

THREE BECOMES TWO, AND OTHER LOOMING CUSTOMS HEADACHES FOR RUSSIAN AIRLINES

March 1, 2010

To Our Clients and Friends:

On November 27, 2009, the Russian Federation, Republic of Belarus and Republic of Kazakhstan entered into an agreement on the Customs Code of the Customs Union (“CCCU”). The CCCU is scheduled to enter into force on July 1, 2010 and should replace the existing national customs codes of the participating states. According to unofficial sources, the Russian Customs Code will be replaced by a Russian law, “On Customs Regulation.” The scope of this law will be limited to issues not covered in the CCCU or left to the discretion of the Russian legislative bodies. As of the date of this update, no draft of such law has been published in Russia.

Although the provisions of the CCCU are generally similar to the provisions of the Russian Customs Code, the CCCU stipulates a maximum temporary import period of 2 years instead of the 34-month period currently permitted under the Russian Customs Code and the relevant customs regulations. In respect of certain goods and depending on the purpose of their importation, a participating state may establish a shorter or longer temporary import term, but no such types of goods or applicable purposes have been specified in the CCCU or in the Russian customs legislation and regulations. At the present time, the majority of Western aircraft imported to Russia are placed under the temporary import regime of 34 months, which allows the airline to pay import customs duty and import VAT on an installment basis — at the rate of 3% per month. At the end of the 34-month period, assuming all installments have been duly paid, the airline can terminate the temporary import and clear the aircraft into “free circulation” without any further payments.

If the new legislation or regulations allowing for a longer term of temporary import for aircraft are not implemented in Russia, then Russian airlines will have to weigh the following options for customs clearance of Western aircraft: (i) immediately release the aircraft into “free circulation” by paying the entire amount of import customs duty (generally 20% of customs value of the aircraft) and import VAT (18% of the aggregate value of the aircraft and the import customs duty), or (ii) place the aircraft under the temporary import regime of 24 months, during which the airline can pay 3% of the customs payments per month; upon expiration of the 24-month term, the aircraft can then be released into “free circulation” by payment of the remaining 28% of the customs payments with interest on the deferred amounts as of the date of initial importation. It is most likely that, in Russia, interest will be calculated at the Central Bank refinancing rate which is currently 8.5% per annum.

In relation to all aircraft declared under the temporary import regime before July 1, 2010, the terms of the temporary import should continue to apply until the expiry of the temporary import term set at the time of placement of such aircraft under temporary import regime. Thus, aircraft currently declared under the temporary import regime and placed under such regime before July 1, 2010 should not be affected by time limitations set by new customs legislation. The unified customs duty rates for aircraft and spare parts that were adopted in connection with the establishment of the Customs Union are identical to the customs duty rates currently applicable in Russia.

The above is a preliminary review of the new customs legal framework and the official interpretation of provisions of the CCCU may differ from the above.

We will keep you updated and would be most happy to answer any queries you may have on this or any other aviation issues.

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