



Fiscal benefits

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FISCAL BENEFITS

The enactment of the Aircraft Registration Act in 2010 (the 'Act'), brought with it the implementation of the Cape Town Convention on International Interest in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment, and a revamp of Maltese legislation in the aviation sector, including the introduction of tax incentives and other measures designed to complement the Act and increase the competitiveness of this sector in Malta. Amendments to the Income Tax Act were enacted with this objective in mind. The following is a brief outline of the fiscal advantages under Maltese law applicable to the aviation sector.

FULL IMPUTATION SYSTEM

Malta has, since the introduction of tax on income, adopted a full imputation system of taxation. The general rule under Maltese law is that dividends paid by a Maltese company to its shareholders are taxed at the rate of 35%. This rate is however charged under Malta's full imputation system which ensures that no dividend received by any shareholder is taxed twice. This system allows the shareholder to deduct the amount of tax paid by the Maltese company from the tax paid by the shareholder on the gross dividend received. The profits of a Maltese company are therefore only taxed once and effectively no further tax is payable by the shareholder on distributions. Credit is also provided to Maltese companies for tax paid at underlying levels in a chain of companies.

Furthermore, Maltese law expressly provides that no tax is to be withheld on dividends paid to non-residents satisfying certain straightforward conditions.

REFUND MECHANISM, TREATY NETWORK & FRFTC

Depending upon the business activity from which the profit is derived, shareholders may be eligible to claim refunds of 2/3rds, 5/7ths or 6/7ths of the corporate tax paid by Maltese companies on distribution of certain profits.

Malta boasts an extensive double tax treaty network (over 60 treaties are currently in force). These are largely based on the OECD Model Tax Convention on Income and on Capital. Moreover, Maltese law also provides for unilateral relief if treaty relief is unavailable. Both treaty relief and unilateral relief operate by virtue of the credit method, applied on a source-by-source basis.

Additionally, the Flat-Rate Foreign Tax Rate Credit (FRFTC) is also available subject to a number of administrative conditions being satisfied. FRFTC is an alternative system of double tax relief based on a flat-rate 'notional' credit of 25% in all cases, irrespective of the amount of foreign tax suffered.

The combination of the refund mechanism and foreign tax credits available allow for particularly advantageous structuring opportunities.

PARTICIPATION EXEMPTION

The participation exemption is a regime which applies to income and gains derived by a Maltese company from participating holdings held in foreign entities as long as the ultimate individual shareholders of any multi-tier structure are not resident in Malta and certain conditions are satisfied.

A company may opt to benefit directly from the participation exemption so that income derived from the participating holding would be exempt from any tax in Malta. Alternatively, a company may choose not to avail itself of such an exemption but rather be charged Malta tax, in which case upon a distribution thereof, the recipient would be entitled to a full refund of the Malta tax paid by the Maltese company.

INCOME DERIVED FROM AIRCRAFT USED FOR INTERNATIONAL TRANSPORT

An interesting benefit particular to the aviation industry is provided in the Income Tax Act, whereby it is held that any income which is derived, or which otherwise arises from, the ownership, operation, or leasing of an aircraft or aircraft engine which is used for the international transport of goods and passengers, is deemed to arise outside of Malta, irrespective of the aircraft's and, or engine's country of registration or of whether the aircraft calls at or operates from a Maltese airport.

Companies incorporated in Malta are considered to be both resident and domiciled in Malta, resulting in such companies being taxable on a worldwide basis at a corporate rate of 35%. However, companies which are resident (by virtue of management and control being effectively exercised in Malta) but not domiciled in Malta, or vice-versa, are only taxable on income arising in Malta and on any other foreign source income (excluding capital gains) which is remitted to (or received in) Malta.

This allows for interesting tax planning opportunities which could be availed of by using entities which are resident but not domiciled (i.e. foreign incorporated) in Malta since it ensures that income derived by non-residents from the leasing of aircraft or aircraft engines to Maltese-resident lessees is not subject to Maltese income tax.

Since Malta's tax treaties are generally based on the OECD Model Tax Convention on Income and on Capital, in the event that a tax treaty between Malta and another state were to apply, income derived from the operation of aircraft in international traffic should generally be taxable only in the state where the effective management of the enterprise is situated.

REDUCED INCOME TAX RATE OF 15% FOR HIGHLY QUALIFIED PERSONS IN THE AVIATION SECTOR

In terms of Maltese law, expatriates in receipt of income payable in relation to activities carried out in Malta will be charged to tax on their employment income at the reduced tax rate of 15%.

