

Reintroduction of exemptions for leased aircraft in Russia

The Customs Union (which consists of Russia, Belarus and Kazakhstan) has recently reintroduced exemptions from customs duties and VAT that were available for the most popular types of aircraft leased to Russian companies.

Certain popular types of leased foreign aircraft imported before 31 December 2013 could benefit from full conditional exemption from customs duty and import VAT. For these aircraft that were imported before 31 December 2013, full conditional exemption is still available until 31 December 2018. If the lease agreement expires after that date, the full amount of customs duty and import VAT is payable; which may be scheduled to be paid in monthly installments over the remaining term of the lease up to a maximum of 34

months following 31 December 2018.

Since Russia and other Customs Union members require renewal of their fleets and after numerous requests from major airlines, the exemption, although slightly modified, has been reintroduced.

According to the Decision of the Board of the Eurasian Economic Commission No.6 dated 31 January 2014 (the "**Decision**") the full conditional exemption from customs duties and import VAT may be granted for a period of up to 5 (five)

Key Issues

- Reintroduction of exemptions from customs payments for popular passenger aircraft leased to Russian airlines
- New exemptions in force
- Courts touch upon repossession issues

years in respect of passenger aircraft that:

- are classified under No. 8802 40 003 5, 8802 40 003 6 and 8802 40 004 6 of the Customs Union Harmonized System; and
- have a manufacturers' empty weight ("**MEW**") of between 20,000 kg and 120,000 kg; and
- have a seat capacity under LOPA from 110 (inclusive) to 300 (inclusive).

Popular A320 series and B737 aircraft should normally fall under the exemption.

In order to apply for the exemption the qualifying aircraft should be imported after 3 March 2014 (when the Decision came into force) and before 1 January 2017. Unlike the previous exemption, the Decision sets the maximum period of temporary import as 5 years from the date of importation. In other words, while aircraft imported under the previous exemption, for example aircraft imported in December 2010, could benefit from the exemption until December 2018, aircraft imported under the Decision, for example, in March 2014, will benefit from the exemption only until March 2019.

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While the Decision is silent as to whether such temporary import regime may be prolonged after expiration of the 5 years, the Customs Union legislation in force may be interpreted as providing a possibility to extend the temporary import procedure in a similar way as applied with the previous exemption – i.e. for an additional maximum period of 34 months, with applicable customs duty and VAT (if any) payable in 34 monthly instalments.

The Decision raises a number of questions with respect to aircraft which are imported, re-exported and then imported again by a Russian lessee. In particular, it is not clear whether the term of the temporary importation prior to re-export should be included or excluded from the 5-year exemption period once the aircraft is imported again. In other words, would it be possible to re-export and import an aircraft again before 1 January 2017 to obtain an additional 5 years of exemption if the same aircraft has already benefited from the exemption before. A similar question arises in respect of an aircraft leased to a Russian company which benefits from the exemption but where the lease is terminated or expires before 5 years has elapsed. If the aircraft is then leased to another Russian company, will this company benefit from an additional 5 year exemption period or only the

remaining part of the 5 year exemption period that commenced when the initial lessee imported the aircraft. While, generally, the Customs Union legislation appears to provide for a single 5 year exemption period irrespective of the number of importations and different airlines that declare aircraft, there is some uncertainty on these questions.

Full conditional exemption for aircraft with MEW over 120,000 kg

Starting from 16 February 2014 full conditional exemption from customs duties and import VAT is also available for aircraft with MEW over 120,000 kg classified under No. 8802 40 009 1 of the of the Customs Union Harmonized System. The maximum period available for full conditional exemption is set at 5 years from the date of importation.

Recent court practice sheds some light on repossession problems

On 11 December 2013 the Federal Arbitrage Court of Moscow District held in favor of Scania Credit AB in its claim for repossession of trucks leased to a Russian company. The lessee claimed that it was not in a position to return the trucks and related customs documentation, in particular, due to (i) a purported

prohibition on the transfer of trucks that were imported under the temporary import procedure (the same is applied to aircraft) without consent of a customs body to that transfer and (ii) the fact that it required the customs documentation for the purposes of re-exporting the trucks and therefore couldn't hand it over to the owner. The court confirmed that the Russian customs legislation did not impede such repossession due to the following reasons:

- no customs body's consent is required in order to transfer leased property to its legal owner; and
- a foreign owner may declare re-export upon termination of a lease agreement and should therefore be presented with the customs documentation.

Although this case concerns importation of trucks rather than aircraft and Russia is not a common law country with a system of binding precedent, the decision is informative of what may happen and what issues a foreign lessor may face in seeking to repossess an aircraft from a non-cooperative lessee and provides some level of comfort in this regard.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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