



# Aviation



The introduction of the Aircraft Registration Act has concretized Malta's commitment to develop the jurisdiction as a successful base for the aviation industry. This Act together with Malta's accession to the Cape Town Convention, its EU status and very competitive registration fees are all factors which have contributed to developing the jurisdiction as an aviation hub. The law is driven by innovative concepts and increased sensitivity to security interest holders which help make Malta a jurisdiction of choice for aircraft owners, lessors, financiers and operators. Among the main features of the Maltese Aircraft Register is the permitted recordation of various rights in aircraft including those of owners, lessors, lessees and others enjoying a temporary title over the aircraft.

## The Aircraft Registration Act

The rationale of the new Aircraft Registration Act, 2010 is to establish a robust legal framework that would assist in the creation and support of a successful Maltese aircraft register, while consolidating the laws on Maltese aircraft registration into one single legislative instrument. The Aircraft Registration Act provides for a National Aircraft Register. One is to note that there is no separate register for aircraft engines. The Aircraft Registration Act, is intended to attract aircraft owners and lessors who wish to register their commercial and private aircrafts in Malta. The definition of aircraft includes air balloons, gliders, seaplanes and helicopters.

The Act also provides for contemporary aircraft ownership trends for business and private jets, including concepts such as fractional ownership and ownership through trust structures. Moreover, it introduces a number of innovative concepts which make the Maltese aviation register increasingly competitive when comparing it to the world's leading aviation registers. The Act seeks to do this by limiting nationality and form requirements in order to make the register accessible to as many owners and operators as possible, while ensuring that the register requirements comply with EU law.

### Eligibility for Registration

The Aircraft Registration Act provides for those parties, who are eligible to register aircraft on the Malta aircraft register. The following parties may register any aircraft on the Maltese aircraft register, be it a private aircraft or an aircraft utilised for hire and/or reward:

- i. the Government of Malta;
- ii. a citizen of Malta or a citizen of a member state of the EU or of an EEA State, or Switzerland, having a place of residence or business in Malta, the EU, the EEA, or Switzerland, including a person sharing in the ownership of such aircraft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered;
- iii. an undertaking formed and existing in accordance with the laws of Malta, of a Member State of the EU, of an EEA State, or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the EU, or the EEA, or Switzerland, whereof not less than 50% of the undertaking is owned and effectively controlled by

“ What railways have done for nations, airways will do for the world.

*Claude Grahame-White, English pioneer of aviation* ”

the Government of Malta, or by any member state of the EU or by persons referred to above, whether directly or indirectly through one or more intermediate undertakings.

With regard to private aircraft the eligibility requirements are broader. To this end Maltese aircraft legislation provides that a natural person who is a citizen of, or an undertaking established in a jurisdiction approved by the Minister may register aircraft provided it:

- i. has legal capacity to own/operate an aircraft in terms of law;
- ii. appoints a local resident agent to represent the owner in Malta for matters concerning the registration of the aircraft;
- iii. complies with applicable regulations/guidelines.

Moreover, the Act provides for the innovative concept of the registration of aircraft under construction. Such can be registered so long as such aircraft is uniquely identifiable.

#### International Registrant and Resident Agent

The Aircraft Registration Act provides for citizens of approved jurisdictions or undertakings established in approved jurisdictions to qualify to register aircraft. Approved jurisdictions include the following jurisdictions Albania, Algeria, Aruba, Bahamas, Bahrain, Barbados, Bosnia and Herzegovina, Brazil, Bermuda, British Virgin Islands, Cayman Islands, China, Croatia, Egypt, Georgia, Gibraltar, Guernsey, Honduras, India, Indonesia, Iraq, Isle of Man, Kosovo, Jersey, Jordan, Kazakhstan, Kuwait, Lebanon, The Former Yugoslav Republic of Macedonia, Malaysia, Marshall Islands, Monaco, Montenegro, Morocco, Oman, Panama, Philippines, Qatar, Russia, Saint

Lucia, San Marino, St. Kitts and Nevis, St. Vincent and the Grenadines, Saudi Arabia, Serbia, Singapore, South Africa, Syria, Tunisia, Ukraine and the United Arab Emirates.

