

AVIATION MALTA

A hub for international commerce and travel throughout history and arguably the most important strategic aviation base in WWII, Malta is no stranger to the world of flight. Surrounded by the Mediterranean Sea, Malta relies on the aviation industry for its important and lucrative tourism industry, as well as for importing and exporting of goods.

Entry to the European Union and recent changes in the legislative framework has changed the Maltese position in the Aviation sector with new rules seeing the increase in the introduction of players in the aviation sector relocating to Malta.

This small island has already attracted various major players to its jurisdiction, the most prestigious of all being Lufthansa.

The leading aviation company Lufthansa Technik has become the world's leading OEM-independent provider of aircraft maintenance, repair and overhaul services of optimal quality and reliability.

Malta's location, at the junction between three continents, also means that companies such as Lufthansa Technik are attracting customers from the Middle East and Eastern Europe.

Such a geographical advantage has been publicly advocated by other companies which have set-up in Malta, particularly Comlux Aviation, a company incorporated in Zurich in 2003 and operating VIP charters with top of the line business jets.

Malta's success in attracting such prestigious companies has been further reinforced through the coming into force of the Aircraft Registration Act on the 1st October 2010. This Act has amended the Civil Code and the Code of Organisation & Civil Procedure and implemented 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.



During the last decade Malta has built a strong regulatory infrastructure to enable it to establish itself as the aviation centre par excellence within the EU. Malta already vaunts a success story in the maritime field and it is riding on this experience by mirroring its techniques & advantages to the aviation sector.

The Regulator

The Aviation Affairs Committee regulates the Civil Aviation Directorate which ensures that the Maltese air transport industry, in all its aspects, continues to develop in a safe and efficient manner. The Civil Aviation Directorate is responsible for:

- aircraft safety;
- aircraft and aerodrome operators;
- air navigation services providers;
- the licensing of aeronautical personnel;
- the conclusion of international air services agreements.

Qualifying Registrants

Under the Act, any type of aircraft can be registered in Malta, including private and corporate jets, helicopters, aircraft used by airline operators and aircraft which are still under construction.

Maltese legislation provides that any aircraft whether used to provide commercial air services or used for private purposes may be registered by the following persons:

- the Government of Malta; or
- a citizen of Malta or a citizen of a Member State of the European Union or an EEA State or Switzerland, having a place of residence or business in Malta, the EU, the EEA or Switzerland; or
- an undertaking formed and existing in accordance with the laws of Malta or of a Member State of the European Union or of an EEA State, or Switzerland and having its registered office, central administration and principal place of business within Malta, the EU, the EEA or Switzerland.

The following persons are solely eligible to register private aircraft, thereby excluding the possibility of registration of aircraft for commercial use:

- A natural person who is a citizen of or an undertaking established in, an approved jurisdiction, other than those enlisted above, provided that:
 - it enjoys legal capacity to own or operate an aircraft, to the satisfaction of the Director; and
 - it complies with the requirements established under the Aircraft Registration Act or any other guidelines and regulations; and
 - it satisfies the Director General that it can and will ensure due observance of the laws of Malta relating to civil aviation; and
 - it complies with the requirements laid down under the Aircraft Registration Act applicable to the international Registrant.

In the case of private aircraft, a special provision is included in the law whereby all that is required to register such an aircraft in Malta is the appointment of a resident agent. For such a registration to occur, the owner of the aircraft has to be a natural person who is a citizen of, or an undertaking established in an approved jurisdiction.

Air Operator Certificate

Operators which fly aircraft used for commercial purposes require an Air Operator Certificate (AOC) which is issued by the Civil Aviation Directorate in terms of Maltese law and in terms of Regulation No 1008/2008 of the European Parliament and of the Council, after the attainment of such certificate through a thorough licensing process with the Civil Aviation Department. The period required for the Civil Aviation Directorate to evaluate the application for an AOC and carry out all the necessary inspections is 90 days.

The Process

The Civil Aviation Directorate identifies five phases in the certification process:

Phase 1- Pre-Application

In the first stage, the applicant will obtain information concerning appropriate legislation and advisory material and will be required to complete a pre-assessment statement.

Phase 2- Formal Application

The applicant submits, a formal AOC application, manuals, qualifications, a compliance schedule and the appropriate fee.

Phase 3 – Document Evaluation

During this phase the Civil Aviation Directorate reviews the applicants' documents for compliance, acceptance and approval.

Phase 4 – Inspection and Demonstration

The Civil Aviation Directorate will evaluate the effectiveness of the applicant's procedures including management, training, maintenance, records and flight operations and would inspect station facilities and accommodation.

Phase 5 – Certification

At the end of the last phase the Civil Aviation Directorate will prepare and issue the AOC and the associated Operations Specifications. The assigned inspector will establish a post-certification surveillance plan and the applicant can commence operating under a Malta AOC.

Aircrafts which are owned or operated by a company which has a Malta AOC benefit from the freedom of movement within the EU.

Chetcuti Cauchi enjoys a wealth of experience in this enticing and burgeoning field of law including the registration of aircraft in Malta, insurance, sales and procurement, aircraft chartering and leasing. In addition we offer negotiating and drafting services of aviation related service agreements and contracts such as maintenance and repair agreements and imperative legal advice on Bilateral Air Services Agreements, conditions of Carriage and Regulations of airlines.

