion of domestic and international flights has to be assessed according to flight charges too. The tax exemption requires a higher proportion of international flights than domestic flights.

For facilitation purposes, the tax authorities refer to the statutory seat of the respective airline. If the airline has established its statutory seat abroad, it is assumed that it predominantly serves international flight routes.

Provided that the airline has its statutory seat in Germany, the same applies if the airline has been added to an official list that is issued and published by the German Federal Ministry of Finance once a year. As soon as one year has passed, the airline's entitlement to be listed is reconsidered and the list revised.

An airline that has been established in the course of a year can apply for a permission granted by the tax authorities to be qualified as an internationally operating airline. Once the list is revised again, the airline can be added if the prerequisites are met. According to our information, it is not relevant whether flights go to or from Germany to meet the criterion 'international'.

8. Can you indicate whether a qualifying airline can also benefit from VAT exemption for domestic flights (cf the *Cimber Air* case)?

Once an airline has qualified for tax exemption, it will, following the German approach, be tax exempted for all flights operated, even domestic ones.

PERMANENT IMPORTATION

An aircraft is fully/permanently imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country.

The result of permanent importation is that the aircraft has a free circulation status within the EU, ie there are no restrictions for the period of stay in the EU and no restrictions for carrying EU residents for flights within the EU). However, this free circulation status may be lost under certain conditions.

9. Can you indicate what customs duty rate is applicable in your jurisdiction to an aircraft's permanent importation?

The duty is 0% for civil use and for any other use, 2.7 %. In case of breach of lawful importation process the importer is obliged to pay inter alia the duty rate.

10. Can you indicate what VAT rate is applicable for a permanent importation in your jurisdiction and for reimportation?

The VAT rate for both transactions is 19%.

PART II

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

FUEL TAX EXEMPTION

Directive 2003/96/EC (Energy Tax Directive)

- Article 14(1)(b) provides that:

The Member States shall exempt energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

For the purposes of this Directive 'private pleasure-flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities. Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21);

- Article 14 (2) provides that:

Member States may limit the scope of this exemptions to international and intra-Community transport (ie tax aviation fuel for domestic flight). In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in 14(1)(b) In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

- Article 15 (1) (j) provides that:

Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships.

In two decisions dated 1 December 2011 (C-79-10) and 21 December 2011 (C-250-10), the CJEU has given the following interpretation of these articles.

Article 14(1)(b) must be interpreted as meaning that the tax exemption on air fuel used for the purpose of air navigation other than private tourism cannot apply in the case of a company which, to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not directly used for the supply, by that company, of air services for consideration (C-79-10) when it leases or hires out under a charter an aircraft belonging to it with fuel to undertakings whose air navigation operations are not directly used for the supply, by those undertakings, of air services for consideration (C 250-10)

Article 15(1)(j) must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision. (C-79-10).

11. Can you explain how Article 14 (1)(b) of the ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

By the Mineral Oil Tax Act, in effect since December 21, 1992 and the Energy Tax Act of 15 July 2006, which supersedes the Mineral Oil Tax Act.

12. How do your customs authorities interpret the concept of 'private pleasure flying'?

German authorities do not show consistent handling of MOT claims. There are regional discrepancies especially regarding the interpretation of 'private pleasure flying'. Because of regional discrepancies, counsel on individual cases is advised.

13. Can you indicate whether a tax on aviation fuel is applied for domestic flight/intra-EU flight?

Yes.

14. Can you explain how Article 15(1)(j) ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

MOT exemptions for test, training and maintenance flights are suspended until a decision is made by the ECJ.

VAT EXEMPTION

International passenger transport services

Art. 371 of the Directive 2006/112/EC ('the VAT Directive') provides for the extension of the existing VAT exemption or being 'zero-rated' for VAT to international passenger transport services, where:

- 'International' includes intra-EU flights;
- The qualification of the flight as commercial or non-commercial is not relevant.

15. How is this VAT exemption for international passenger transport applied in your jurisdiction and what conditions are imposed, if any?

A carrier (operating carrier or contractual carrier) in general is tax liable in Germany for the domestic part of the flight route; a German domestic part of the flight route may result out of flights from a foreign airport to German airport, from a German airport to a foreign airport and from a foreign airport to another foreign airport over German territory. This would mean that the carrier has to allocate the total flight price to different parts of the flight route. However, it is possible for the carrier to apply for a VAT remission according to Sec. 26 para. 3 German VAT Act. If the carrier is a German entity, the remission applies without further requirements besides an invoice without VAT. In contrast, if the carrier is a foreign entity, the tax relief has to be mutual, ie the state of the registered office of the foreign carrier has to grant tax relief to German carriers as well. The German Ministry of Finance has issued a list of the respective states.

Note: For domestic flights German VAT occurs and the carrier has to invoice VAT towards the recipients of the transportation service. No tax exemption or tax remission is possible.

Supply of goods and services

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

On the concept of 'aircraft used by airlines operating for reward chiefly on international routes', see questions 4 to 7.

16. Do the VAT authorities in your jurisdiction consider management charges to fall under the scope of article 148 of the VAT Directive? If so, are there any particular supplies that they include or exclude from this exemption?

The VAT exemption of Art. 148 e), f) and g), that corresponds with Sec. 8 para. 2 German VAT Act, requires a direct relation of the service to the demand of an aircraft and its load, ie the service has to be necessary for the operation of the aircraft. The German tax authorities for example name the following services as only indirect and not tax exempt: (i) agency regarding tax-exempt services, (ii) letting of halls for maintenance at airports, (iii) room and board for aircrew. Therefore, management charges should in general not fall under the scope of article 148 VAT Directive.

17. Do the VAT authorities in your jurisdiction consider that intermediaries in the supply chain should recover VAT on supplies they receive?

The recovery of input VAT of intermediaries into the supply chain is possible, no matter whether the supply or service rendered by the intermediary itself is tax exempt or not. Of course, the general requirements for the recovery of input VAT (eg proper invoice) have to be met.

Note: However, to decide whether the intermediary's supply or service is tax exempt or not may be complex. According to the German tax authorities, the tax exemption in general is only applicable if the supply or service is rendered directly to the operator. The tax exemption does not refer to supplies and services on previous levels if at the time of the supply or service. However, if the intended use of an aircraft is certain and if this intended use is not only comprehensible due to particular control and monitoring mechanisms, then the tax exemption can be applicable on previous levels (see decision of the CJEU of 14 September 2006 (C-181/04 to 183/04) and of 19 July 2012 (C-33/11)). Also service regarding loading and unloading may be tax exempt, if it is rendered not

directly to the operator but on a previous level, e.g. the services for loading and unloading from a subcontractor towards a principal, who recharges to a freight or transportation service. Loading and unloading can also be tax exempt if it is rendered to the authorised person with regard to the cargo (see decision of the CJEU of 4 May 2017 (C-33/16)).

18. Do the tax authorities in your jurisdiction expect that the recipient of the supplies of goods and services in the scope of article 148 of the VAT Directive should be a VAT-taxable entity?

Yes. The German tax authorities expect that the recipient of the supplies of goods and services in the scope of article 148 VAT Directive is a VAT-taxable entity (*Unternehmer*).

VAT REFUND

Directive 2008/9/EC (VAT Refund – EU business) and Directive 86/560/EEC (VAT Refund – non-EU business)

When no exemption applies and VAT has been paid, input VAT may be refunded. A taxable entity is allowed to deduct the VAT paid on deliveries (purchases) insofar as the goods or services are used for its business activities.

The EU directive that became effective on 1 January 2010 (ie Directive 2008/09/EC) introduced a new procedure for businesses established and registered for VAT purposes within the EU to request a refund of VAT incurred in other EU member states.

The changes made by Directive 2008/09/EC do not affect refund claims by businesses that are not established or VAT-registered in an EU member state. Such businesses still recover VAT incurred in EU member states according to the procedure in the 13th VAT Directive.

19. Can you describe how the VAT refund directive provisions are implemented in your jurisdiction and what evidence the tax authorities require to make the repayment?

The procedure for a VAT refund differs depending on whether the applicant is a business domiciled in the EU or outside the EU.

Businesses that are not domiciled in the EU, which acquire goods or services for business purposes in Germany, may under certain circumstances obtain refunds for VAT they have been charged through the VAT refund scheme. The Federal Central Tax Office (Bundeszentralamt für Steuern; BZSt) is responsible for administering the scheme in Germany.

The basic condition for refunding VAT to companies from non-EU countries is that there are reciprocal arrangements between the non-EU country and Germany. The German tax authorities publish a list regarding existing reciprocal agreements. The list is available on the homepage of the BZSt (www.bzst.de).

The entrepreneur has to submit an application for a refund to the BZSt according to the officially prescribed dataset, by way of

remote data transmission under the German Tax Data Transmission Ordinance. The application is filed via the online portal of the BZSt. A registration is required to for the application procedure. Information regarding the registration can be found at the BZSt homepage. The registration form has to be signed by the taxable person. Staff members, authorised signatories, representatives or agents are not entitled to sign the registration form. An entrepreneur from a non-EU country has to provide proof of the identity of the person who signs the registration form (ie a copy of a valid identity document such as an identification card or a passport or driving license). He should also enclose a copy of a current trade register excerpt or a similar certificate. The registration form and the additional documentation have to be sent to the BZSt by post. The documents may not be sent electronically. The registration process may take a long time due to lengthy postal delivery times. It may take weeks or even months to complete the registration process.

The refund has to be claimed within six months of expiration of the calendar year in which the claim to the refund arose (limitation period).

The entrepreneurs have to calculate the refund on their own. However, the input tax amount is subject to verification by submission of invoices and importation certificates in the originals. The original invoices and original import certificates have to be received in paper format by the BZSt within the limitation period. The VAT amounts for which a refund is being sought must be listed individually in the application form. The original invoices and import documents are to be enclosed within the application, with the invoices numbered to match their position in the application form.

The refund period can be a minimum of three months up to a maximum of one calendar year, at the trader's discretion. The refund period may be less than three months if it covers the remainder of a calendar year. The refund amount applied for must be at least €1000. This does not apply if the compensation period

is the calendar year or the last period of the calendar year. The refund applied for must amount to at least €500 for these refund periods.

The entrepreneurs have to demonstrate to the competent financial authority that they are entered as an entrepreneur and have been assigned a tax number (the so-called entrepreneur certificate) by handing in an official certificate of the country in which they are resident. The certificate must contain the following information: (i) name of applicant, (ii) address of applicant, (iii) tax number of applicant, (iv) classification of the applicant's business, (v) date, stamp and signature of the issuing authority

Applications for refunds of VAT by businesses based in an EU member state can only be submitted online in the member state in which the business is established (Art. 7 Directive 2008/09/EC). Applications cannot be submitted in Germany. Each member state has now set up an electronic portal for VAT refunds through which applications must be submitted. These applications must be submitted by 30 September of the year after the period during which the refund claim arose.

PART III

SPECIFIC NATIONAL TAXES APPLICABLE TO BUSINESS AVIATION ACTIVITIES

20. Could you indicate what other specific national taxes are applicable to business aviation in your jurisdiction (eg luxury tax in Italy, APD in the UK), if any, and what are the rules for applying these taxes?

Corporate tax on profits generated by services in business aviation.
Passenger tax on the commercial transport of passengers.
Energy tax (MOT) on fuel used in non-commercial operations.

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PART I

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

CUSTOMS DUTIES

The new UCC became effective on 1 May 2016 and is an update to customs legislation across the EU and introduced revisions to existing requirements.

The UCC is formalised by:

- Council Regulation (EU) No. 952/2013, and associated Delegated and Implementing Acts;
- Regulation (EC) No. 2015/2447 (Implementing Regulation);
- Commission Regulation (EC) No. 2015/2446 (Delegated Regulation).

According to the UCC rules, all aircraft flying into or out of EU must fly into or from a designated customs airport.

The importer shall:

- Either claim custom duty relief based on:
 - Temporary importation relief, or
 - End-use relief, ie if imported by an EU-established importer with end-use authorisation from the customs authorities of the Member State in which the aircraft will be declared*
- Or pay duty on importation on the aircraft (rates between 2.7% and 7.7% within the EU), which will be permanently imported and put in 'free circulation';

CUSTOM DUTY RELIEF

Temporary Admission (TA)

Under certain specific conditions and restrictions, the UCC permits a temporarily imported aircraft to enter the EU with no customs documentation and no requirement to pay VAT or import duties before departure.