The expatriate cannot be domiciled in Malta and must receive minimum annual emoluments of at least €75,000 (excluding any fringe benefits).

These rules have been extended to apply to persons receiving emoluments payable under a qualifying contract of employment within the aviation industry who are considered to be 'eligible officers'.

An eligible officer is any individual employed within the aviation industry with an undertaking holding an air operators' certificate issued by the Authority for Transport in Malta and occupying any of the posts or offices as listed in the rules governing these provisions. These include the post of Aviation Accountable Manager, Aviation Continuing Airworthiness Inspector, Aviation Flight Operations Inspector, Aviation Training Manager, Chief Executive Officer, Chief Financial officer, Chief Operations Officer and Chief Commercial Officer.

These benefits are available for limited periods of five consecutive years in the case of EEA and Swiss nationals and four consecutive years for any other third country nationals.

VALUE ADDED TAX (VAT)

The standard VAT rate in Malta is 18%, which is a flat rate applied to the consideration paid on every supply of goods or services rendered by a taxable person, on every intra-community acquisition and on every importation that takes place in Malta. However, the supply of and any intra-community acquisitions or importation of aircraft for use by airline operators chiefly for international transport of passengers and, or goods for reward is exempt from VAT, with a right to claim credit of any VAT incurred for the purpose of its economic activity. No exemption is applicable to the acquisition of aircraft which are not destined to be used by airline operators for reward for international transport of passengers and, or goods.

VAT TREATMENT OF AIRCRAFT LEASES

In October 2012 the VAT Department issued guidelines regarding the VAT treatment of aircraft leasing. An aircraft lease is defined as an agreement whereby the lessor (the owner of the aircraft, who must be established in Malta) contracts the use of the aircraft to a lessee (which is established in Malta and which would not be eligible to claim input tax in respect of the lease) for a consideration. In addition, after the end of the lease period, the lessee may opt to purchase the aircraft at a percentage of the original cost. The purchase at the end of the lease is an option which may be exercised by the lessee at its sole discretion for a separate consideration.

Through these guidelines, the Director General (VAT) has determined that the specified services relating to aviation which take place within Malta are to be considered to take place outside the EU if they are used and enjoyed outside the EU. The guidelines establish criteria for determining when an aircraft is deemed to be used within EU airspace, in order to assess the effective use and enjoyment of the aircraft in the EU and

consequently the taxable value of the aircraft for VAT purposes. The VAT rate of 18% is levied on the deemed percentage of the lease relating to the period of time in which the aircraft is used within EU airspace, which is calculated in accordance with a formula based on an expert technical study and issued by virtue of the guidelines. In terms of this formula, the percentage of use within EU airspace is determined by reference to various criteria, such as the aircraft type, the maximum aircraft take-off mass (in kg), the maximum fuel capacity (in kg), the fuel burn, optimum altitude and optimum cruising speed.

The guidelines specify that for this VAT treatment to be applicable, the following cumulative conditions must be satisfied:

- (i) the leasing agreement must be between a lessor and lessee which are both established in Malta and which must not be eligible to claim input VAT;
- (ii) the lease period must not exceed a period of 60 months and the lease instalments must be paid monthly;
- (iii) the Director General (VAT) may require the lessor to submit details regarding the use of the aircraft; and
- (iv) prior approval must be obtained from the VAT Department. Each application will be considered on its own merits. The Director General (VAT) may impose other conditions which he may deem appropriate.

If at the end of the lease period the lessee exercises the option to purchase the aircraft, a VAT-paid certificate will be issued provided that all the VAT due would have been paid in full.

FINANCE LEASING

The manner in which a finance lease is treated for income tax purposes is set out in the Finance Leasing Rules. In terms of these rules, leases of assets for periods of four years or more are deemed to be finance leases if the lessee:

- (i) agrees to pay to the lessor, over the lease period, the full or nearly the full cost of the asset together with a return on the finance provided by the lessor; and
- (ii) assumes all the risks and rewards normally associated with the ownership of the asset, other than the legal title thereto.

The following tax treatment is applicable to the income derived from a finance lease:

- (i) the lessor is chargeable to tax on the annual lease payments. This is without prejudice to the right for any deduction properly attributable there against;
- (ii) the lessor is entitled to a deduction in respect of the wear and tear of the leased asset as it is assumed that the burden of wear and tear is borne by the lessor; and
- (iii) the lessee is entitled to deduct the full amount of the lease payments from chargeable income, as well as other relevant deductions.

