

15th Annual Corporate Aircraft Transactions

June 22, 2010

“International Considerations for U.S. Aircraft Operators”

James E. Cooling
Cooling & Herbers, P.C.
1100 Main Street,
Suite 2400
Kansas City, Missouri 64152
+1 816.474.0777

Overview

- 1. Emissions Trading Scheme**
- 2. Noise Certification Requirements**
- 3. International Insurance Requirements**
- 4. Importation and Taxation of Aircraft in the EU**
- 5. Customs Export of Aircraft from US in International Transactions**
- 6. US Owner Trusts with Non-US Citizen Beneficiaries**

1. Emissions Trading Scheme

- Emissions Trading Scheme was passed by the E.U. Parliament in 2003.
- E.U. member states set emissions cap and are allotted allowances or credits that function as emissions currency.
- ETS is now applicable to the aircraft industry. Commercial and private operators must determine whether or not they need to comply.

1. Emissions Trading Scheme

- a. ETS applies to all operators flying to, from, or within the EU.**
- Certain *de minimus* exceptions apply.
 - Takes effect in 2012, although early compliance period has already begun.
 - Free-allocation program deadlines have mostly passed.
 - All operators subject to ETS are required to submit an emission monitoring plan by 01/01/11.

1. Emissions Trading Scheme

a. ETS applies to all operators flying to, from, or within the EU (cont'd)

- Monitoring documents and requirements will vary depending on member state.
- Verification services available to aid in compliance.
- Universal Weather & Aviation, Inc. provides an informative and free FAQ about the ETS on their website.
- Operators with flight contact with EU should ensure that they have/are assigned to a member state for reporting purposes.

1. Emissions Trading Scheme

b. Penalties for non-compliance.

- There are civil penalties, including monetary fines and confiscation of aircraft, if one does not have an acceptable plan in place with the regulatory authority.

2. Noise Certification Requirements

a. ICAO Annex 16

- 14 CFR 91.703(a)(5) – new provision applying to aircraft governed by ICAO Annex 16 operating outside the U.S.
- Requires operators to carry on board the aircraft documents that summarizes noise operating characteristics and certifications to conform with Amendment 8 to Annex 16 of ICAO.

2. Noise Certification Requirements

b. Documents required.

1. Aircraft Airworthiness Certificate.
 2. Document containing noise certification data contained in Airplane Flight Manual (“AFM”) or Rotocraft Flight Manual (“RFM”).
- Instructions for filling out sample forms are included in Advisory Circular 91-68, which can be found on the FAA website.

3. International Insurance Requirements

a. EU mandatory insurance requirements.

- Applies to operators that fly into, out of, or within the EU. (Regulation 785/2004)
- Requires both passenger and 3rd party liability.
- Special Drawing Rights work out to approx. US\$360,000 per passenger for passenger liability for aircraft weighing over 6,600 lbs.
- 3rd party liability calculated using number of seats. Example: approx. US\$120M for a Citation X, Falcon 50, or Hawker 800.

3. International Insurance Requirements

a. EU mandatory insurance requirements (con'td).

- Standards of compliance for flying over, but not originating or destined for EU may be different.
- EU member states have a right to inspect aircraft and require proof of insurance coverage.
- Proof of coverage should be carried onboard at all times to avoid delays and possible landing refusals.

3. International Insurance Requirements

b. War risk minimums are also required under E.U. Regulations (785/2004).

- Since most policies contain a war risk exclusion, this is accomplished in the form of a “write back” endorsement to the policy.

3. International Insurance Requirements

C. Country-specific insurance issues.

- Some countries, such as Mexico, require that operators carry a 3rd party insurance policy issued by a company within the country being visited. In those cases, an insurance certificate issued by that company is required to be carried onboard the aircraft.

4. Importation and Taxation of Aircraft in the EU.

a. Non-EU registered, but regularly in the EU.

- Non-EU registered aircraft that operate regularly in the EU risk being fined. Example: In France, at both Paris and Le Bourget airports, corporate aircraft have been seized for customs violation for over-frequent visits.

4. Importation and Taxation of Aircraft in the EU.

b. Frequent EU visitors should import their aircraft.