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be all of the following:

- Registered outside the customs territory of the EU in the name of a person established outside that territory;
- Used privately by a non-EU resident;
- Not available to EU residents within the EU boundaries unless employed or authorised by the owner or lessee.

- Imported and used by people residing in its country of registration or by third parties authorised by the owner or lessee;

- Not in the EU for more than six months in a 12-month period.

Operators have been confused by differences in the meanings of the terms 'private use' and 'commercial use' as used by the international aviation community and as applied by customs authorities in the EU; besides, not all customs authorities in the EU apply the same meaning to these terms. Having as its objective to clarify and standardise terms such as 'private use' and 'commercial use', the European Commission published a working paper on November 23, 2014, regarding TA. 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 that would result in 'commercial' use of the aircraft;
- EU residents are allowed on board but with certain restrictions.

1. Are there any additional rules applied in your jurisdiction for the Temporary Admission procedure? Also, are there any particular local interpretations of the standard rules applied by your tax authority?

No.

2. And more specifically how do your local customs authorities interpret 'private use' vs 'commercial use' in reference to the guidelines of the European Commission?

Who is considered as the holder of the TA authorisation from your local customs perspective in the following scenarios (eg passenger, pilot, operator, lessee):

- Privately used aircraft having non-EU passenger(s) on board;
- Privately used aircraft flying into the EU to pick up passenger(s);
- Chartered aircraft operated by a non-EU AOC holder where the operator provides pilots, crew and navigation services and the charterer exercise actual control over the aircraft.

Isle of Man Customs appears to follow the EC guidelines.

* Please note that the EU Commission has stated that from 1 January 2018 a simplification applies that removes the need for customs approval for duty relief and reduces the requirement down to carrying a Certificate of Registration on the aircraft. Information on the implementation of this new simplification is still awaited.

End-use relief

End-use is a customs procedure whereby goods entered for free circulation in the EU may be given favourable tariff treatment or relief at a reduced or zero rate of duty on condition they are put to a prescribed use.

The EU Commission has now announced a simplification due to apply from 1 January 2018 whereby there is no requirement for customs approval for duty relief and reduce the requirement down to carrying a Certificate of Registration on the aircraft. Very little formal information on implementation has yet been provided.

3. Can you describe what the procedure is to claim end-use relief for aircraft importation in your jurisdiction?

End-use relief has been removed for aircraft and is now fully simplified with effect from 1 January 2018.

VAT EXEMPTION

No importation will be deemed to occur while the aircraft benefits from the TA regime for customs duties (see above). Importation will only occur at the time the aircraft is released from the suspension of duties under TA.

If an aircraft has not yet been imported for free circulation in the EU (see above) or has been released from the TA regime, it can still benefit from a VAT exemption contained in Article 148 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax Directive 2006/112/EC (the 'VAT Directive').

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
 - The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
 - The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes
- Therefore, the VAT exemption will apply to aircraft used by an airline operating 'chiefly for reward on international routes'.

The Court of Justice of the European Union (CJEU) has clarified the scope of this VAT exemption in its decision of 19 July 2012 (C-33/11 A Oy case) by answering prejudicial questions submitted by the Finnish administrative courts.

What is the concept of an aircraft 'used by an airline operating for reward'?

In the A Oy case, the CJEU has ruled that:

- Legal or equitable ownership was not required by article 148(e); the legal right to operate the aircraft seems sufficient to satisfy the 'used by' test;

- The personal use of the aircraft by the owner — when operated by an airline in the meaning of the VAT Directive — does not jeopardise the exemption, provided that the aircraft is not solely or exclusively used by the owner of the aircraft;

- An international charter operator can be considered an 'airline operating for reward chiefly on 'international routes'. Thus an 'airline' can include an operator of business and private jets who holds an Air Operator's Certificate or equivalent;

- The exemption applied to all sales of aircraft purchased 'for the purpose' of supplying them to airlines operating chiefly on international routes. By this teleological approach, the court applies the look-through principle, whereby the use made of an aircraft by its final user is decisive in evaluating whether VAT is applicable on its sale.

4. Do the tax authorities in your jurisdiction recognize and apply the analysis from A Oy and the decisions mentioned above? If they do not apply all of the conclusions mentioned above, which do they not apply and what treatment do they apply instead? Is a lease agreement sufficient to satisfy the 'used by' criteria in your jurisdiction?

The Isle of Man tax authorities recognise and accept A Oy and the other cases mentioned, apart from the comments below about private use. There are no particular restrictions on the use of leases, although the Isle of Man authorities are cautious to ensure that any lease supplied by an Isle of Man entity for business purposes and that there is only very limited ultimate private use of the aircraft further down the supply chain.

5. To what extent does the personal use of the aircraft by the beneficial owner impact the applicability of the VAT exemption in your jurisdiction? Are any specific tests or percentages applied to restrict this?

The UK's HMRC's view is that where the aircraft is not wholly used for business purposes, ie that there is some private use, then the aircraft cannot be considered a qualifying aircraft. It is not clear that this policy of requiring an aircraft to be 'wholly' qualifying has any basis either in UK or in EU law and appears to be the one area where HMRC does not accept the decision in A Oy. This means that an aircraft can be entirely qualifying where its sole use is charter flights provided through an AOC but doesn't allow the zero rating/exemption to any supplies not made via the AOC. This approach is the same in the Isle of Man.

6. Is it a requirement in your jurisdiction that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment? If so how are these tested, eg owner referred to in contract, preferential rates or availability etc?

HMRC looks very carefully at any beneficial treatment applied to beneficial owners, for example in contracts or pricing, and might consider that this affects whether there is a genuine charter business being conducted — something that might ultimately cause the VAT registration to be cancelled and VAT to become due on the aircraft. The same policy is applied in the Isle of Man.

What does 'chiefly on international routes' mean?

In the *Cimber Air* case (C-382-02), the CJEU decided on 16 September 2004 that the VAT exemption is linked to the overall status of the airline and not to the qualification of the specific flight, which may be domestic. It is for the national courts to establish, upon review of each individual case, whether an airline satisfies relevant conditions, although the proportion of the turnover related to international flights of the specific airlines may provide guidance.

7. Can you indicate what percentage of international traffic is required for an airline to qualify for the VAT exemption in your jurisdiction? If this is not tested by way of percentage, what alternative tests are applied? Do the tax authorities in your jurisdiction accept that 'international' includes flights to and from their home country rather than just flights to and from the EU territory as a whole?

HMRC allows a reasonable majority percentage test to demonstrate that the airline operates chiefly on international routes, eg number of flights or seats etc. This would be the same policy in the *Isle of Man*.

8. Can you indicate whether a qualifying airline can also benefit from VAT exemption for domestic flights (cf the *Cimber Air* case)?

Yes, this should be possible under the UK's domestic VAT exemption (zero rate) for passenger transport but is not often found in practice as airlines would typically use the airline exemption. There may be limited circumstances where a domestic VAT exemption is applied.

PERMANENT IMPORTATION

An aircraft is fully/permanently imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country.

The result of permanent importation is that the aircraft has a free circulation status within the EU, ie there are no restrictions for the period of stay in the EU and no restrictions for carrying EU residents for flights within the EU). However, this free circulation status may be lost under certain conditions, for example, where the aircraft is physically outside the EU for three years or more or there is a change of title while it is outside the EU.

9. Can you indicate what customs duty rate is applicable in your jurisdiction to an aircraft's permanent importation?

The duty is 2.7% for all aircraft with an empty operating weight above 2000 kg, but it can be higher for smaller aircraft and helicopters. (See above for the removal of end-use restrictions so long as the aircraft is on a civilian registry.)

10. Can you indicate what VAT rate is applicable for a permanent importation in your jurisdiction and for reimportation?

The VAT rate is 20% at the standard rate unless the zero rate (0%) for the qualifying airline exemption applies.

PART II

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

FUEL TAX EXEMPTION

Directive 2003/96/EC (Energy Tax Directive)

- Article 14(1)(b) provides that:

The Member States shall exempt energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

For the purposes of this Directive 'private pleasure-flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities. Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21);

- Article 14 (2) provides that:

Member States may limit the scope of this exemptions to international and intra-Community transport (ie tax aviation fuel for domestic flight). In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in 14(1)(b). In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

- Article 15 (1) (j) provides that:

Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships.

In two decisions dated 1 December 2011 (C-79-10) and 21 December 2011 (C-250-10), the CJEU has given the following interpretation of these articles.

Article 14(1)(b) must be interpreted as meaning that the tax exemption on air fuel used for the purpose of air navigation other than private tourism cannot apply in the case of a company which, to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not

directly used for the supply, by that company, of air services for consideration (C-79-10) when it leases or hires out under a charter an aircraft belonging to it with fuel to undertakings whose air navigation operations are not directly used for the supply, by those undertakings, of air services for consideration (C 250-10)

Article 15(1)(j) must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision. (C-79-10).

11. Can you explain how Article 14 (1)(b) of the ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

Please see response to question 12.

12. How do your customs authorities interpret the concept of 'private pleasure flying'?

This is a complicated issue in the UK and needs careful consideration. In general, the exemption is only applied to ticketed and overseas flights but there is some confusion in the industry around the intended application of the exemption.

13. Can you indicate whether a tax on aviation fuel is applied for domestic flight/intra-EU flight?

The exemption applies to flights across borders but not to domestic flights unless they are already exempt under the 'private pleasure' exemption.

14. Can you explain how Article 15(1)(j) ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

Please see response to question 12.

VAT EXEMPTION

International passenger transport services

Art. 371 of the Directive 2006/112/EC ('the VAT Directive') provides for the extension of the existing VAT exemption or being 'zero-rated' for VAT to international passenger transport services, where:

- 'International' includes intra-EU flights;
- The qualification of the flight as commercial or non-commercial is not relevant.

15. How is this VAT exemption for international passenger transport applied in your jurisdiction and what conditions are imposed, if any?

Passenger transport is zero rated in the UK/Isle of Man for vehicles designed or adapted to carry ten or more passengers, for scheduled flights within the UK. This local exemption excludes pleasure transport or transport that is not for the purpose of travelling from A to B.

The VAT exemption applies for travel within the UK as international

passenger transport would apply to international flights.

Supply of goods and services

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

On the concept of 'aircraft used by airlines operating for reward chiefly on international routes', see questions 4 to 7.

16. Do the VAT authorities in your jurisdiction consider management charges to fall under the scope of article 148 of the VAT Directive? If so, are there any particular supplies that they include or exclude from this exemption? Is there any restriction on the application of the exemption where the aircraft is not 'wholly' used for commercial flights, ie where there is some direct use by the ultimate beneficial owner of the aircraft? If so, how is this applied?

Yes, handling supplies to an aircraft are zero rated under Article 148 when supplied from within the confines of a Customs and Excise airport.

Please see question 5 above. Recharges of direct costs to the owner are not treated as entitled to the exemption where, for example, the beneficial owner uses the aircraft otherwise than as a normal third party charter hire. In these circumstances, HMRC may determine that the whole management charge is not entitled to exemption.

17. Do the VAT authorities in your jurisdiction consider that intermediaries in the supply chain should recover VAT on supplies they receive?

Subject to the normal rules — yes.

18. Do the tax authorities in your jurisdiction expect that the recipient of the supplies of goods and services in the scope of article 148 of the VAT Directive should be a VAT-taxable entity?

Yes

VAT REFUND

Directive 2008/9/EC (VAT Refund – EU business) and Directive 86/560/EEC (VAT Refund – non-EU business)

When no exemption applies and VAT has been paid, input VAT may be refunded. A taxable entity is allowed to deduct the VAT paid on deliveries (purchases) insofar as the goods or services are used for its business activities.

The EU directive that became effective on 1 January 2010 (ie Directive 2008/09/EC) introduced a new procedure for businesses established and registered for VAT purposes within the EU to request a refund of VAT incurred in other EU member states.

The changes made by Directive 2008/09/EC do not affect refund claims by businesses that are not established or VAT-registered in an EU member state. Such businesses still recover VAT incurred in EU member states according to the procedure in the 13th VAT Directive.

19. Can you describe how the VAT refund directive provisions are implemented in your jurisdiction and what evidence the tax authorities require to make the repayment?

Any claimant can make a request to recover VAT incurred in another member state through an electronic portal system using their own VAT number. Alternatively, this refund request may be processed by an agent — again using an electronic portal set up under the agent's client portal. Copies of all invoices need to be uploaded as part of the process.

PART III

SPECIFIC NATIONAL TAXES APPLICABLE TO BUSINESS AVIATION ACTIVITIES

20. Could you indicate what other specific national taxes are applicable to business aviation in your jurisdiction (eg luxury tax in Italy, APD in the UK), if any, and what are the rules for applying these taxes?

