



# DOMMANN REU

## FAVOURABLE DANISH VAT REGIME FOR AIRCRAFTS

*Due to the Danish VAT rules with respect to aircrafts it may be favourable to purchase aircrafts such as business jets through a Danish company and subsequently lease out the aircraft to an operator or user in Denmark or abroad. A new Act will amend the current Danish rules. However, aircrafts may be imported to Denmark free of VAT until the new rules enter into force on 1 January 2010 and in many cases it will still be possible to reduce or entirely avoid payment of any Danish VAT. Kromann Reumert is experienced in setting up aircraft leasing structures in Denmark and may also assist with contacts to financiers and aviation assistance companies in order to provide the client with the best possible service.*

### **The Current Regime**

Under the EC VAT Directive, the following is exempt from VAT: the supply, modification, repair, maintenance, chartering and hiring of aircrafts used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used therein.

The exemption also applies to the supply of goods for the fuelling and provisioning of such aircrafts provided that the aircraft is mainly used for international flights.

In Denmark these provisions have been implemented in such a way that the supply, modification, repair, maintenance, chartering and hiring of all aircrafts - except for certain sport planes - are exempt from VAT. I.e. the requirement for operation of the aircraft on chiefly international routes does not apply.

The rules make it an attractive option to acquire aircrafts through a Danish limited liability company (normally a company established as a special purpose vehicle for the acquisition) and to have this company – which will be the registered owner of the aircraft – lease out the aircraft to the end user or an operator in Denmark or abroad.

By applying this structure, the client may effectively avoid payment of any VAT in connection with the



purchase and lease of the aircraft. Also, no VAT will be payable in respect of a subsequent resale of the aircraft in connection with the maintenance and repair of the aircraft, or in connection with the purchase of supplies delivered to the aircraft.

### The New Act

On 17 June 2008 the Danish Parliament adopted a new Act to amend the Danish VAT Act, including the VAT exemptions applying to aircrafts and deliveries to aircrafts.

The new Act adapts the Danish VAT rules to the VAT Directive and to the case law developed by the European Court of Justice, including in particular case 382/82 (Cimber Air vs. The Danish Ministry of Taxation).

As a consequence of the new Act, the Danish VAT exemptions will be limited to the supply, modification, repair, maintenance, chartering and hiring of aircrafts used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used therein. The VAT exemption will also continue to apply to the supply of goods for the fuelling and provisioning of such aircrafts provided that the aircraft is mainly used for international flights.

The new rules will enter into force on 1 January 2010.

Therefore, if a Danish company purchases an aircraft from outside the EU before the end of 2009, the import of the aircraft into Denmark can be made without any Danish VAT.

Further, it follows from the Act that the current VAT exemption will continue to apply to any aircraft sales that are based on a written contract concluded in

2009 in as far as the delivery of the aircraft takes place before 1 July 2010.

If, on the other hand, the aircraft is purchased after 31 December 2009 or imported to Denmark after 1 July 2010, the aircraft may be subject to Danish import VAT unless the Danish importer can be regarded as an "airline operating for reward chiefly on international routes".

It is not entirely clear how such airlines will be defined. However, it appears from the Cimber Air case that the concept of "airlines operating for reward chiefly on international routes" has a uniform meaning within the EC and must be interpreted strictly in so far as it serves as a basis for a VAT exemption. Further, it seems likely that an "airline" is to be understood as a company that operates air services with respect to the conveyance of passengers on certain routes for reward - i.e. companies that sell tickets for flights with passengers and their accompanying luggage. However, it may be argued that airlines covers all air transport undertakings with a valid operating licence permitting it to carry out carriage by air of both passengers, mail and/or cargo, cf. Council Regulation No. 2407/92.

An airline is considered to operate chiefly on international routes if the international flights correspond to more than 55% of the traffic.

Therefore, only few Danish companies can be regarded as an "airline" for Danish VAT purposes. For example, a Danish company that purchases and leases out an aircraft to an operator for use as a private business jet for group companies or the like is unlikely to qualify as an "airline".

As a consequence, the importation of the aircraft and the subsequent leasing of the aircraft may be



subject to Danish VAT after 1 January 2010.

However, despite the new rules it will often be possible to reduce or avoid payment of any Danish VAT.

If the aircraft is to be used outside of the EU, the leasing charges will not be subject to Danish VAT. Otherwise the leasing charges will be subject to Danish VAT but may, as a general rule, be reclaimed from the Danish tax authorities by the lessee if the lessee carries out taxable activities abroad - including for example, letting out of the aircraft.

Further, any goods and services regarding the aircraft may be acquired by the foreign operator in order to minimise the costs in Denmark. If the goods or services are acquired in Denmark a foreign operator will generally be able to reclaim the VAT from the Danish tax authorities.

Moreover, any input VAT paid with respect to the aircraft (including any VAT paid in connection with the importation of the aircraft) may be deducted by the Danish company in so far as it carries on taxable business activities in Denmark (including leasing out the aircraft).

Finally, a future resale of the aircraft will generally not be subject to Danish VAT if delivery is made outside of Denmark.

Therefore, despite of the new rules it is still be possible to avoid the payment of any Danish VAT when setting up aircraft structures.

However, each structure always needs to be assessed individually with respect not only to the Danish VAT rules but also any applicable taxes and aviation laws.



### Copenhagen

Kromann Reumert  
Sundkrogsgade 5  
DK-2100 Copenhagen  
Denmark

Phone: +45 70 12 12 11  
Fax: +45 70 12 13 11  
E-mail: [cph@kromannreumert.com](mailto:cph@kromannreumert.com)

### Aarhus

Kromann Reumert  
Raadhuspladsen 3  
DK-8000 Aarhus C  
Denmark

Phone: +45 70 12 12 11  
Fax: +45 70 12 14 11  
E-mail: [arh@kromannreumert.com](mailto:arh@kromannreumert.com)

### London

Kromann Reumert  
42 New Broad Street  
London EC2M 1JD  
England  
Phone: +44 207 920 3030  
Fax: +44 207 920 3099  
E-mail: [lon@kromannreumert.com](mailto:lon@kromannreumert.com)

### Brussels

Kromann Reumert  
Rue du Luxembourg 3  
B-1000 Brussels  
Belgium  
Phone: +32 2 501 07 00  
Fax: +32 2 501 07 01  
E-mail: [bru@kromannreumert.com](mailto:bru@kromannreumert.com)

## PRIMARY CONTACTS

Please do not hesitate to contact us with any questions or comments on the above or any other aspects of Danish tax law:



Arne Møllin Ottosen  
[ao@kromannreumert.com](mailto:ao@kromannreumert.com)  
Direct: + 45 38 77 44 66



Peter Nordentoft  
[pno@kromannreumert.com](mailto:pno@kromannreumert.com)  
Direct +45 38 77 43 67

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