When an application is submitted by an international registrant from an approved jurisdiction, the applicant is required to appoint, prior to registration of an aircraft, a resident agent who shall be based in Malta. The international registrant shall ensure that it has a validly appointed resident agent at all times. The resident agent shall act as the channel of communication between the International Registrant and the Director General of Civil Aviation and other Maltese government departments and authorities. WDM International can be duly appointed as resident agent.

A Resident Agent must be habitually resident in Malta, is not interdicted or incapacitated or is an undischarged bankrupt; has not been convicted of any of the crimes affecting public trust or of theft or of fraud or money laundering or of knowingly receiving property obtained by theft or fraud and has satisfied the Director General of Civil Aviation that he is a person capable of carrying out the functions stated under the Aircraft Registration Act 2010. The appointed resident agent has to accept the appointment in writing.

## Special Privileges and Mortgages on Aircraft

An aircraft constitutes a particular class of movables forming separate and distinct assets within the estate of their owners for the security of actions and claims to which the aircraft may be subject. In the case of bankruptcy or insolvency of the owner of an aircraft, all actions and claims to which the aircraft may be subject, shall have preference on the aircraft over all other debts of the estate.

When dealing with mortgages an 'aircraft' shall comprise:

- i. all data, manuals and technical records;
- ii. the airframe, all equipment, machinery and other appurtenances as accessories belonging to the aircraft, which are on board or which have been temporarily removed therefrom;
- iii. any engines owned by the owner of the aircraft whether attached to the aircraft or not as well as any replacement engines which are designated for use on the aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft.

Mortgages and special privileges shall have priority of claims on the aircraft over all other debts of the owner. Given the mortgage has been created or the special privilege arises, the bankruptcy or insolvency of the owner of the aircraft shall not affect the actions and claims to which the aircraft may be subject.

It is also lawful for a mortgage to be executed and registered in favour of a security trustee. Such security trustee shall be recognised as the mortgagee and shall be entitled to exercise all the rights in relation to that mortgage.

An aircraft may also constitute security for a debt or other obligation either by agreement or by operation of the law in the form of a special privilege. A special privilege is subject to registration in the International Registry of Mobile Assets and such registration is necessary for the continuing existence of the privilege.

The role of a security trustee in such a scenario is fundamental because of the huge costs involved in aircraft financing where financiers may wish to share the burden of these costs. The law acknowledges this and provides for a situation where, rather than having each financier enforcing the security, a pool of financiers could appoint one of themselves as security trustee.

A Maltese registered aircraft or a share therein may be made a security for any debt or other obligation by means of a mortgage instrument, signed by the mortgagor in favour of the mortgagee in the presence of, and attested by, a witness or witnesses. On the production of a mortgage for registration in the prescribed form, the Director General Civil Aviation shall record it in the national aircraft register.

## The Cape Town Convention and its Aircraft Protocol

Malta has acceded to the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment on 1st October 2010, coming into force in Malta on 1st February 2011.

The Treaty provides for rules in respect of the recognition, enforcement and priority status of interests in mobile equipment. The Treaty also provides for the establishment of an international interest which is proprietary in character and which encompasses security agreements, title reservation agreements, leasing agreements and their equivalents. International interests are registered in the International Registry, which is established under the Treaty and which is an on-line, notice based registry.

Holders of an international interest are afforded extensive remedies under the Treaty in the event of the debtor's default or insolvency. It also establishes the right for registrants of aircraft, (as debtors), to grant an Irrevocable De-Registration and Export Request Authorization (IDERA) in favour of an authorised party, to procure the de-registration and export of the aircraft.

# Attainment of an Air Operator Certificate (AOC)

An AOC, issued by Transport Malta Civil Aviation Directorate is necessary for an air transport organisation to carry out any air service within the (European) Community in accordance with Council Regulation 1008/2008 on common rules for the operation of air services in the Community. As the AOC is the certificate authorising a business to operate as an air transport organisation, the requirements apply to those operational and technical aspects of the business relating to equipment (including aircraft and their support equipment), organisation, staffing and so on.

The requirements for the business organisation in terms of adequacy of capital, business plan and other commercial matters shall also have to be met. In these matters, the organisation shall be required to comply with the requirements of the Civil Aviation Directorate (CAD) and to obtain an Air Operating Licence (AOL).