APD does not apply in the Isle of Man.

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PART I

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

CUSTOMS DUTIES

The new UCC became effective on 1 May 2016 and is an update to customs legislation across the EU and introduced revisions to existing requirements.

The UCC is formalised by:

- Council Regulation (EU) No. 952/2013, and associated Delegated and Implementing Acts;
- Regulation (EC) No. 2015/2447 (Implementing Regulation);
- Commission Regulation (EC) No. 2015/2446 (Delegated Regulation).

According to the UCC rules, all aircraft flying into or out of EU must fly into or from a designated customs airport.

The importer shall:

- Either claim custom duty relief based on:
 - Temporary importation relief, or;
 - End-use relief, ie if imported by an EU-established importer with end-use authorisation from the customs authorities of the Member State in which the aircraft will be declared;
- Or pay duty on importation on the aircraft (rates between 2.7% and 7.7% within the EU), which will be permanently imported and put in 'free circulation'.

CUSTOM DUTY RELIEF

Temporary Admission (TA)

Under certain specific conditions and restrictions, the UCC permits a temporarily imported aircraft to enter the EU with no customs documentation and no requirement to pay VAT or import duties before departure.

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be all of the following:

- Registered outside the customs territory of the EU in the name of a person established outside that territory;
- Used privately by a non-EU resident;
- Not available to EU residents within the EU boundaries unless employed or authorised by the owner or lessee;

- Imported and used by people residing in its country of registration or by third parties authorised by the owner or lessee;

- Not in the EU for more than six months in a 12-month period.

Operators have been confused by differences in the meanings of the terms 'private use' and 'commercial use' as used by the international aviation community and as applied by customs authorities in the EU; besides, not all customs authorities in the EU apply the same meaning to these terms. Having as its objective to clarify and standardise terms such as 'private use' and 'commercial use', the European Commission published a working paper on November 23, 2014, regarding TA.

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 that would result in 'commercial' use of the aircraft;
- EU residents are allowed on board but with certain restrictions.

1. Are there any additional rules applied in your jurisdiction for the Temporary Admission procedure? Also, are there any particular local interpretations of the standard rules applied by your tax authority?

No.

2. And more specifically how do your local customs authorities interpret 'private use' vs 'commercial use' in reference to the guidelines of the European Commission?

Who is considered as the holder of the TA authorisation from your local customs perspective in the following scenarios (eg passenger, pilot, operator, lessee):

- Privately used aircraft having non-EU passenger(s) on board;
- Privately used aircraft flying into the EU to pick up passenger(s);
- Chartered aircraft operated by a non-EU AOC holder where the operator provides pilots, crew and navigation services and the charterer exercise actual control over the aircraft.

The definition of private and commercial use is contained in Art. 215/4 of Reg. 2446/2015, where:

- Private use means the use of a means of transport other than the commercial use;

- Commercial use means the use of means of transport for the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration.

There are in principle no reasons why the Italian authorities would not apply the legal definition and accordingly follow the guidelines of the European Commission.

End-use relief

End-use is a customs procedure whereby goods entered for free circulation in the EU may be given favourable tariff treatment or relief at a reduced or zero rate of duty on condition they are put to a prescribed use.

3. Can you describe what the procedure is to claim end-use relief for aircraft importation in your jurisdiction?

End-use relief is provided for by Art. 254 of Council Reg. 952/2013 and enables goods to enter into free circulation in Italy with a favourable tariff treatment or relief at a reduced or zero rate on condition they are put to a prescribed use.

Goods entered in free circulation remain subject to custom authorities' supervision and are given end-use status authorisation if the conditions set out in Art. 211 of Council Reg. 952/2013 are met.

End-use admission is approved by the competent local customs, typically within 30 days of an admission request being filed.

End-use admission procedures are carried out by professional customs operators (in Italy, circular no. 84724 of 16 October 2016).

The issue of a guarantee is also requested if custom duties may be due for the goods.

VAT EXEMPTION

No importation will be deemed to occur while the aircraft benefits from the TA regime for customs duties (see above). Importation will only occur at the time the aircraft is released from the suspension of duties under TA.

If an aircraft has not yet been imported for free circulation in the EU (see above) or has been released from the TA regime, it can still benefit from a VAT exemption contained in Article 148 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax Directive 2006/112/EC (the 'VAT Directive').

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance

of equipment incorporated or used in it;

- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

Therefore, the VAT exemption will apply to aircraft used by an airline operating 'chiefly for reward on international routes'.

The Court of Justice of the European Union (CJEU) has clarified the scope of this VAT exemption in its decision of 19 July 2012 (C-33/11 A Oy case) by answering prejudicial questions submitted by the Finnish administrative courts

What is the concept of an aircraft 'used by an airline operating for reward'?

In the A Oy case, the CJEU has ruled that:

- Legal or equitable ownership was not required by article 148(e); the legal right to operate the aircraft seems sufficient to satisfy the 'used by' test;
- The personal use of the aircraft by the owner — when operated by an airline in the meaning of the VAT Directive — does not jeopardise the exemption, provided that the aircraft is not solely or exclusively used by the owner of the aircraft;
- An international charter operator can be considered an 'airline operating for reward chiefly on 'international routes'. Thus an 'airline' can include an operator of business and private jets who holds an Air Operator's Certificate or equivalent;
- The exemption applied to all sales of aircraft purchased 'for the purpose' of supplying them to airlines operating chiefly on international routes. By this teleological approach, the court applies the look-through principle, whereby the use made of an aircraft by its final user is decisive in evaluating whether VAT is applicable on its sale.

4. Do the tax authorities in your jurisdiction recognize and apply the analysis from A Oy and the decisions mentioned above? If they do not apply all of the conclusions mentioned above, which do they not apply and what treatment do they apply instead? Is a lease agreement sufficient to satisfy the 'used by' criteria in your jurisdiction?

Under article 8 bis (c) of DPR 633/72 (as amended), implementing, inter alia, the 2006 VAT Directive, the supply of aircraft 'addressed to' ('destinati') air transportation companies engaged primarily in international transportation are VAT exempt.

Although the version in Italian of the 2006 VAT Directive expressly referred to aircraft 'used' ('utilizzati') by air transportation companies engaged primarily in international transportation, the implementing legislation opted for the wording 'addressed to'. Italian legislation and some past positions of the Ministry of Finance are in this regard more focused on the identity of the addressee of the supply rather than the actual end-use of the aircraft. For example, a lessor would not be granted the exemption but an

airline being supplied with an aircraft by a lessor would.

The European Court of Justice, more coherently with the actual wording (and scope) of the VAT Directive, has put emphasis on the actual use of the aircraft rather than the identity of the party being supplied with the aircraft.

In the absence of formal acknowledgment by the Italian authorities of the look-through principle established by the European Court of Justice, whose implications cannot be ignored by the national courts, its implications and implementation in Italy would have to be considered and applied carefully case by case, especially where different parties and supplies are involved (purchase, finance and/or operating lease etc.).

A lease agreement, including a finance lease, would satisfy the 'used by' criterion.

5. To what extent does the personal use of the aircraft by the beneficial owner impact the applicability of the VAT exemption in your jurisdiction? Are any specific tests or percentages applied to restrict this?

Also based on the further guidance provided by the European Court of Justice in C-33/11 A Oy, personal use by the beneficial owner would not in principle affect the VAT exemption, so long as the use is made on the basis of market charter rates from an aircraft operator commercially operating on the basis of an aircraft operator's certificate (AOC).

There are no specific regulatory tests or percentages to restrict the exemption. A sound guiding principle would be that the beneficial owner has no exclusive use of the aircraft and that the aircraft operator should be entitled to charter it to other third parties.

6. Is it a requirement in your jurisdiction that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment? If so how are these tested, eg owner referred to in contract, preferential rates or availability etc?

It is a requirement that the aircraft qualifies as being operated under an AOC commercially and can in principle be made available to several parties. Some preferential terms (eg in terms of availability) can be granted to the beneficial owner so long as the aircraft is operated commercially under the operator's AOC.

What does 'chiefly on international routes' mean?

In the *Cimber Air* case (C-382-02), the CJEU decided on 16 September 2004 that the VAT exemption is linked to the overall status of the airline and not to the qualification of the specific flight, which may be domestic. It is for the national courts to establish, upon review of each individual case, whether an airline satisfies relevant conditions, although the proportion of the turnover related to international flights of the specific airlines may provide guidance.

7. Can you indicate what percentage of international traffic is required for an airline to qualify for the VAT exemption in your jurisdiction? If this is not tested by way of percentage, what alternative tests are applied? Do the tax authorities in your jurisdiction accept that 'international' includes flights to and from their home country rather than just flights to and from the EU territory as a whole?

The exemption applies to airlines/operators providing 'predominantly' international air transportation services. The concept of 'prevalence' is tested by considering the portion of remuneration (eg as turnover) received by the operator for transportation services within the national territory and outside the national territory. Therefore, 'international' includes flights to and from the national territory and outside the national territory, rather than flights to and from the EU territory as a whole.

The 'prevalence' test is to be applied yearly, by reference not only to the year preceding the year of acquisition (purchase, leasing etc) of the aircraft, but also with regard to the actual year of acquisition of a specific aircraft.

8. Can you indicate whether a qualifying airline can also benefit from VAT exemption for domestic flights (cf the *Cimber Air* case)?

Yes, so long as the 'prevalence' test is met.

PERMANENT IMPORTATION

An aircraft is fully/permanently imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country.

The result of permanent importation is that the aircraft has a free circulation status within the EU, ie there are no restrictions for the period of stay in the EU and no restrictions for carrying EU residents for flights within the EU). However, this free circulation status may be lost under certain conditions.

9. Can you indicate what customs duty rate is applicable in your jurisdiction to an aircraft's permanent importation?

Custom duties are specified in EU Regulation 2016/1821 of October 6, 2016, amending Annex I to EU Regulation 2658/87.

Import duties exemption is provided for, inter alia:

- Civil aircraft;
- Certain products to be used in civil aircraft and incorporated during construction, refurbishment, maintenance, repair or transformation.

'Civil aircraft' are defined as those that are not used by the Member States military services or the likes or those having a military registration or the like.

Custom duties exemption is subject to the conditions set out with regards to custom control and products final use (Articles 291-300

del Reg. (CEE) no. 2454/93).

10. Can you indicate what VAT rate is applicable for a permanent importation in your jurisdiction and for reimportation?

The current standard VAT rate for permanent importation and reimportation is 22% under Art. 16, comma 1 of DPR 26/10/1972 no. 633.

PART II

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

FUEL TAX EXEMPTION

Directive 2003/96/EC (Energy Tax Directive)

- Article 14(1)(b) provides that:

The Member States shall exempt energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

For the purposes of this Directive 'private pleasure-flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities. Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21).

- Article 14 (2) provides that:

Member States may limit the scope of this exemptions to international and intra-Community transport (ie tax aviation fuel for domestic flight). In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in 14(1)(b) In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

- Article 15 (1) (j) provides that:

Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships.

In two decisions dated 1 December 2011 (C-79-10) and 21 December 2011 (C-250-10), the CJEU has given the following interpretation of these articles.

Article 14(1)(b) must be interpreted as meaning that the tax

exemption on air fuel used for the purpose of air navigation other than private tourism cannot apply in the case of a company which, to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not directly used for the supply, by that company, of air services for consideration (C-79-10) when it leases or hires out under a charter an aircraft belonging to it with fuel to undertakings whose air navigation operations are not directly used for the supply, by those undertakings, of air services for consideration (C 250-10)

Article 15(1)(j) must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision. (C-79-10).

11. Can you explain how Article 14 (1)(b) of the ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

The ETD Directive 2003/96/EC has been implemented in Italy by the Legislative Decree No. 26 of 2 February 2007, which amended Table A, paragraph 2 of the 'Single Text on Excises' introduced by the Legislative Decree No. 504 of 1995. This decree provides for the exemption from excise duties on fuels for the purpose of air navigation other than in private pleasure flying.

12. How do your customs authorities interpret the concept of 'private pleasure flying'?

The concept 'private pleasure flying' (which in Italian is *aviazione privata da diporto*) to which Directive 2003/96/EC refers has already been implemented in Italy by the 'Single Text on Excises' (Legislative Decree No. 504 of 1995) and specified in the Circular 1/D of 28 January 2004 issued by the Customs Agency. The decree defines the concept 'private pleasure flying' as 'the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities'. This is the same definition as that provided in Directive 2003/96/EC.