- Importing foreign-registered aircraft to EU member state gains free circulation within entire EU territory.
- Aircraft considered “imported” when all applicable VAT are paid.
- U.K. and Denmark have had 0% VAT for certain aircraft. Denmark’s rate changed to 25% in January, 2010.

4. Importation and Taxation of Aircraft in the EU.

c. UK has 0% VAT in certain circumstances.

- Aircraft weighing over 8,000 kg. (17,600 lbs.).
- Allows foreign operators to arrive from outside of EU, undergo importation for a fee, which then allows aircraft free circulation throughout the EU.

4. Importation and Taxation of Aircraft in the EU.

d. Change in the UK 0% VAT.

- Before the latest U.K. election, the Labour party had introduced legislation to change the U.K. 0% VAT policy. Target date for the new legislation was September, 2010. Based on information from new coalition government treasury, this regime is still on track to change as of Sept. 1.
- We have been advised that under European Community rules, it is unlikely the new legislation would apply retroactively. Therefore, aircraft that have been properly imported into the U.K. prior to new legislation should not be affected and still qualify for the 0% VAT rate.

5. Customs Export of Aircraft from U.S. in Int'l Transactions.

a. U.S. Export Administration Regulations ("EAR")

- Compliance is extremely important for U.S. Sellers.
- Regulations overseen by the Bureau of Industry and Security ("BIS")
- "Know Your Customer" advice should be reviewed for all U.S. aircraft sales to non-U.S. citizens regardless of where the aircraft will be based.

5. Customs Export of Aircraft from U.S. in Int'l Transactions.

a. U.S. Export Administration Regulations (“EAR”) (cont’d).

- BIS maintains important lists to check for parties barred from engaging in U.S. export transactions. Sellers should check these lists frequently.

www.bis.gov/complianceand enforcement/liststocheck.htm

- Certain military or dual-purpose products/equip. may be subject to additional licensing requirements under EAR.

5. Customs Export of Aircraft from U.S. in Int'l Transactions.

a. U.S. Export Administration Regulations ("EAR") (cont'd).

- Seller due diligence requires checking BIS lists for all parties to the transaction, including:
 - Foreign purchasers
 - Brokers
 - Lenders and banks

5. Customs Export of Aircraft from U.S. in Int'l Transactions.

b. Shipper's Export Declaration ("SED")

- Customs export of aircraft requires filing a SED by party benefitting from sale.
- Seller can be held responsible if Purchaser takes aircraft out of the country without complying.
- If closing in U.S., Purchase Agreement should include Seller's cooperation for filing SED.
- If closing outside U.S., Seller should be responsible for filing SED, Purchaser to cooperate.

6. U.S. Owner Trusts with Non-U.S. Beneficiaries.

a. **Recent FAA concerns.**

- Recent concerns by FAA with regard to “Non-Citizens Trusts,” which enable non-citizen owners to register an aircraft on FAA registry.
- Issue not resolved, but FAA Southwest Region will be reviewing the Non-Citizen Trust issue.

6. U.S. Owner Trusts with Non-U.S. Beneficiaries.

b. FAA not to delay registration.

- FAA has pledged not to delay the registration of affected aircraft during this Non-Citizen Trust issue review period.
- If agency determines that change to policy is needed, it will follow notices and comment procedure required by law, involving various stakeholders as necessary.

6. U.S. Owner Trusts with Non-U.S. Beneficiaries.

b. FAA not to delay registration (continued).

- Owner Trustees have been advised to add Truth-in-Leasing language to their Operating Agreements and to file them with FAA technical (pursuant FAR 91.23) in order to keep the FAA advised of who is responsible for operating and maintaining non-citizen trust aircraft.

7. Conclusion

International Operations in today's world requires far more than just avoiding volcanic ash. We have considered today just a few of the important legal considerations for an aircraft owner operating outside the U.S., exporting aircraft outside the U.S., or selling a U.S. aircraft to a non-U.S. citizen.

Thank you to Kate Breckenridge and Bonjwing Lee, attorneys with Cooling & Herbers, P.C. for their contributions to this presentation.

James E. Cooling
jcooling@coolinglaw.com
Cooling & Herbers, P.C.
1100 Main Street, Suite 2400
Kansas City, Missouri 64152
+1 816.474.0777