If the ownership of the asset is subsequently transferred from the lessor to the lessee with the latter making a payment exceeding the total annual lease payments, such payment shall be chargeable to tax in the hands of the lessor. The lessee would be entitled to certain deductions relating to depreciation of the aircraft (at comparatively accelerated rates – see below) in respect of any such payment.

LEASES NOT REGULATED UNDER FINANCE LEASING RULES

The Inland Revenue Department has issued guidelines in respect of aircraft leasing arrangements which are not regulated under the Finance Leasing Rules. In such cases, the following tax treatment is to be adopted for each year of the lease period:

- (i) the lessor is charged to tax on the annual finance charge, namely the difference between the total lease payments less the capital element divided by the number of years of the lease;
- (ii) the lessee is allowed a deduction in respect of the finance charge, maintenance, repairs and insurance;
- (iii) the lessee is allowed capital allowances in respect of the aircraft and the parties may not opt to shift the burden of wear and tear onto the lessor;
- (iv) where the lessee exercises an option to purchase the aircraft on the termination of the finance lease, and the lessor is not trading in the purchase and sale of aircraft, the purchase price received by the lessor shall be considered to be of a capital nature and no tax thereon shall be payable by the lessor.

MAINTENANCE, REPAIR OR OVERHAUL

Malta is actively seeking to bolster its aviation industry by investing in related and ancillary activities such as maintenance, repair and overhaul (MRO) operations. With this objective in mind, Malta offers tax incentives, in accordance with applicable EU legislation, to companies involved in the MRO of aircraft, engines or related equipment, in the form of tax credits. The extent of these credits would depend on, amongst other things, the level of qualifying investment, the wage cost of jobs created and whether the company is considered to be a small, medium or large enterprise.

The fiscal incentives have also been complimented by investments in infrastructure suitable for accommodating key players in the aviation sector. An example of such investment is the €17 million Safi Aviation Park, a 200,000 square metre facility inaugurated at the end of 2012 created with the intention of providing suitable infrastructure to facilitate the creation of an aviation cluster, with a number of complementary services being provided from one location.

Malta's MRO industry has developed considerably over the years, with two of the world's leading players, namely Lufthansa Technik Malta and SR Technics having a strong presence. There are also several other international service providers carrying out MRO services in Malta such as Aeromaritime Malta (an authorised Rolls-Royce Maintenance Centre), Medavia Malta (an EASA Part-145 and Libyan LyCAA CAR-145 approved Aircraft Maintenance Organisation) and M.C.M. Maintenance Centre Malta (an EASA approved Part 145 Line and Base maintenance facility).

FRINGE BENEFITS – PRIVATE USE OF AIRCRAFTS

The Fringe Benefits (Amendment) Rules 2010 brought about amendments to the Income Tax Act, in terms of which the private use of an aircraft by a non-resident who is an employee of an entity whose business activities include the ownership, leasing or operation of aircraft and, or aircraft engines used for international transport of passengers and, or goods will not be considered a fringe benefit and is therefore not taxable as a fringe benefit.

CAPITAL ALLOWANCES

In terms of the Deduction for Wear and Tear of Plant and Machinery Rules, annual deductions for wear and tear of an aircraft for tax purposes are calculated over the following minimum number of years:

Asset	Number of years	Percentage
Aircraft airframe	6	16.7%
Aircraft engines	6	16.7%
Aircraft engine or airframe overhaul	6	16.7%
Aircraft interiors and other parts	4	25.0%

Prior to the coming into force of Legal Notice 291 of 2010 amending the Deduction (Wear and Tear of Plant and Machinery Rules), 2001 the minimum number of years for depreciation of aircraft (this was, at the time, the only category dealing with aircraft objects) was 12 years. Through these amendments this has been reduced by half and, in the case of interiors and other parts, by 2/3ds, making the minimum periods of depreciation more competitive.

OTHER BENEFITS WORTHY OF NOTE

In addition to the above, it is worth noting that Malta has:

- (i) no duty on documents on transfers of assets;
- (ii) no capital gains on disposal of assets;
- (iii) no wealth taxes;
- (iv) provisions for allowing re-domiciliation of companies, with no exit or entry taxes.



MALTA

- Robust legal system, based on UK and EU law and in tune with the business world
- Member of the EU: easy access to 28 member states through the EU marketing passport
- Reputable regulator while being easily accessible and sensitive to the particular requirements of applicants
- Tax efficiency: favourable tax regime and extensive double tax treaty network
- Skilled and highly qualified workforce and service providers
- English is an official language
- Currency is the Euro

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