13. Can you indicate whether a tax on aviation fuel is applied for domestic flight/intra-EU flight ?

Italy does not implement tax aviation fuel for domestic or intra-EU flights.

14. Can you explain how Article 15(1)(j) ETD Directive 2003/96/EC exemption is implemented in your jurisdiction ?

The Article 15(1)(j) ETD Directive 2003/96/EC exemption has not been implemented in the Italian tax system.

VAT EXEMPTION

International passenger transport services

Art. 371 of the Directive 2006/112/EC ('the VAT Directive') provides for the extension of the existing VAT exemption or being 'zero-rated' for VAT to international passenger transport services, where:

- 'International' includes intra-EU flights;
- The qualification of the flight as commercial or non-commercial is not relevant.

15. How is this VAT exemption for international passenger transport applied in your jurisdiction and what conditions are imposed, if any?

Pursuant to Directive 2006/112/EC, the Italian VAT Law (D.P.R. No. 633 of 1972, table A attached, No. 127 novies, part III) provides for the application of a reduced rate of 10% for the suburban transport services of persons and for transport services other than taxi services (ie buses, trams, metros, aircraft, railways, ships).

Supply of goods and services

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

On the concept of 'aircraft used by airlines operating for reward chiefly on international routes', see questions 4 to 7.

16. Do the VAT authorities in your jurisdiction consider management charges to fall under the scope of article 148 of the VAT Directive? If so, are there any particular supplies that they include or exclude from this exemption?

Article 8-bis of the Italian VAT Law (D.P.R. No. 633 of 1972) has extended the exemption from value added tax to the management charges and to the supply of services rendered to aircraft.

17. Do the VAT authorities in your jurisdiction consider that intermediaries in the supply chain should recover VAT on supplies they receive?

Article 8-bis of the Italian VAT Law (D.P.R. No. 633 of 1972) has extended the exemption from value added tax to the supply chain of management charges and to the supply chain of services rendered to aircraft.

18. Do the tax authorities in your jurisdiction expect that the recipient of the supplies of goods and services in the scope of article 148 of the VAT Directive should be a VAT-taxable entity?

The recipient of the supplies of goods and services must necessarily be a taxable entity or person.

VAT REFUND

Directive 2008/9/EC (VAT Refund – EU business) and Directive 86/560/EEC (VAT Refund – non-EU business)

When no exemption applies and VAT has been paid, input VAT may be refunded. A taxable entity is allowed to deduct the VAT paid on deliveries (purchases) insofar as the goods or services are used for its business activities.

The EU directive that became effective on 1 January 2010 (ie Directive 2008/09/EC) introduced a new procedure for businesses established and registered for VAT purposes within the EU to request a refund of VAT incurred in other EU member states.

The changes made by Directive 2008/09/EC do not affect refund claims by businesses that are not established or VAT-registered in an EU member state. Such businesses still recover VAT incurred in EU member states according to the procedure in the 13th VAT Directive.

19. Can you describe how the VAT refund directive provisions are implemented in your jurisdiction and what evidence the tax authorities require to make the repayment?

The repayment of VAT to taxable persons established and also not established in the territory of the European Community is governed by Art. 38-ter of the D.P.R. No. 633 of 1972.

For persons established in the territory of the European Community to be eligible for repayment of VAT paid in Italy, they must:

- Be a taxable person in the state of residence;
- Submit, along with the application for repayment, the certificate issued by the competent tax authority of its Member State;
- NOT have a tax identification in Italy;
- NOT have conducted transactions subject to VAT with the exception of the supply of transport services and ancillary operations and operations exempted from VAT under Article 7 of D.P.R. No. 633 of 1972.

For persons not established in the territory of the European Community to be eligible for repayment of VAT paid in Italy, they must:

- Verify whether in its state of residence a condition of reciprocity with Italy exists;

- Verify that the purchase is inherent to the activity carried out;
- Verify that its state of residence provides for the application of VAT;
- Be a taxable person in the state of residence
- Submit, along with the application for repayment, the certificate issued by the competent tax authority of its Member State.

The application for repayment must be submitted to the Italian Revenue Agency (Agenzia delle Entrate), by 30 June of the calendar year after the purchase, along with the presentation of a form called 'Modello IVA 79', which must be duly signed by the applicant or by an applicant's delegate with notarised power of attorney. Original invoices and the certificate issued by the competent Member State tax authority are to be attached to the form 'Modello IVA 79'.

PART III

SPECIFIC NATIONAL TAXES APPLICABLE TO BUSINESS AVIATION ACTIVITIES

20. Could you indicate what other specific national taxes are applicable to business aviation in your jurisdiction (eg luxury tax in Italy, APD in the UK), if any, and what are the rules for applying these taxes?

i. The Italian Aerotaxi Passengers Tax

The tax is due from each passenger and paid to the operator as follows:

- €10 for each passenger for each flight to, from or within the Italian territory of less than 100km (targeted primarily at helicopter transportation services);
- €100 for each passenger for each flight to, from or within the Italian territory of more than 100km but less than 1500km;
- €200 for each passenger for each flight to or from the Italian territory in excess of 1500km.

For calculation purposes, flight distance between point of departure and point of arrival (regardless of any technical stopover) is calculated by reference to the great circle route plus 95km.

The tax is due on 'aerotaxi flights', generally defined for the purpose of the tax as passenger flights where the aircraft is chartered for its entire capacity. Coherently with the definition of aerotaxi at EU legislation level, aerotaxis should be limited to aircraft having a seating capacity of up to 19 seats.

I. Who pays the tax?

The tax is due from each passenger to the operator, who is then obliged to pay it to the tax authorities once collected. The amount of the tax is not part of the operator services subject to VAT. The

operator acts as a collecting agent.

When is the tax paid?

Time of payment of the tax by the operator depends on the aircraft country of registration:

- For EU-registered aircraft and aircraft registered within the European Economic Area (EU Member States plus Iceland, Liechtenstein and Norway), the tax is paid at the end of each month by reference to the passengers/flights carried out in the previous month.
- For aircraft registered in other countries, the tax is payable for each passenger/flight, before departure from Italian territory or within the day after the date of arrival on Italian territory.

How is the tax paid?

The tax is paid via the F24 form, typically used in Italy for tax payment purposes, but that requires an Italian tax code.

Non-Italian operators not having an Italian tax code (unless with an Italian permanent establishment) can pay the tax via euro bank transfers as follows:

- Beneficiary: 'Bilancio dello Stato al Capo 8 – Capitolo 1224';
- IBAN IT48 A010 0003 2453 4800 8122 400;
- BIC: BITAITRRENT;
- Payment description: (i) operator name; (ii) number of passengers; (iii) flight type (A for flights of less than 1500km, B for flights in excess of 1500km); (iv) date of flight (day/month/year).

ii. The Italian luxury tax on private aircraft

The tax is expressed to apply to private aircraft at the following rates.

MTOW in kg	Rates (euro per kg)
Up to 1000	0.75
Up to 2000	1.25
Up to 4000	4.00
Up to 6000	5.00
Up to 8000	6.65
Up to 10000	7.10
Above 10000	7.60

For helicopters, the tax rates are increased by 50% (always by reference to MTOW).

Gliders, motor gliders and balloons are flat-taxed at €450.

The tax is payable by the registered owner, the beneficial owner or the lessee by reference to the duration of the Airworthiness

Review Certificate (ARC) at the time of request of issue/renewal of the ARC.

Exempted aircraft

Aircraft/helicopters exempted from the tax are:

- State aircraft and aircraft subject to the same regime;
- Aircraft dedicated to scheduled, non-scheduled commercial flights and air-work;
- Aircraft owned or operated by registered organisations, FTOs and TRTOs;
- Italy's Aero Club and local aero club aircraft;
- Newly built aircraft registered in the name of the manufacturer, until sold;
- Rescue aircraft/helicopters;
- Historical aircraft (originally registered more than 40 years ago);

- Kit construction aircraft;

- Recreational and sport aircraft as per Italian law no. 106/1985.

Non-Italian-registered aircraft

Since 4 September 2013, the tax has also applied to non-Italian-registered aircraft that have spent more than six months (over 12-month period) on Italian territory.

The tax is due beginning from the expiry of the six-month (grace) period. If the aircraft remains in Italy for less than 12 months, the tax is calculated monthly until actual departure.

The tax must be paid before the aircraft leaves Italian territory. In addition to the indicated exempted aircraft, foreign state aircraft and military aircraft are also exempted.

Those having paid in excess by reference to the new rates can set off any such excess against future tax. No sanctions apply to those having paid a lower amount to the extent that actual payment is made within 90 days of the law ratifying the new regime coming into force and at the new rates.

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PART I

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

CUSTOMS DUTIES

The new UCC became effective on 1 May 2016 and is an update to customs legislation across the EU and introduced revisions to existing requirements.

The UCC is formalised by:

- Council Regulation (EU) No. 952/2013, and associated Delegated and Implementing Acts;
- Regulation (EC) No. 2015/2447 (Implementing Regulation);
- Commission Regulation (EC) No. 2015/2446 (Delegated Regulation);

According to the UCC rules, all aircraft flying into or out of EU must fly into or from a designated customs airport. The importer shall:

- Either claim custom duty relief based on:
 - Temporary importation relief, or;
 - End-use relief, ie if imported by an EU-established importer with end-use authorisation from the customs authorities of the Member State in which the aircraft will be declared.
- Or pay duty on importation on the aircraft (rates between 2.7% and 7.7% within the EU), which will be permanently imported and put in 'free circulation'.

CUSTOM DUTY RELIEF

Temporary Admission (TA)

Under certain specific conditions and restrictions, the UCC permits a temporarily imported aircraft to enter the EU with no customs documentation and no requirement to pay VAT or import duties before departure.

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be all of the following:

- Registered outside the customs territory of the EU in the name of a person established outside that territory;
- Used privately by a non-EU resident;
- Not available to EU residents within the EU boundaries unless employed or authorised by the owner or lessee.

- Imported and used by people residing in its country of registration or by third parties authorised by the owner or lessee;
- Not in the EU for more than six months in a 12-month period.

Operators have been confused by differences in the meanings of the terms 'private use' and 'commercial use' as used by the international aviation community and as applied by customs authorities in the EU; besides, not all customs authorities in the EU apply the same meaning to these terms. Having as its objective to clarify and standardise terms such as 'private use' and 'commercial use', the European Commission published a working paper on November 23, 2014, regarding TA. 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 that would result in 'commercial' use of the aircraft.
- EU residents are allowed on board but with certain restrictions;

1. Are there any additional rules applied in your jurisdiction for the Temporary Admission procedure? Also, are there any particular local interpretations of the standard rules applied by your tax authority?

There are no additional rules applied in Malta for the Temporary Admission procedure. There are also no particular local interpretations of the standard rules applied by the Malta Customs Department.

2. And more specifically how do your local customs authorities interpret 'private use' vs 'commercial use' in reference to the guidelines of the European Commission?

Who is considered as the holder of the TA authorisation from your local customs perspective in the following scenarios (eg passenger, pilot, operator, lessee):

- Privately used aircraft having non-EU passenger(s) on board;
- Privately used aircraft flying into the EU to pick up passenger(s);
- Chartered aircraft operated by a non-EU AOC holder where the operator provides pilots, crew and navigation services and the charterer exercise actual control over the aircraft.

The general rule is that the Malta Customs Department would always issue the Temporary Admission authorisation to the owner of the aircraft. For the Malta Customs Department, the holder of the Temporary Admission authorisation would also be considered to be the owner.

End-use relief

End-use is a customs procedure whereby goods entered for free circulation in the EU may be given favourable tariff treatment or relief at a reduced or zero rate of duty on condition they are put to a prescribed use.

3. Can you describe what the procedure is to claim end-use relief for aircraft importation in your jurisdiction?

To claim end-use relief, the importer must be the holder of an end-use authorisation. The practice in Malta involves applying for end-use authorisation with the Malta Customs Department by filing the appropriate application form.

A correctly completed and duly signed application form will include *inter alia*:

- The full name and address of the applicant, i.e., to whom the authorisation will be issued;
- A valid VAT registration number;
- The place and kind of accounts/ records of the applicant, that is, the place where the applicant's commercial, tax or other accounting material is located, as well as the kind of records (containing all necessary information and technical details enabling the customs authorities to supervise and control) to be used for customs procedure;
- The period of validity of the authorisation;
- The aircraft to be placed under the end-use procedure. For civil aircraft and goods used in civil aircraft, CN codes are not required;
- The estimated value of the aircraft;
- The intended end-use.

