

Aircraft Leasing - Take off from Malta!



Various factors including Malta's flexible and business friendly regulatory and fiscal system has led Malta to increasingly be seen as a reputable jurisdiction for international business including aircraft leasing arrangements.

Introduction to Malta

Malta, an island with a history stretching back 7,000 years, has always been well-known for the role it plays in the international field due to its location in the heart of the Mediterranean. Malta was historically used as a hub for the carriage of goods and has since flourished into a reputable centre for international business in the Euro-Mediterranean region.

A number of factors contribute to Malta's success. In the first place, accession to the EU in 2004, the use of English as the business language (with all documentation and laws being in English) contributes to Malta's attraction and the Malta's beneficial tax refund system, which was formally sanctioned by the EU Commission, have cemented Malta's leading position as an onshore jurisdiction for reputable multinational groups.

While Malta's financial services sector is proving to be a driving force in the economy, multinationals are choosing Malta as their preferred jurisdiction in which to locate all sorts of activities such as general trading, back office, call centre, research, development and design and where appropriate even manufacturing activities, notably in the pharmaceutical, electronics and machinery sectors. Malta's aviation industry is no exception and in recent years Malta has become a jurisdiction of choice in the fields of aircraft maintenance, aircraft registration and aircraft leasing – Lufthansa Technik and SR Technics both have substantial aircraft maintenance facilities in Malta.

Tax refund system

As part of Malta's imputation tax system which eliminates economic double taxation, Malta has embedded in its fiscal legislation a system of tax refunds.

Maltese resident companies, including a foreign company with a branch in Malta, first pay tax on their profits at 35%. Upon a subsequent distribution of these taxed profits, whether derived from local or foreign sources (other than from immovable property situated in Malta), the shareholders would be entitled to a full or partial refund of the tax paid by the company.

"...effective Malta tax charge of between 0% and 6.25%"

The quantum of the tax refund and hence the tax that will be incurred in Malta after the tax refunds is dependent on the nature of the income and on the amount of any foreign tax credits claimed. Generally, the refund is 6/7ths of the 35% underlying tax, resulting in a 30% tax refund of the taxable profits (6/7ths of 35%). The resultant Maltese tax would thus be 5%, but can be nil when foreign tax credits exceed 5%. In a nutshell when all possible tax refund scenarios are taken into consideration the effective Malta tax charge will be between 0% and 6.25%

Aircraft Leasing

Over the last few years, the use of Malta for aircraft leasing structures has seen a sharp increase. Companies engaged in aircraft leasing transactions may benefit from Malta's tax refund system, however, the tax treatment will vary depending on whether the lease is an operating lease or a finance lease.

Lessor

Operating Lease

In an operating lease, the lessor would be entitled to tax depreciation on the value of the aircraft frame and aircraft engine at 16.7% per annum as well as a tax depreciation on interiors and other parts at 25% per annum.

Through the application of the tax refund system, although the lessor will be subject to tax at 35%, the effective Malta tax charge will be reduced to between 0% and 6.25%.

Furthermore, with proper structuring upon a disposal of the aircraft there are no tax consequences in Malta.

“...effective Malta tax charge of between 0% and 6.25%”

Finance Lease

In a finance lease scenario, the lessor will be taxable in Malta on the finance charge, with deductions allowable for any finance cost.

Same as in an operating lease scenario, although the lessor will be subject to tax at 35% on its taxable income, the tax refund system will reduce the effective Malta tax charge to a maximum of 6.25%.

Upon a disposal of the aircraft there are no tax consequences in Malta.

“...No liability to Maltese income tax...”

Lessee

Operating Lease

In an operating lease, where the lessee uses the aircraft as part of its trade, it will be allowed a deduction for the lease payments and any other expenses which are incurred in the production of its income, and would then be taxable at 35%.

The application of the tax refund system will result in an effective Malta tax charge of between 0% and 6.25%

Finance Lease

In a finance lease scenario, the lessee will be allowed annual tax depreciation on the value of the aircraft frame and aircraft engine at 16.7% and tax depreciation on interiors and other parts at 25%. A further deduction is allowed for the finance charge, the cost of repairs and maintenance and insurance.

Through the application of the tax refund system, the effective Malta tax charge will be between 0 – 6.25% on the chargeable income.

Tax Depreciation Rates

The Aircraft airframe, engines or an overhaul thereof: 6 years i.e. 16.7%

Aircraft Interiors and other parts: 4 years i.e. 25%

Alternative Planning Opportunity

Where the lessor or lessee is a company that is resident but non-domiciled in Malta i.e. although incorporated outside Malta it is managed and controlled in Malta it would only be subject to tax in Malta upon:

- any income and gains arising in Malta; and
- any chargeable gains arising in Malta; and
- any income arising outside of Malta which is received in / remitted to Malta.

In terms of Malta's source rules, any income derived from the ownership, leasing and operation of aircraft or an aircraft engine, which is used for or employed in the international transport of passengers or goods, is deemed to be arising outside of Malta. Therefore, a resident non-domiciled company will only be taxable in Malta if it receives its income in Malta. Where the income is not received in Malta there would be no tax liability in Malta.



Withholding taxes

Malta does not impose any withholding taxes on interest, royalties, dividends, lease payments and proceeds from liquidation.

Transfer Pricing

There is no transfer pricing legislation in Malta.

Controlled foreign company (CFC)

There is no CFC legislation in Malta.

Thin Capitalisation

There is no thin capitalisation legislation in Malta.

Contact us

André Zarb

Partner, Head of Tax

T: + 356 2563 1134

E: andrezarb@kpmg.com.mt

Lisa Zarb Mizzi

Senior Manager, Tax

T: + 356 2563 1082

E: LisaZarbMizzi@kpmg.com.mt

Simon Xuereb

Advisor, Tax

T: + 356 2563 1147

E: SimonXuereb@kpmg.com.mt

www.kpmg.com.mt

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2012 KPMG, a Maltese Civil Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name, logo and 'cutting through complexity' are registered trademarks or trademarks of KPMG International Cooperative (KPMG International).

Printed in Malta.

January 2012