Canadian Cabotage for Part 91 Operations

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Operations from the U.S. under FAR Part 91 authority are private aircraft operations and are accepted by Canada as private. This is notwithstanding the extent of allowances under FAR Part 91.501. Some of those allowances would be deemed to be commercial operations under the Canadian Aviation Regulations if they were conducted by a Canadian private operator; however, Canada respects the U.S. allowances granted to FAR Part 91 operators. We outline below the extent of operations into and between points in Canada by FAR Part 91 operators that would not violate Canadian cabotage regulations.

Cabotage regulations in all countries, are a matter of not only aviation regulations, but are also revenue regulations. In Canada, cabotage from a revenue standpoint is under the authority of the Canada Revenue Agency (CRA). The CRA establishes and administers these revenue regulations on a national level, although other provincial laws can also be additionally triggered. Additionally, cabotage concerns from an aviation regulatory perspective fall under the authority of the Canadian Transportation Agency (CTA). Aircraft entering Canada are subject to compliance verification with both the revenue and aviation regulations relating to Cabotage by the Canada Border Services Agency (CBSA). In other words, even though the restrictions are imposed by either the CRA or the CTA, transborder operators will in the majority of circumstances only deal with the CBSA. Interactions with the CBSA do not necessarily preclude subsequent investigation or sanction by either the CRA or CTA, though such investigations are rare and usually on complaint only.

Foreign registered corporate aircraft may be used to transport non-resident company personnel/clientele into, out of, and within Canada without any restrictions on the itinerary. However, all movements must be for the benefit of, or on behalf of, a non-resident of Canada.

Canadian residents may accompany non-resident company personnel/clientele on movements between points in Canada only if their presence on board the aircraft is "incidental" to the primary purpose of the trip and no remuneration for the flight is directly or indirectly paid. In other words, each movement of the aircraft in Canada must be for the purpose of transporting or accommodating an eligible non-resident user. It would be a contravention if only individuals who boarded in Canada were on board at any time on movements between points in Canada. There is no black and white definition of the numbers of originating U.S. passengers, as opposed to the number of Canadians moving between Canadian points in order to make each flight eligible. I would suggest that common sense would dictate, that at all times, the majority of individuals on board the aircraft, be individuals who originated from, or are returning to, a U.S. point.

This concept is now expressed in Section 43 of CBSA, Memorandum D2-1-1 (found at https://www.cbsa-asfc.gc.ca/publications/dm-md/d2/d2-1-1-eng.pdf). That Memorandum details that a U.S. private registered aircraft may enter Canada and then stop at more than one Canadian location and that Canadians can embark, disembark or re-embark during the movement through Canada, along with passengers who are "the same passengers who originate outside of Canada." That section allows the movement of Canadian originating passengers between those points in Canada ". . . only if their presence on board the aircraft is incidental to the primary purpose of the trip and no remuneration is involved."

If the purpose of the flights between points in Canada is determined to be for the benefit of a resident person, then the aircraft will attract a minimum of 5% Goods and Services Tax (GST) on the assessed value of the aircraft. Except where the registered owner of the aircraft is a GST Registrant with the CRA, this tax is a complete expense. A GST Registrant could claim back some or all of the tax paid on account of an input tax credit.

As FAR Part 91 operators do not require any Canadian economic authority to operate into and in Canada, they are therefore not under the jurisdiction of the CTA. Therefore, it is common for FAR Part 91 operators to enter Canada at a point, move Canadians on subsequent movements in Canada pursuant to the incidental traffic allowance, and return to the original point of entry to Canada to disembark the Canadian traffic, and then outbound to the U.S. That is a major requirement for many FAR Part 91 operators, as they operate in conjunction with the Canadian subsidiaries of their U.S. parent, and inbound to the location of that Canadian subsidiary and then move the Canadian officials as incidental traffic to the third point. They are then returned to that originating Canadian point prior to the aircraft outbounding to its U.S. base.

Obviously, no remuneration can be involved in regard to carriage of any traffic, otherwise the nature of the trip would no longer be a private one. The opening paragraph of this article indicated that Canadian authorities accept FAR Part 91 operations as private, notwithstanding allowances under U.S. Regulations that would be deemed commercial if conducted by Canadian operators. However, it is our interpretation that no remuneration can be involved in regard to the carriage of the incidental Canadian traffic.

It is our opinion that Canadian authorities would not maintain the private operation aspect of that FAR Part 91 flight if there was any direct or indirect contribution from the Canadian participants. Then, if CBSA deems the aircraft to have been utilized for "hire and reward" in Canada, the sanction is that CBSA deems the aircraft to have been imported to Canada for domestic use, and is therefore subject to GST. CBSA's prime concern is that only tax-paid aircraft can be "consumed" in Canada. Consumption occurs when the aircraft is operated between points in Canada, and where the beneficiary is not a non-resident.

In closing, we would refer to the other sections of Customs Memorandum D2-1-1. Those sections of that Memorandum are clearly limited to utilization by non-residents of Canada, of foreign registered vehicle (trucks, cars, RV's, boats and personal aircraft) for conveyance of non-residents (read U.S. citizens) between points in Canada in those U.S. vehicles. Those allowances in our opinion, are strictly in regard to the movement of non-residents between points in Canada, and provide no allowances (or restrictions) for the movement of Canadians between points in Canada, on or in foreign vehicles.

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