Each end-use relief application would be assessed case by case.

VAT EXEMPTION

No importation will be deemed to occur while the aircraft benefits from the TA regime for customs duties (see above). Importation will only occur at the time the aircraft is released from the suspension of duties under TA.

If an aircraft has not yet been imported for free circulation in the EU (see above) or has been released from the TA regime, it can still benefit from a VAT exemption contained in Article 148 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax Directive 2006/112/EC (the 'VAT Directive').

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;

- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;

- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

Therefore, the VAT exemption will apply to aircraft used by an airline operating 'chiefly for reward on international routes'.

The Court of Justice of the European Union (CJEU) has clarified the scope of this VAT exemption in its decision of 19 July 2012 (C-33/11 A Oy case) by answering prejudicial questions submitted by the Finnish administrative courts.

What is the concept of an aircraft 'used by an airline operating for reward'?

In the A Oy case, the CJEU has ruled that:

- Legal or equitable ownership was not required by article 148(e); the legal right to operate the aircraft seems sufficient to satisfy the 'used by' test;
- The personal use of the aircraft by the owner — when operated by an airline in the meaning of the VAT Directive — does not jeopardise the exemption, provided that the aircraft is not solely or exclusively used by the owner of the aircraft;
- An international charter operator can be considered an 'airline operating for reward chiefly on 'international routes'. Thus an 'airline' can include an operator of business and private jets who holds an Air Operator's Certificate or equivalent;
- The exemption applied to all sales of aircraft purchased 'for the purpose' of supplying them to airlines operating chiefly on international routes. By this teleological approach, the court applies the look-through principle, whereby the use made of an aircraft by its final user is decisive in evaluating whether VAT is applicable on its sale.

4. Do the tax authorities in your jurisdiction recognize and apply the analysis from A Oy and the decisions mentioned above? If they do not apply all of the conclusions mentioned above, which do they not apply and what treatment do they apply instead? Is a lease agreement sufficient to satisfy the 'used by' criteria in your jurisdiction?

Yes, the tax authorities recognise and apply the analysis from the A Oy decision and the conclusions set out therein. A lease agreement would be sufficient to satisfy the 'used by' criterion in Malta.

5. To what extent does the personal use of the aircraft by the beneficial owner impact the applicability of the VAT exemption in your jurisdiction? Are any specific tests or percentages applied to restrict this?

The Maltese tax authorities have (on a case-by-case basis) accepted that an AOC issued by the Civil Aviation Authority in favour of operators should satisfy the 'airline operator' definition

for the purposes of the exemption. Presentation of an AOC and evidence that the aircraft will be used in terms of the AOC would be sufficient for the exemption to apply.

There are no official specific tests or percentages applied to restrict the applicability of the VAT exemption.

6. Is it a requirement in your jurisdiction that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment? If so how are these tested, eg owner referred to in contract, preferential rates or availability etc?

No, it is not a requirement in Malta that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment.

What does 'chiefly on international routes' mean?

In the *Cimber Air* case (C-382-02), the CJEU decided on 16 September 2004 that the VAT exemption is linked to the overall status of the airline and not to the qualification of the specific flight, which may be domestic. It is for the national courts to establish, upon review of each individual case, whether an airline satisfies relevant conditions, although the proportion of the turnover related to international flights of the specific airlines may provide guidance.

7. Can you indicate what percentage of international traffic is required for an airline to qualify for the VAT exemption in your jurisdiction? If this is not tested by way of percentage, what alternative tests are applied? Do the tax authorities in your jurisdiction accept that 'international' includes flights to and from their home country rather than just flights to and from the EU territory as a whole?

There are no specific rules and/or guidelines on what percentage of international traffic is required for an airline to qualify for the VAT exemption in Malta.

Yes, the tax authorities in Malta accept that 'international' includes flights to and from their home country rather than just flights to and from the EU territory as a whole.

8. Can you indicate whether a qualifying airline can also benefit from VAT exemption for domestic flights (cf the *Cimber Air* case)?

There are no domestic flights within the jurisdiction of Malta. That said, from a Maltese VAT perspective, the exemption would not be applicable to an airline that operates purely domestic routes, should the case arise.

PERMANENT IMPORTATION

An aircraft is fully/permanently imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country.

The result of permanent importation is that the aircraft has a free circulation status within the EU, ie there are no restrictions for the period of stay in the EU and no restrictions for carrying EU residents for flights within the EU). However, this free circulation status may be lost under certain conditions.

9. Can you indicate what customs duty rate is applicable in your jurisdiction to an aircraft's permanent importation?

The Import Duties Act (Cap. 337 of the laws of Malta) lists different rates of duty applicable to the permanent importation of an aircraft in Malta. The rates depend on the size and qualification of the aircraft, as follows:

H.S Code Number	Description	Rate
88.02	Other aircraft (for example, helicopters, aeroplanes); space- craft (including satellites) and suborbital and spacecraft launch vehicles	N/A
8802.12.10.00	Aeroplanes and other aircraft, of an unladen weight not exceeding 2000kg:	
8802.20.10.00	• Civil Aircraft	0
8802.20.90.00	• Other	7,7
8802.30	Aeroplanes and other aircraft, of an unladen weight* exceeding 2000kg but not exceeding 15,000kg:	
8802.30.10.00	• Civil Aircraft	0
8802.30.90.00	• Other	5,5

*The expression 'unladen weight' refers to the weight of the aircraft in normal flying order, excluding the weight of the crew and of fuel and equipment other than permanently fitted items of equipment.

10. Can you indicate what VAT rate is applicable for a permanent importation in your jurisdiction and for reimportation?

The VAT rate applicable for a permanent importation is 18%. This is the standard VAT rate applicable in Malta. Other rates, such as 7% and 5%, may be applicable in specific cases, however these are relevant to the current context. As will be discussed further below, VAT exemptions do exist for aircraft-related activities.

Where the aircraft is imported for commercial purposes, it is possible to apply to the tax authorities to defer the VAT payment to the point when VAT is reclaimable on the first VAT return. This is intended to avoid VAT payment obligations affecting cash flow. In such case, the importer would be required to prove commercial purposes.

On the contrary, when the aircraft is imported for private use, VAT becomes a cost. However, there is the possibility of putting a VAT leasing scheme into effect. In terms of the Maltese aircraft VAT leasing scheme and to the extent that the aircraft is imported through Maltese customs while the aircraft is physically in Malta, it may be possible to achieve an effective VAT rate that is substantially lower than the standard rate of VAT. The scheme is based on the EU use and enjoyment rules, which intended to ensure that services are taxed where they are actually used and enjoyed. The tax authorities issued guidelines in 2016 clarifying the VAT treatment of aircraft leased by Maltese companies. In terms of the said guidelines, the main parameters of the scheme are that:

- A lessor contracts the use of an aircraft to a lessee in terms of a lease agreement;
- After the end of the lease period, the lessee may opt to purchase the aircraft at a percentage of the original cost – this consideration must be separate from the lease payments;
- The chargeable portion of the lease is based on the estimated time that the aircraft is used in EU airspace;
- VAT is charged at the normal 18% VAT rate on the established percentage of the lease deemed to relate to the use of the aircraft in EU airspace – the basis for determining the extent of use and enjoyment within EU is aircraft type by range (km);
- The lease agreement must be between a lessor that is established in Malta and a lessee that is also established in Malta and is not eligible to recover input tax in respect of the lease;
- The lease agreement must not exceed a period of 60 months and lease instalments are payable every month;
- Tax authorities have the right to require the lessor to submit details regarding the use of aircraft;
- The scheme is subject to prior approval from the tax authorities, which assess each application on its own merits;
- Where, after the end of the lease, the lessee exercises the option to purchase the aircraft and pays VAT on it at 18%, a VAT paid certificate is issued.

For the purposes of the scheme, it is imperative to establish the aircraft's market value, which must be subject to independent assessment and be provided by the registering party. A surveyor's report on the aircraft from an accredited individual or organisation must be provided to the tax authorities, clearly identifying market value, age, airworthiness status and present condition. Moreover, an aircraft technical data sheet with all the necessary supporting documents will need to be completed and filed with the tax authorities.

The maximum deemed percentage of use outside the EU according to the formula is 70%, while the minimum is 40%.

Insofar as reimportation is concerned, the VAT Act (Cap. 406 of the laws of Malta) provides an exemption for the reimportation by the

person who exported outside the EU:

- Of goods in the state in which they were exported outside the EU;
- Of goods that, outside the EU, have undergone repair, transformation or adaptation, or have been made up or reworked. This is provided that the exemption is limited to the value of the goods at the time they were exported outside the EU.

PART II

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

FUEL TAX EXEMPTION

Directive 2003/96/EC (Energy Tax Directive)

- Article 14(1)(b) provides that:

The Member States shall exempt energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

For the purposes of this Directive 'private pleasure-flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21);

- Article 14 (2) provides that:

Member States may limit the scope of this exemptions to international and intra-Community transport (ie tax aviation fuel for domestic flight). In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in 14(1)(b) In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

- Article 15 (1) (j) provides that:

Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships.

In two decisions dated 1 December 2011 (C-79-10) and 21 December 2011 (C-250-10), the CJEU has given the following interpretation of these articles.

Article 14(1)(b) must be interpreted as meaning that the tax exemption on air fuel used for the purpose of air navigation other than private tourism cannot apply in the case of a company which, to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not directly used for the supply, by that company, of air services for consideration (C-79-10) when it leases or hires out under a charter an aircraft belonging to it with fuel to undertakings whose air navigation operations are not directly used for the supply, by those undertakings, of air services for consideration (C 250-10).

Article 15(1)(j) must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision. (C-79-10).

11. Can you explain how Article 14 (1)(b) of the ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

Article 14(1)(b) of the ETD Directive 2003/96/EC has been transposed into Maltese law through amendments to the Excise Duty Act (Cap. 382 of the laws of Malta). Specifically, the Fourth Schedule to the Excise Duty Act, treating energy products, provides that the excise duty treatment for kerosene, which falls within CN Codes 2710.19.21 (ie jet fuel, kerosene type) and 2710.19.25 (ie kerosene, excluding jet fuel) is €472.40 per 1000 litres. This was increased from an excise duty charge of €442.49 per 1000 litres as from 1 January 2016. It is also pertinent to note that the European Commission website portal that lists the excise duty on energy products and electricity in all Member States provides that the Maltese minimum tax liability for kerosene used as a propellant is an excise duty charge of €330 per 1000 litres.

If, on the other hand, the kerosene falling within the aforementioned CN Codes is used either for air navigation between Malta and Gozo, the sister island of Malta, or for testing and maintenance of aircraft engines, it will attract an excise duty charge of €72.21 per 1000 litres.

The Fourth Schedule also provides that the aforementioned kerosene, when used by private pleasure aircraft for direct voyages to destinations outside the European Union, attracts no excise duty charge.

12. How do your customs authorities interpret the concept of 'private pleasure flying'?

The Malta Customs Department has, to date, not issued any official guidance note on the interpretation of the term 'private pleasure flying'. However, the term is defined in the Excise Duty (Goods Imported by Persons Travelling from Third Countries) Regulations (Subsidiary Legislation 382.02 to the Excise Duty Act, of the Laws of Malta). The definition is borrowed, *ad litteram*, from Article 14(1)(b) of the ETD Directive 2003/96/EC.

13. Can you indicate whether a tax on aviation fuel is applied for domestic flight/intra-EU flight ?

Please refer to our answer to Question 11.

14. Can you explain how Article 15(1)(j) ETD Directive 2003/96/EC exemption is implemented in your jurisdiction ?

Malta has transposed Article 15(1)(j) of the ETD Directive 2003/96/EC by applying a partial reduction in the level of taxation to kerosene falling within CN Codes 2710.19.21 and 2710.19.25 for the testing and maintenance of aircraft engines. As stated in our response to Question 11, the said energy product will attract an excise duty charge of €72.21 per 1000 litres. The partial reduction has not been extended to kerosene used for manufacturing and development of aircraft, as is provided for in Article 15(1)(j).

VAT EXEMPTION

International passenger transport services

Art. 371 of the Directive 2006/112/EC ('the VAT Directive') provides for the extension of the existing VAT exemption or being 'zero-rated' for VAT to international passenger transport services, where:

- 'International' includes intra-EU flights;
- The qualification of the flight as commercial or non-commercial is not relevant.

15. How is this VAT exemption for international passenger transport applied in your jurisdiction and what conditions are imposed, if any?

