Aviation legislation in Malta

Tax and Legal Services

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Tax planning opportunities in the Aviation Industry

The enactment of the Aircraft Registration Act on 1 October 2010 complements the success of already existing aircraft maintenance operations in Malta and continues to enhance the country's profile in the aviation industry and the growth of a cluster of aviation services relating to finance, leasing and management of aircraft, aircraft maintenance, classification, surveying, insurance, and brokerage.

The Act also implements the provisions of the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol, which is well known for its benefits to banks and aircraft lessors.

A qualified person may register aircraft in Malta as owner thereof who operates it, as operator of an aircraft under a temporary title who satisfies the applicable conditions, as owner of an aircraft under construction or temporarily not being operated or managed or as buyer of an aircraft under a conditional sale or title reservation agreement. The concept of fractional ownership of aircraft is also recognised thus granting more flexibility.

Mortgages will be registered in the aircraft register entitling the mortgagee, in the event of default of the mortgagor, to a set of self help remedies without the need of the leave of any court and upon giving notice in writing to the debtor, including the right to take possession of the aircraft, sell or lease the aircraft.

In addition to this legislative milestone, a number of new provisions on the taxation of aviation income have also been introduced. Alongside the existing tax framework, these are intended to create new tax planning opportunities for entities carrying on business in the aviation sector.

Income from aircraft/ aircraft engines in international transport has foreign source

Income derived from the ownership/lease/operation of an aircraft/ aircraft engine used for the international transport of goods or passengers is considered to arise outside Malta. The foreign source nature of the income applies regardless of the country of registration of the aircraft, or whether the aircraft has called at or operates from a Maltese airport.

This rule provides some interesting tax planning opportunities:

(1) It ensures that the leasing of aircraft/ aircraft engines by non-residents to Maltese-resident lessees is not subject to Maltese income tax, whether by withholding or otherwise. This applies irrespective of the existence or otherwise of a double taxation treaty between the Malta and the country of residence of the lessor;

(2) It opens up to Maltese-resident aircraft lessors/ operators the planning points applicable under Maltese tax law in respect of foreign source income, whilst enabling them to make use of Malta's double tax treaty network where applicable.

Taxation of income from aircraft/ aircraft engines in international transport

A number of interesting tax provisions apply in respect of income from aircraft/ aircraft engines:

(1) In case of operating leases, the lessor is taxable on the lease payments. If the lessor maintains the burden of wear and tear, he is able to set off capital allowances against such income. In finance lease situations, the lessor is chargeable solely on the interest element of the lease, with no deduction being available for capital allowances;

(2) Lessees may claim a deduction for lease payments in case of operating leases as well as capital allowances if the burden of wear and tear falls on them. In finance leases, lessees may deduct the interest element of the lease, repairs and maintenance, insurance and capital allowances;

(3) Aircraft airframe, engines and overhaul thereto are written off for tax purposes over a period of not less than 6 years (i.e. a 16.67% rate per annum on a straight line method), whilst interiors and other parts are written off over a minimum of 4 years (i.e. a 25% rate per annum on a straight line method);

(4) Aircraft leasing and other income derived from international air transport operations is taxable at the corporate rate of 35% but on distribution to shareholders, the imputation system applies with qualifying shareholders being entitled to a refund of 6/7ths of the tax suffered on the distributed profits, subject to satisfying the statutory conditions;

(5) Interesting planning opportunities may arise regarding re-domiciliation to Malta of foreign companies conducting international aviation operations.

Investment Tax Credits to Maltese Incorporated Entities involved in the Aviation Industry

Malta grants tax incentives, in line with the EU framework of Regional Aid, to companies that are involved in the repair, overhaul or maintenance of aircraft, engines or equipment incorporated or used in such aircraft. These are provided mainly in the form of tax credits the quantum of which depends on the level of investment made by the particular company and on whether the company is considered to be a small, medium or large enterprise. Any unutilised investment tax credits may be carried forward.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners or Senior Consultants of the firm. For further details please do not hesitate to contact:

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