An operator shall not operate an aircraft for the purpose of commercial air transportation otherwise than under, and in accordance with, the terms of an AOC.

An applicant for an AOC, or variation of an AOC, shall allow the CAD to examine all safety aspects of the proposed operation and to provide the CAD with access to their personnel, aircraft, operations and facilities and associated records for the purpose of certification and continued surveillance.

An applicant for an AOC must:

- i. not hold an AOC issued by another Authority unless specifically approved by the Authorities concerned;
- ii. have his principal place of business and, if any, his registered office located in the EU State responsible for issuing the AOC;
- iii. satisfy the Authority that he is able to conduct safe operations.

At WDM International we can provide full consultancy and technical assistance to our clients who wish to register their aircraft and maintain such registration in Malta. We can also provide administrative support functions and the setting up of corporate vehicles as well as advice on the Cape Town Convention where necessary. WDM International has experience in drafting sale and purchase contracts of aircraft, and in dealing with aircraft ownership, finance and leasing structures. We can also provide assistance in relation to the application of an AOC.





# Tax Regime applicable to Aircraft Operations

As a part of the above overhaul, tax provisions were introduced in Maltese tax legislation in order to complement the Aircraft Registration Act. Moreover, particular tax incentives were introduced specifically targeting the aircraft maintenance sector.

## Main Income Tax Provisions

Income from ownership, leasing or operation of aircraft or aircraft engines: The Source Rule	<p>Any income derived from the ownership, leasing or operation of aircraft or aircraft engines used or employed in the international transport of passengers and goods, shall be deemed to arise outside Malta irrespective of both the aircraft's country of registration and whether it calls at or operates from Malta or otherwise.</p> <p>This provision is of particular interest to companies which are deemed to be resident but not domiciled in Malta for tax purposes. In the case of such entities, any income derived from the ownership, leasing or operation of aircraft or engines used internationally will be taxable in Malta solely in the event that such income is remitted or received in Malta.</p>
Finance Leases	<p>Any income derived from the ownership, leasing or operation of aircraft or aircraft engines used or employed in the international transport of passengers and goods, shall be deemed to arise outside Malta irrespective of both the aircraft's country of registration and whether it calls at or operates from Malta or otherwise.</p> <p>This provision is of particular interest to companies which are deemed to be resident but not domiciled in Malta for tax purposes. In the case of such entities, any income derived from the ownership, leasing or operation of aircraft or engines used internationally will be taxable in Malta solely in the event that such income is remitted or received in Malta.</p> <p>The Maltese Inland Revenue Department has also issued guidelines in relation to aircraft leasing arrangements, which do not fall under the Finance Leasing Rules and which arrangements ought not to be longer than four years in duration. In such cases, the Guidelines clarify that the Maltese tax treatment should be as follows:</p> <ol style="list-style-type: none"> <li>a. the lessor is charged to tax on the annual finance charge, which represents the difference between the total lease payments less the capital element, divided by the number of years;</li> <li>b. the lessee is allowed deductions in respect of the following expenses:             <ol style="list-style-type: none"> <li>i. the finance charge;</li> <li>ii. any maintenance costs;</li> <li>iii. any repair costs; and</li> <li>iv. any insurance expenses;</li> </ol> </li> <li>c. the lessee is the party entitled to deduct capital allowances in respect of the aircraft; and</li> <li>d. where the lessee exercises an option to purchase the aircraft on the termination of the lease, the consideration received by the lessor is considered to be a capital payment and no tax thereon is charged by the lessor.</li> </ol>
Capital Allowances	<p>Accelerated depreciation allows larger portions of the depreciation value to be claimed early in the depreciation cycle, resulting in larger deductions for a shorter depreciation period. Accelerated depreciation can reduce costs during a company's startup years. The increased deductions created by accelerated depreciation allow companies to defer a portion of their tax liability. To this end, the minimum periods for tax depreciation of aircraft have been reduced via the Deduction for Wear and Tear of Plant and Machinery (Amendment) Rules, 2010. Prior to the introduction of these rules, the minimum period for aircraft wear and tear was 12 years. With the enforcement of the rules, aircraft depreciation for tax purposes will be reduced to six or four years depending on asset belonging to the aircraft.</p>
Fringe Benefits Exemption	<p>The Fringe Benefits (Amendment) Rules, 2010 also introduce an outright exemption from Maltese tax attributable to the taxation of fringe benefits. This exemption applies to the private use of an aircraft by non-resident employees or officers, companies or partnerships whose business activities include the ownership, leasing or operation of aircraft or aircraft engine used in the international transport of passengers or goods.</p>
Investment Tax Credits	<p>A person that carries on a trade or business consisting of the repair, overhaul or maintenance of aircraft, engines or equipment incorporated or used in such aircraft may benefit from investment tax credits. Such tax credits are calculated either as a percentage of:</p> <ol style="list-style-type: none"> <li>a. qualifying expenditure; or</li> <li>b. wage costs for jobs directly created by the project.</li> </ol> <p>The Maltese tax credit is credited against the tax due in Malta. Moreover, unutilised investment tax credits may be carried forward against tax due in subsequent years.</p>