The VAT exemption (with credit) afforded to international passenger transport by the VAT Act is broadly similar to the VAT exemption in section 10 of Part B to Annex A of the VAT Directive. The international transport of persons, the transport of luggage and motor vehicles accompanying passengers and the supply of services related to the international transport of passengers fall within the list of services that are exempt with credit supplies (ie no VAT is charged on such transactions; however, the supplier is entitled to recover input VAT to the extent that it is incurred in the course of or in furtherance of its economic activity), as specified in item 4(1) of Part One of the Fifth Schedule to the VAT Act. No additional conditions are imposed.

Insofar as a Maltese company is considered to be providing services related to the international transport of passengers, then these services should be considered exempt with credit supplies.

Supply of goods and services

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
- The supply of services, with some excluded, to meet the direct

needs of the aircraft or of their cargoes.

On the concept of 'aircraft used by airlines operating for reward chiefly on international routes', see questions 4 to 7.

16. Do the VAT authorities in your jurisdiction consider management charges to fall under the scope of article 148 of the VAT Directive? If so, are there any particular supplies that they include or exclude from this exemption?

By way of background, Article 148 of the VAT Directive, specifically sub-article (g), has been transposed into item 7 of Part 1 of the Fifth Schedule to the VAT Act. It provides for an exemption with credit for services provided to airline operators related to aircraft. When referring to the supply of services to an airline operator for the direct needs of the aircraft and their cargo, the exemption extends to services consisting of:

- Towage;
- Pilotage;
- Rescue services;
- Valuation;
- Use of airports;
- Services provided to aircraft operators by their agents acting as such;
- Services necessary for the landing, take-off or stay in airports;
- Assistance provided to passengers or crew for the account of the airline operators.

The VAT authorities have, to date, not issued any official guidance on whether management services may fall within scope of Article 148 of the VAT Directive.

In practice, in the absence of guidelines, it may be possible to obtain written confirmation from the VAT Authorities that particular management services are exempt. This depends on, inter alia:

- The management agreement in place (if any);
- The nature of the aircraft-related services supplied;
- Whether the services are considered to constitute separate supplies or a single supply of management services.

With respect to separate supplies (e.g. maintenance services, administrative services and so on) the VAT treatment of each of the services would be considered separately and it is possible that some services may be considered to be exempt while other services would not. A single management service would fall within the VAT exemption if it was considered to principally constitute one of the services listed in the exemption. However, it may be argued that it is unlikely that a general management service per

se could be seen to fall within the exemption of aircraft-related services since the exempt services are quite specific. In practice, it would need to be considered case by case.

It is pertinent to note that any confirmation to this effect would not constitute a formal tax ruling and would not be strictly binding on the Maltese tax authorities, but could be considered to provide a reasonably realistic indication of how the Maltese tax authorities would view these management services.

17. Do the VAT authorities in your jurisdiction consider that intermediaries in the supply chain should recover VAT on supplies they receive?

The supply of services by intermediaries who act in the name and for the account of another person when that person takes part in the operations exempted under item 7 of Part 1 of the Fifth Schedule to the VAT Act, ie services related to aircraft (as described in our reply to Question 16) are also considered to be exempt with credit supplies. Therefore, no VAT will be charged on such transactions; however, the intermediary will be entitled to recover input VAT to the extent that it is incurred in the course of or in furtherance of the intermediary's economic activity.

18. Do the tax authorities in your jurisdiction expect that the recipient of the supplies of goods and services in the scope of article 148 of the VAT Directive should be a VAT-taxable entity?

On the assumption that the reference to a 'VAT-taxable entity' is a reference to a taxable person, ie a person who carries on an economic activity, whatever the purpose or result of that activity, the answer to this question would be in the affirmative.

VAT REFUND

Directive 2008/9/EC (VAT Refund – EU business) and Directive 86/560/EEC (VAT Refund – non-EU business)

When no exemption applies and VAT has been paid, input VAT may be refunded. A taxable entity is allowed to deduct the VAT paid on deliveries (purchases) insofar as the goods or services are used for its business activities.

The EU directive that became effective on 1 January 2010 (ie Directive 2008/09/EC) introduced a new procedure for businesses established and registered for VAT purposes within the EU to request a refund of VAT incurred in other EU member states.

The changes made by Directive 2008/09/EC do not affect refund claims by businesses that are not established or VAT-registered in an EU member state. Such businesses still recover VAT incurred in EU member states according to the procedure in the 13th VAT Directive.

19. Can you describe how the VAT refund directive provisions are implemented in your jurisdiction and what evidence the tax authorities require to make the repayment?

Directive 86/560/EEC (13th VAT Directive)

This directive is transposed into Maltese legislation via the Refund of VAT to Taxable Persons Not Established in the Territory of the Community Regulations (S.L. 406.11 of the Laws of Malta). These regulations provide that the Commissioner for Revenue shall refund to any taxable person not established within the territory of the EU any VAT charged in respect of the importation of goods into Malta, in so far as such goods and services are used for the purposes of the provision of the transport services referred to in the regulations. The person established outside the EU applying for the VAT refund is to fill in a form prescribed by the regulations, which is to be submitted to the Commissioner for Revenue. The application is to contain information and documentation proving that the importation by the person applying for the VAT refund has taken place. The application must include:

- An official certificate endorsed by the competent authority of the country where that taxable person is registered for VAT purposes or where they exercise their economic activity;
- The original valid invoices or valid documents referring to the importation.

The application will then be decided upon by the Commissioner for Revenue within six months from the date on which the commissioner has received these documents.

Directive 2008/9/EC

This directive is transposed into Maltese legislation via the Refund of Value Added Tax to Taxable Persons Not Established in Malta

but Established in Another Member State Regulations (S.L. 406.10 of the Laws of Malta). These regulations apply when the importer is established in an EU Member State other than Malta.

The application must be submitted to the Commissioner for Revenue, who will refund to any taxable person not established in Malta any VAT charged in respect of the importation of goods into Malta, insofar as those goods and services are used for an economic activity by the person applying for the VAT refund.

To be eligible for a VAT refund, the taxable person not established in Malta must carry out transactions giving rise to a right of deduction in the Member State where the person is established. The taxable person will address an electronic refund application to the Commissioner for Revenue and submit it to the Member State in which he is established. The refund application would inter alia state the applicant's personal data and a description of the applicants business activity for which the goods and services are acquired and the refund period covered by the application. The Commissioner for Revenue may require the applicant to submit a copy of the invoice or the importation document with the refund application where the taxable amount on an invoice is €1000 or more. The Commissioner for Revenue may also require a description of the business activity of the applicant.

PART III

SPECIFIC NATIONAL TAXES APPLICABLE TO BUSINESS AVIATION ACTIVITIES

20. Could you indicate what other specific national taxes are applicable to business aviation in your jurisdiction (eg luxury tax in Italy, APD in the UK), if any, and what are the rules for applying these taxes?

There are no other specific national taxes in place (other than VAT, duty and income tax) applicable to business aviation in Malta.

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TURKEY

Turkey does not fall under the jurisdiction of EU legislation and the decisions of the Court of Justice. For this reason, the presentation relating to Turkey does not follow the same scheme as applied to the other countries. There are four types of tax that may apply to aviation related lease payments, loan payments and transfers of aircraft. These are stamp tax, VAT, motor vehicle tax and corporate tax/withholding tax. You may find below our explanations concerning the above-mentioned aspects of the Turkish tax system.

STAMP TAX

Pursuant to Turkish stamp tax law, all documents executed in Turkey such as the contracts, agreements, commitments, guarantees, etc., attract stamp tax. Documents executed outside of Turkey are not subjected to the stamp tax until (i) such documents are submitted to a governmental authority in Turkey, (e.g., CAD, the Association, etc.); (ii) are transferred or endorsed in Turkey; or (iii) their provisions are benefited in Turkey. In the case of any of those conditions, stamp tax will be applicable even if they are executed outside Turkey. In the case of any of those conditions, stamp tax will be applicable even if they are executed outside in Turkey. Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payroll. It is either levied as a percentage of the highest monetary amount stated on the loan agreements at a rate of 0.948 per cent or fixed. The stamp tax threshold that will be applied for 2018 is 2.135.949,30 Turkish Liras. Stamp tax is payable by the parties who sign a document. According to the leasing law, financial leasing agreements and documents concerning the transfer and amendment of these contracts, as well as those prepared for their collateral, are exempted from stamp tax.

VAT

Delivery of goods and services related to commercial, industrial, agricultural and professional activities, Importation of all types of goods and services, Delivery of goods and services related to other operations are subject to a VAT at a rate of 18%. However, pursuant to the VAT Law "Delivery of sea, air and railway vehicles or floating establishment and vehicles, deliveries related to production or construction of these vehicles and the services and activities arise from modification, repair and maintenance of these vehicles, to taxpayers whose activities are renting or operating of sea, air and railway vehicles." are exempt from VAT. Of course, in order to enjoy the benefit of this exemption the buyer must be a Turkish entity.

Furthermore, VAT rate as 1% for the payments regarding an air vessel lease made by the lessee if the said lessee is mainly involved in airline business.

MOTOR VEHICLE TAX

The amount of the vehicle tax to incur on an aircraft will be determined depending on the age and the maximum take-off weight of the respective aircraft. The vehicle tax must be paid by the party under the name of whom the aircraft will be registered with the CAD. If the lessee has an aircraft operating certificate and if the lessee is the operator of the aircraft, then the vehicle tax

is paid by and in the name of the lessee. If the lessee does not have an aircraft operating certificate and the aircraft is operated by another third party, then the vehicle tax is paid by the operator. Without the evidence proving that the vehicle tax is paid, the aircraft cannot be assigned, deregistered or exported.

CORPORATE TAX/WITHHOLDING TAX

Under the Corporate Tax Law, certain Turkish source income, as specified therein -such as rental income- payable to non-resident companies are subject to Turkish corporate income tax by way of withholding deducted at source. The general withholding tax rate is 15%. The Council of Ministers is authorized by the Corporate Tax Law to determine the rate of withholding tax which is applicable to different profits and incomes derived by non-resident entities based on their fields of operations and to reduce it to zero or to increase the rate to 30%. In accordance with such authority, the Council of Ministers determined the withholding tax rate for the lease payments paid by Turkish residents to non-resident lessor as 20% (1% for financial lease).

Unless it is attributable to a permanent establishment run by a non-resident company in Turkey, withholding tax is the final Turkish tax on the income of a non-resident company, and the non-resident company is not further required to register and report in Turkey for such Turkish source income.

There are charges for parking the aircraft which are paid to the General Directorate of State Airports Authority and other than the foregoing, the CAD's service fees apply for registration and de-registration of aircraft in Turkey. In addition, before de-registering an aircraft, any and all debts must be cleared to the General Directorate of State Airports Authority as well as the Eurocontrol charges. Although such costs are required to be paid by the operator, in case of repossession such costs will need to be paid by the party repossessing the aircraft if the operator fails to do so.

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PART I CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

CUSTOMS DUTIES

The new UCC became effective on 1 May 2016 and is an update to customs legislation across the EU and introduced revisions to existing requirements.

The UCC is formalised by:

- Council Regulation (EU) No. 952/2013, and associated Delegated and Implementing Acts;
- Regulation (EC) No. 2015/2447 (Implementing Regulation);
- Commission Regulation (EC) No. 2015/2446 (Delegated Regulation).

According to the UCC rules, all aircraft flying into or out of EU must fly into or from a designated customs airport.

The importer shall:

- Either claim custom duty relief based on:
 - Temporary importation relief, or;
 - End-use relief, ie if imported by an EU-established importer with end-use authorisation from the customs authorities of the Member State in which the aircraft will be declared*;
- Or pay duty on importation on the aircraft (rates between 2.7% and 7.7% within the EU), which will be permanently imported and put in 'free circulation'.

CUSTOM DUTY RELIEF

Temporary Admission (TA)

Under certain specific conditions and restrictions, the UCC permits a temporarily imported aircraft to enter the EU with no customs documentation and no requirement to pay VAT or import duties before departure.

To qualify for TA and be eligible for conditional relief of customs duties and VAT, the aircraft must be all of the following:

- Registered outside the customs territory of the EU in the name of a person established outside that territory;
- Used privately by a non-EU resident;

- Not available to EU residents within the EU boundaries unless employed or authorised by the owner or lessee;

- Imported and used by people residing in its country of registration or by third parties authorised by the owner or lessee;

- Not in the EU for more than six months in a 12-month period;

Operators have been confused by differences in the meanings of the terms 'private use' and 'commercial use' as used by the international aviation community and as applied by customs authorities in the EU; besides, not all customs authorities in the EU apply the same meaning to these terms. Having as its objective to clarify and standardise terms such as 'private use' and 'commercial use', the European Commission published a working paper on November 23, 2014, regarding TA. 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 that would result in 'commercial' use of the aircraft;
- EU residents are allowed on board but with certain restrictions.

1. Are there any additional rules applied in your jurisdiction for the Temporary Admission procedure? Also, are there any particular local interpretations of the standard rules applied by your tax authority?

No.

2. And more specifically how do your local customs authorities interpret 'private use' vs 'commercial use' in reference to the guidelines of the European Commission?

Who is considered as the holder of the TA authorisation from your local customs perspective in the following scenarios (eg passenger, pilot, operator, lessee):

- Privately used aircraft having non-EU passenger(s) on board;
- Privately used aircraft flying into the EU to pick up passenger(s);
- Chartered aircraft operated by a non-EU AOC holder where the operator provides pilots, crew and navigation services and the charterer exercise actual control over the aircraft.

The UK's HMRC appears to follow the EC guidelines.

* Please note that the EU Commission has stated that from 1 January 2018 a simplification applies that removes the need for customs approval for duty relief and reduces the requirement down to carrying a Certificate of Registration on the aircraft. Information on the implementation of this new simplification is still awaited.

End-use relief

End-use is a customs procedure whereby goods entered for free circulation in the EU may be given favourable tariff treatment or relief at a reduced or zero rate of duty on condition they are put to a prescribed use.

The EU Commission has now announced a simplification due to apply from 1 January 2018 whereby there is no requirement for customs approval for duty relief and reduce the requirement down to carrying a Certificate of Registration on the aircraft. Very little formal information on implementation has yet been provided.

3. Can you describe what the procedure is to claim end-use relief for aircraft importation in your jurisdiction?

End-use relief has been removed for aircraft and is now fully simplified with effect from 1 January 2018.

VAT EXEMPTION

No importation will be deemed to occur while the aircraft benefits from the TA regime for customs duties (see above). Importation will only occur at the time the aircraft is released from the suspension of duties under TA.

If an aircraft has not yet been imported for free circulation in the EU (see above) or has been released from the TA regime, it can still benefit from a VAT exemption contained in Article 148 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax Directive 2006/112/EC (the 'VAT Directive').

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply, hiring, repair and maintenance of equipment incorporated or used in it;
- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

Therefore, the VAT exemption will apply to aircraft used by an airline operating 'chiefly for reward on international routes'.

The Court of Justice of the European Union (CJEU) has clarified the scope of this VAT exemption in its decision of 19 July 2012 (C-33/11 A Oy case) by answering prejudicial questions submitted by the Finnish administrative courts

What is the concept of an aircraft 'used by an airline operating for reward'?

In the A Oy case, the CJEU has ruled that:

- Legal or equitable ownership was not required by article 148(e); the legal right to operate the aircraft seems sufficient to satisfy the 'used by' test;

- The personal use of the aircraft by the owner — when operated by an airline in the meaning of the VAT Directive — does not jeopardise the exemption, provided that the aircraft is not solely or exclusively used by the owner of the aircraft;

- An international charter operator can be considered an 'airline operating for reward chiefly on 'international routes'. Thus an 'airline' can include an operator of business and private jets who holds an Air Operator's Certificate or equivalent;

- The exemption applied to all sales of aircraft purchased 'for the purpose' of supplying them to airlines operating chiefly on international routes. By this teleological approach, the court applies the look-through principle, whereby the use made of an aircraft by its final user is decisive in evaluating whether VAT is applicable on its sale.

4. Do the tax authorities in your jurisdiction recognize and apply the analysis from A Oy and the decisions mentioned above? If they do not apply all of the conclusions mentioned above, which do they not apply and what treatment do they apply instead? Is a lease agreement sufficient to satisfy the 'used by' criteria in your jurisdiction?

The UK and Isle of Man tax authorities recognise and accept A Oy and the other cases mentioned, apart from the comments below about private use. There are no particular restrictions on the use of leases, although the UK is dubious about how genuine a business is that only has one aircraft/lease and is likely to challenge a registration application in these circumstances.

5. To what extent does the personal use of the aircraft by the beneficial owner impact the applicability of the VAT exemption in your jurisdiction? Are any specific tests or percentages applied to restrict this?

The UK's HMRC's view is that where the aircraft is not wholly used for business purposes, ie that there is some private use, then the aircraft cannot be considered a qualifying aircraft. It is not clear that this policy of requiring an aircraft to be 'wholly' qualifying has any basis either in UK or in EU law and appears to be the one area where HMRC does not accept the decision in A Oy. This means that the aircraft can be entirely qualifying where its sole use is charter flights provided through an AOC but doesn't allow the zero rating/exemption for any supplies not made through the AOC.

6. Is it a requirement in your jurisdiction that the aircraft is chartered to third parties, that the owner is treated as a normal third party and that the owner must not receive any beneficial treatment? If so how are these tested, eg owner referred to in contract, preferential rates or availability etc?

HMRC looks very carefully at any beneficial treatment applied to beneficial owners, eg in contracts or pricing, and might consider that this affects whether there is a genuine charter business being

conducted – something that might ultimately cause the VAT registration to be cancelled and VAT to become due on the aircraft. What does ‘chiefly on international routes’ mean?

In the *Cimber Air* case (C-382-02), the CJEU decided on 16 September 2004 that the VAT exemption is linked to the overall status of the airline and not to the qualification of the specific flight, which may be domestic. It is for the national courts to establish, upon review of each individual case, whether an airline satisfies relevant conditions, although the proportion of the turnover related to international flights of the specific airlines may provide guidance.

7. Can you indicate what percentage of international traffic is required for an airline to qualify for the VAT exemption in your jurisdiction? If this is not tested by way of percentage, what alternative tests are applied? Do the tax authorities in your jurisdiction accept that ‘international’ includes flights to and from their home country rather than just flights to and from the EU territory as a whole?

HMRC allow a reasonable majority percentage test to demonstrate that the airline operates chiefly on international routes, eg number of flights or seats etc.

8. Can you indicate whether a qualifying airline can also benefit from VAT exemption for domestic flights (cf the *Cimber Air* case)?

Yes, this should be possible under the UK’s domestic VAT exemption (zero rate) for passenger transport but it is not often found in practice as airlines would typically use the airline exemption. There may be limited circumstances where domestic VAT exemption is applied.

PERMANENT IMPORTATION

An aircraft is fully/permanently imported into the EU when it is brought into a particular EU member country and the owner pays all applicable customs duties and VAT imposed in that country.

The result of permanent importation is that the aircraft has a free circulation status within the EU, ie there are no restrictions for the period of stay in the EU and no restrictions for carrying EU residents for flights within the EU). However, this free circulation status may be lost under certain conditions, for example, where the aircraft is physically outside the EU for three years or more or there is a change of title while it is outside the EU.

9. Can you indicate what customs duty rate is applicable in your jurisdiction to an aircraft’s permanent importation?

The duty is 2.7% for all aircraft with an empty operating weight above 2000 kg, but it can be higher for smaller aircraft and helicopters. (See above for the removal of end-use restrictions so long as the aircraft is on a civilian registry.)

10. Can you indicate what VAT rate is applicable for a permanent importation in your jurisdiction and for reimportation?

The rate is 20% at the standard rate unless the zero rate (0%) for the qualifying airline exemption applies.

PART II

CUSTOMS AND TAX ISSUES WHEN IMPORTING AN AIRCRAFT

FUEL TAX EXEMPTION

Directive 2003/96/EC (Energy Tax Directive)

- Article 14(1)(b) provides that:

The Member States shall exempt energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

For the purposes of this Directive ‘private pleasure-flying’ shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities. Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21);

- Article 14 (2) provides that:

Member States may limit the scope of this exemptions to international and intra-Community transport (ie tax aviation fuel for domestic flight). In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in 14(1)(b) In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

- Article 15 (1) (j) provides that:

Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships.

In two decisions dated 1 December 2011 (C-79-10) and 21 December 2011 (C-250-10), the CJEU has given the following interpretation of these articles.

Article 14(1)(b) must be interpreted as meaning that the tax exemption on air fuel used for the purpose of air navigation other than private tourism cannot apply in the case of a company which, to develop its business, uses its own aircraft to transport members of its staff to clients or to trade fairs, in so far as that travel is not directly used for the supply, by that company, of air services for consideration (C-79-10) when it leases or hires out under a charter

an aircraft belonging to it with fuel to undertakings whose air navigation operations are not directly used for the supply, by those undertakings, of air services for consideration (C 250-10)

Article 15(1)(j) must be interpreted as meaning that the fuel used for the purpose of flights to and from an aircraft maintenance facility does not fall within the scope of that provision. (C-79-10).

11. Can you explain how Article 14 (1)(b) of the ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

Please see response to question 12.

12. How do your customs authorities interpret the concept of 'private pleasure flying'?

This is a complicated issue in the UK and needs careful consideration. In general the exemption is only applied to ticketed and overseas flights but there is some confusion in the industry around the intended application of the exemption.

13. Can you indicate whether a tax on aviation fuel is applied for domestic flight/intra-EU flight?

The exemption applies to flights across borders but not to domestic flights unless they are already exempt under the 'private pleasure' exemption.

14. Can you explain how Article 15(1)(j) ETD Directive 2003/96/EC exemption is implemented in your jurisdiction?

Please see response to question 12.

VAT EXEMPTION

International passenger transport services

Art. 371 of the Directive 2006/112/EC ('the VAT Directive') provides for the extension of the existing VAT exemption or being 'zero-rated' for VAT to international passenger transport services, where:

- 'International' includes intra-EU flights;
- The qualification of the flight as commercial or non-commercial is not relevant.

15. How is this VAT exemption for international passenger transport applied in your jurisdiction and what conditions are imposed, if any?

Passenger transport is zero rated in the UK for vehicles designed or adapted to carry ten or more passengers for scheduled flights within the UK. This local exemption excludes pleasure transport or transport that is not for the purpose of travelling from A to B. The VAT exemption applies for travel to or from the UK as international passenger transport would apply to international flights.

Supply of goods and services

Art. 148 of the VAT Directive exempts the following:

- The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for reward chiefly on international routes;
- The supply, modification, repair, maintenance, chartering and hiring of the aircraft and the supply; hiring, repair and maintenance of equipment incorporated or used in it;
- The supply of services, with some excluded, to meet the direct needs of the aircraft or of their cargoes.

On the concept of 'aircraft used by airlines operating for reward chiefly on international routes', see questions 4 to 7.

16. Do the VAT authorities in your jurisdiction consider management charges to fall under the scope of article 148 of the VAT Directive? If so, are there any particular supplies that they include or exclude from this exemption? Is there any restriction on the application of the exemption where the aircraft is not 'wholly' used for commercial flights, ie where there is some direct use by the ultimate beneficial owner of the aircraft? If so, how is this applied?

Yes, handling supplies to an aircraft are zero rated under Article 148 when supplied from within the confines of a customs and excise airport.

Please see question 5 above. Recharges of direct costs to the owner are not treated as entitled to the exemption where, for example, the beneficial owner uses the aircraft otherwise than as a normal third party charter hire. In these circumstances, HMRC may determine that the whole management charge is not entitled to exemption.

Question 17: Do the VAT authorities in your jurisdiction consider that intermediaries in the supply chain should recover VAT on supplies they receive?

Subject to the normal rules — yes.

18. Do the tax authorities in your jurisdiction expect that the recipient of the supplies of goods and services in the scope of article 148 of the VAT Directive should be a VAT-taxable entity?

Yes

VAT REFUND

Directive 2008/9/EC (VAT Refund – EU business) and Directive 86/560/EEC (VAT Refund – non-EU business)

When no exemption applies and VAT has been paid, input VAT may be refunded. A taxable entity is allowed to deduct the VAT paid on deliveries (purchases) insofar as the goods or services are used for its business activities.

The EU directive that became effective on 1 January 2010 (ie Directive 2008/09/EC) introduced a new procedure for businesses established and registered for VAT purposes within the EU to request a refund of VAT incurred in other EU member states.

The changes made by Directive 2008/09/EC do not affect refund claims by businesses that are not established or VAT-registered in an EU member state. Such businesses still recover VAT incurred in EU member states according to the procedure in the 13th VAT Directive.

19. Can you describe how the VAT refund directive provisions are implemented in your jurisdiction and what evidence the tax authorities require to make the repayment?