Aircraft used for private purposes, should, by way of general principle, not generate income and hence should give rise to no Maltese tax implications.

### VAT Treatment of Aircraft Operations

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Business aviation refers to the use of aircraft for a business purpose. A business aviation arrangement can take various forms, such as:

- i. aircraft owned by a SPV beneficially owned by a private individual or family;
- ii. aircraft owned by a company and used for the transportation of its senior officers and employees

The EU VAT Directive and local VAT Legislation provide for an exemption with credit (i.e. zero rate) for Qualifying Aircraft (QA). Hence such aircraft qualify for the zero rate (VAT exemption with right of recovery of any VAT paid).

The QA VAT exemption covers the:

- i. supply (sale/transfer) of QA;
- ii. supply of equipment used/incorporated in QA to constructors, owners or operators;
- iii. modification, maintenance, chartering and hiring of QA and equipment used/incorporated in QA;
- iv. goods for the fuelling and provisioning of QA.

The QA VAT exemption likewise covers services for the direct needs of QA and its cargo, such as:

- i. towage;
- ii. pilotage;
- iii. rescue services;
- iv. valuation;
- v. use of airports (including landing fees);
- vi. services provided to aircraft operators by their agents acting as such;
- vii. services necessary for the landing, take off or stay in airports;
- viii. assistance provided to passengers or crew.

Intra-EU acquisition supplies and importation of aircraft are subject to no VAT (with right of recovery of any input tax) if the QA VAT exemption applies. If such exemption does not apply, VAT is applicable at standard rate (18% in Malta) if not qualifying for the QA VAT exemption. Parts and equipment sold with/accessory to aircraft are part of the same supply and follow the same VAT treatment.

### VAT Guidelines on Aircraft Leasing Arrangements

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The Maltese VAT department has enacted guidelines in order to clarify the VAT treatment of aircraft leasing in cases other than those where aircraft used by airline operators in international traffic are involved. The guidelines provide that the effective VAT rate suffered on the use of a non-QA within EU airspace can be reduced to a minimum of 5.4%. Moreover, the Aircraft can be registered on the aircraft register of any country.

Essentially, in accordance with these guidelines, aircraft leasing occurs when the lessor (owner of the aircraft) contracts the use of the aircraft to the lessee (the person who leases the aircraft) for a consideration. For VAT purposes, the supply of aircraft leasing is treated as supply of services which is taxable according to the use of the aircraft attributed within the airspace of the European Union. Therefore, VAT at the rate of 18% is only payable on the deemed use of the aircraft within the European Union's airspace.

In view of the practical difficulty to establish the actual use of the aircraft within the European Union's airspace, the local authorities have issued a formula which takes into consideration essential features of the aircraft through which the percentage of deemed use of the aircraft within European Union airspace is established. Such formula takes into consideration the following criteria:

- i. aircraft type;
- ii. MTOM;
- iii. maximum fuel capacity;
- iv. fuel burn;
- v. optimum altitude;
- vi. optimum cruising speed.

At WDM International we are well versed in transactions involving the registration of aircraft, mortgages, including registrations in the Cape Town International Registry, ownership and licensing requirements. Our full service firm can assist in advising on the correct implementation, structuring and maintenance of your operation in Malta, from a legal, corporate and tax perspective.

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