Any claimant can make a request to recover VAT incurred in another member state through an electronic portal system using their own VAT number. Alternatively, this refund request may be processed by an agent – again using an electronic portal set up under the agent's client portal. Copies of all invoices need to be uploaded as part of the process.

PART III

SPECIFIC NATIONAL TAXES APPLICABLE TO BUSINESS AVIATION ACTIVITIES

20. Could you indicate what other specific national taxes are applicable to business aviation in your jurisdiction (eg luxury tax in Italy, APD in the UK), if any, and what are the rules for applying these taxes?

Air Passenger Duty applies per passenger per departing flight to all aircraft over 5700 kg. The fees applied vary depending on the class of flight and the ultimate location of destination. APD is payable by the operator but airlines generally pass this cost on to the passenger.

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CHAPTER 3

National Registries Comparison Table



NATIONAL REGISTRIES COMPARISON TABLE

EU Jurisdiction	Type of registry	Separate registry to record rights in aircraft (in addition to CAA)	Originals required / pdf accepted	Notari- sation	Apostille	Certified translation / English accepted	Ad valorem fees/duties
Austria	Operator registry	No	Originals	No	No	English and German accepted	The registration fee is based upon weight: the maximum fee is EUR 2.893 for aircraft of more than 20.000 kg
Belgium	Operator registry	National elec- tronic registry of pledges over movable goods	Originals are usually required	No	No	The official forms are in French, Dutch or German - however, English is often accepted.	No
France	Title	No	Originals (1)	No	No	English accepted (2)	No

Timing (from application to registration)	Evidence of authority (originals/copies) (notarisation)	Prior approval of court or	Online registration	Official excerpt available online	Forms available online	Special procedure for fractional ownership	Notes
Within a few days of the submission of all documents	Excerpt from commercial register or certificate of incorporation, power(s) of attorney for complete chain of authorisation	No	No	The Austrian aircraft register can be searched online under https://www.austrocontrol.at/luftfahrtbehoerde/luftfahrzeuge/lfz_register/online-abfrage . No official excerpts are available.	Forms are available online at https://www.austrocontrol.at/luftfahrtbehoerde/luftfahrzeuge/lfz_register	No	
When the documentation is completed, the registration certificate may be issued on the same date; however most of the time, the certificate is issued the following day. Same day closing/registration is difficult.	Certificate of incorporation, board minutes and/or power(s) of attorney (no notarisation required)	No	No	No - however, a non-official excerpt is available online.	Yes	Yes - all different owners need to be communicated to the BCAA even if they will not be indicated on the registration certificate.	
One or two hours - same day closing/registration is possible (3).	Certificate of incorporation, board minutes and/or power(s) of attorney (from CEO to signatory), specimen of signatures (copies) (no notarisation required)						

NATIONAL REGISTRIES COMPARISON TABLE

EU Jurisdiction	Type of registry	Separate registry to record rights in aircraft (in addition to CAA)	Originals required / pdf accepted	Notari-sation	Apostille	Certified translation / English accepted	Ad valorem fees /duties	Timing (from application to registration)
Germany	Owner registry (1)	Yes, register of registered liens in aircraft (Pfandrechts-register für Luftfahrzeuge)at the Local Court Braunschweig (2)	Originals	No	No	English and German accepted	No (3)	2-4 Weeks (4)
Isle of Man	Title	No	Pdf accepted	No	No	English accepted (2)	No	1 working day NOTE - The process for registration and issue of certificates required for operation, in its entirety, typically takes up to 15 working days.
Italy	Both owner and operator	No	Originals required	Yes	Required only for foreign documents.	English documents are accepted if accompanied by a certified translation.	Ad valorem fees only for mortgages. Fixed fees for other registrations.	Usually, two or three business days from the date of filing

Evidence of authority (originals/copies) (notarisation)	Prior approval of court or	Online registration	Official excerpt available online	Forms available online	Special procedure for fractional ownership	Notes
Excerpt from commercial register, power(s) of attorney for complete chain of authorisation	No	No (5)	No	Yes	No	(1) The CAA's aircraft register serves a public function, i.e. to provide for air traffic safety; the register does not serve the purpose to record existing ownership interests as proof towards third parties. The aircraft register can list the name of the operator of the aircraft; however, this is subject to the operator's consent. (2) To register a registered lien all documents must be notarised, apostilled (if applicable) and accompanied by certified translations into the German language. (3) Fees are mainly based on MTOW. (4) The LBA generally requires 2-4 weeks. But if coordinated accordingly the de-registration certificate can be handed in on the same day of registration, which can shorten the AOG time. (5) The reservation of the registration-mark can be done online.
Certificate of Incorporation OR equivalent document OR copy of passport if the registered owner is an individual. List of company directors for the registered owner company. Acceptable forms are extracts from the company register or minutes of company meeting. Power of attorney required if a person, or persons, will be signing applications on behalf of the aircraft registered owner.	No	All forms and documentation required to register and aircraft are available on website, www.iomaircraftregistry.com , but forms require email submission as a minimum.	Yes	Yes	No	(1) Registry Publication 1 provides details of the requirements for registration and the initial Certificate of Airworthiness. (2) All applications can be submitted electronically and wet ink or verified digital signatures are acceptable.
Corporate authority certified by a notary public	No	No	No. Official excerpt is available upon submission of written application to the CAA.	Yes	No	(1) Sale/purchase agreements and mortgage deeds must be notarized and filed with the Italian tax authority. (2) Lease agreements must be filed with the Italian tax authority. (3) Nationality requirements to register in the name of the owner (i.e. EU citizens or companies with EU majority shareholders), otherwise registration can be made in the name of EU licensed operators.

NATIONAL REGISTRIES COMPARISON TABLE

EU Jurisdiction	Type of registry	Separate registry to record rights in aircraft (in addition to CAA)	Originals required / pdf accepted	Notari- sation	Apostille	Certified trans- lation / English accepted	Ad valorem fees/duties
Luxem- bourg	Title	Register of Rights over Air- crafts (Registre des Droits sur Aéronefs)	Originals	No	No	The official forms are in French but English is in prin- ciple accepted.	No
Malta	Operator registry	No	Certified true copies are required	Notarisation and apostille are required in connection with (a) certain documentation originating from outside the EU, and (b) security documents (and POAs relating to the execution thereof), such as mortgages and IDERA.	Notarisation and apostille are required in connection with (a) certain documentation originating from outside of Malta, and (b) security documents (and POAs relating to the execution thereof), such as mortgages and IDERA.	English accepted	The charges payable for regis- tration of an aircraft are based on technical specifications, such as take-off mass.
San Marino	Owner registry	No	PDF acc- cepted and original to be submitted within 60 days	Yes	Yes	English accepted	No
Switzerland	Title	Yes, kept by CAA	Originals (1)	No	No	English accepted	No

Timing (from application to registration)	Evidence of authority (originals/copies) (notarisation)	Prior approval of court or	Online registration	Official excerpt available online	Forms available online	Special procedure for fractional ownership	Notes
If all the required documents have been filed with the Direction de l'Aviation Civile (hereafter the «DACL»), the registration certificate could be issued on the day of the filing or on the next day.	If the owner is a company: copy of its articles of association, citizenship certificate or copy of passport of the ultimate beneficial owner, majority shareholders and directors of the company. If the owner is an individual: citizenship certificate or copy of passport/identity card and a certificate of residence.	No	No	No	Yes	Yes. A specific form shall be fulfilled by the co-owners and filed with the DACL together with the aircraft registration form	
Registration normally takes place within a week from submission of application to registration. Scan is issued on registration.	Signatories would require a power of attorney, company resolution or evidence of authority for signing of application form or any other legal document. In case of a foreign body corporate, this will include a legal opinion from a lawyer qualified in the jurisdiction where the applicant is established, an original certificate of good standing in relation to the applicant and a copy of the memorandum and articles of association, duly certified.	N/A	N/A	N/A	N/A	No	Full breakdown of all applicable fees may be accessed here: http://www.transport.gov.mt/aviation/aircraft/fees . IAN 17 may be found here: http://live.transport.gov.mt/admin/uploads/media-library/files/IAN%2017%20Registration%20of%20Aircraft%20-Issue%207.pdf_20170223124153.pdf
One or two hours - same day closing/registration is possible.	certificate of incorporation, board minutes and/or power(s) of attorney (from CEO to signatory), (no notarisation required)	No	No	No	Yes	No	Cape Town Convention ratified
30 days but with retroactive effect to the day the request was made (2)	Evidence that the signatories have powers to sign on behalf of the corporate owner of the aircraft (extract from the Register of Commerce and / or certification of signatures)	No	No	The Swiss Aircraft Register can be researched online. The Swiss Aircraft Record (recording in rem rights in the aircraft) cannot (3)	Yes	No. But special form to be completed by all co-owners	(1) Certified copies are also accepted. (2) As soon as all the supporting evidence has been submitted (filled-in form, ownership evidence, extract from the register of retention of ownership, evidence that the signatories have powers to sign), the request is published in the Official Swiss Official Gazette of Commerce. This occurs in principle on the same day the request with full supporting evidence was submitted. Provided there was no objection within 30 days from publication, registration will occur with retroactive effect to the day the request was made. (3) it is possible to get an extract from the Swiss Aircraft Record (but not the supporting evidence) by phone or written request to the Swiss Aircraft Record. A fee of CHF85 applies.

NATIONAL REGISTRIES COMPARISON TABLE

EU Jurisdiction	Type of registry	Separate registry to record rights in aircraft (in addition to CAA)	Originals required / pdf accepted	Notari- sation	Apostille	Certified trans- lation / English accepted	Ad valorem fees/duties
Turkey	Operator based	Registry of the Association of Financial Institu- tions («AFI»), in case the aircraft is registered at the CAA under cross-border financial leasing	PDF ver- sions are accepted online but subse- quently originals need to be submitted	Yes	Necessary if the document is issued out- side Turkey	Certified transla- tion into Turkish by a sworn trans- lator of a Turkish notary public is necessary.	Service fee required by the CAA, which differs according to the type of the aircraft.
United Kingdom	Owner registry	Yes - Register of Aircraft Mortgages	Original not needed for owner registry; cer- tified copies for Register of Aircraft Mortgages. PDF accep- table	No	No	All forms are in English.	The registration fee is based upon weight: maximum weight not exceeding 15,000 kg (£71.00); and maximum weight exceeding 15,000 kg (£142.00).

Timing (from application to registration)	Evidence of authority (originals/copies) (notarisation)	Prior approval of court or	Online registration	Official excerpt available online	Forms available online	Special procedure for fractional ownership	Notes
Within a week of submission of all documents	Aircraft Registration Certificate (<i>Hava aracı Tescil Sertifikası</i>) *Corporate Certificate *BoD Meeting Minutes *Signatory Circular *Power of Attorney (All of the documents should be notarized. If these documents are issued outside of Turkey, apostille certification must be obtained.)	In the event of financing of an aircraft via cross-border financial lease, lease must be registered with AFI before CAA registration.	Online registration is available at http://web.shgm.gov.tr/tr/pre-view/5288-e-hizmetler . Subsequently, hardcopy of the original documents must be submitted to CAA	Registration procedures are available online at http://web.shgm.gov.tr/en/aircraft/2205-registration-procedures	Forms are available online at http://web.shgm.gov.tr/tr/for-	Fractional ownership is not possible in Turkey due to operator-based registry system of the CAA.	All correspondence with CAA must be made by using Registered Electronic Mail («KEP»).
Applications submitted in person can be processed on the same day, if all the relevant documentation is available including the SRG1750 form and relevant fee (based on weight). If registration is conducted by any other means, the service standard is up to three (3) working days from the receipt of all relevant documentation, to the despatch of the appropriate Certificate, or other item, by second class post.	In the case that a body corporate or undertaking, a director, Secretary or other authorised officer of the company should sign the registration form, a covering letter should be attached to the application giving the names and positions of all such authorised officers. No originals or notarised documents are needed.	No	Yes	Yes	Yes	No - Jointly owned aircraft can be registered in the name of each individual owner. The standard registration procedure is followed, but additional information is required. If, however, there are three or more individual owners, the CAA recommends that a group of co-ownership syndicate is formed. Under this model, in the event there is a change in composition of the members, reregistration is not required.	Evidence of insurance, or a declaration that the aircraft will not fly until evidence of insurance has been supplied to the CAA, must also be supplied with the application to register. There are specific requirements for registering new home-built aircraft; new foreign manufactured aircraft; used foreign registered aircraft; new UK-manufactured aircraft; former UK-registered aircraft never registered elsewhere; and gliders. UK-registered aircraft are required to bear nationality and registration marks.

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