Security

Registration in the National Register

The law has been amended in order to facilitate the possibility for owners and operators to attain finance for the purchase of aircraft. Under Malta's National Register aircraft constitutes a particular class of movables which is separate and distinct assets within the estate of their owners for the security of actions and claims to which the aircraft is subject. The different types of security rights which are recognised under Maltese law are the following:

- those which arise by agreement or by operation of law;
- those which are registerable special privileges; and
- security rights over engines.

Registration in the International Register

On the 1st of October 2010 Malta ratified the Convention on International Interests in Mobile Equipment, also known as the Cape Town Convention. Such convention has come into force on February 2011 and is today fully applicable under Maltese law.

This Convention provides for more sophisticated cross-border and domestic financing of moveable assets addressing risks in situations where banks, lessors and other financiers funding assets not in their possession may risk losing their

security position, especially if the asset moves across a jurisdictional border. By providing more security to the private sector, the Convention is reducing the cost of borrowing and in certain cases, facilitating such borrowing.

The main features of the Cape Town Convention include the following:

1. Registration of International Interests in an International Registry

The Convention provides for the recognition of 'international interests' in mobile equipment, that is, security interests in a uniquely identifiable object. These international interests can be registered in an International Registry which is currently established in Ireland.

Once an international interest has been filed by a creditor, such an interest will have priority over all subsequent registered interests and all unregistered interests.

2. Protection of Security Rights

The Convention provides financiers with a number of key rights with respect to any aircraft financed in a country that has ratified this Convention and Protocol. These include:

- to take possession or control of any aircraft object charged to it;
- sell or grant a lease of any such aircraft object;
- collect or receive any income or profits arising from the management or use of any such aircraft object.

Fiscal Incentives

Malta is an attractive jurisdiction providing extensive tax-efficient solutions for international business operations. A number of fiscal incentives in relation to international aviation have been introduced recently as a follow up to the revised legislation.

1. Income from Aircraft used for International Transport

Income derived from the ownership, lease, operation of an aircraft or aircraft engines used for international transport is deemed to arise outside of Malta for tax purposes, irrespective of the country of registration of the aircraft or whether the aircraft calls or operates from Malta. This provides for interesting planning opportunities.

Where the lessor/operator is a company that is resident in Malta (management and control) but not domiciled in Malta (incorporated outside Malta) it would only be subject to tax in Malta upon any income and gains arising in Malta, any chargeable gains arising in Malta and any income arising outside of Malta which is received in / remitted to Malta. Therefore, no tax liability arises in Malta if aviation income received by a foreign incorporated company resident in Malta is not received / remitted to Malta.

Income derived from international air transport operations in Malta is taxable at the corporate rate of 35% with the possibility of 6/7 refund to qualified shareholders upon distribution of such profits.

2. Finance and Operating Lease

Lessor

In an operating lease, the lessor is taxable on the profits derived from such leasing income. The lessor would be entitled to offset from such income tax depreciation on the value of the aircraft frame and aircraft engine (subject to the lessor retaining the burden of wear and tear).

In a finance lease, the lessor will be taxable in Malta on the interest element, with deductions allowable for any finance cost. No tax depreciation is allowed as a deduction

Lessee

In an operating lease, where the lessee uses the aircraft as part of its trade, a deduction for the lease payments as well as tax depreciation (if the burden of wear and tear falls on the lessee) is allowed.

In a finance lease, the lessee will be allowed tax depreciation on the value of the aircraft frame and aircraft engine, finance charges, the cost of repairs and maintenance and insurance.

3. Tax Depreciation / Capital Allowances

Tax depreciation of aircrafts and related parts will be spread over minimum number of years as follows:

- Aircraft Airframe, Aircraft Engine, Aircraft and Engine overhaul - 6 years (16.7% per annum);
- Interior and other parts - 4 years (25% per annum)

4. Tax credits to Maintenance, Repair or Overhaul (MRO) Operations

Investment tax credit has been extended to entities engaged in the repair, overhaul or maintenance of aircraft, engines or equipment used in such aircraft. The investment tax credit which an eligible enterprise may attain is calculated as a percentage of either qualifying expenditure or wage costs for jobs directly created by the project. The tax credits which are not utilized in a particular year may be carried forward against tax due in subsequent years.

5. VAT Simplification Procedure

The supply of aircraft used by airline operators in international traffic is exempt from VAT, with credit. On the other hand, the lease of an aircraft for non-business (or private) purposes is subject to VAT at the rate of 18%, with the right of deduction of input VAT by the lessor. Malta provides for a leasing set-up by means of which a lower effective rate of VAT can be availed of for the use of aircraft in the EU airspace. This is achieved through a VAT aircraft leasing procedure that allows the payment of VAT exclusively on the portion of use of the aircraft within the EU.

An expert technical test is applied to ascertain the estimated percentage portion of the lease subject to VAT, taking into account the following considerations:

- Aircraft type
- Maximum Take-off Mass (MTOM) of the aircraft
- Maximum fuel capacity (kg)
- Fuel burn
- Optimum Altitude (Feet at ISA conditions)
- Optimum cruising speed – true airspeed (knots)

Both the lessor and the lessee have to be established in Malta, and the lease agreement must not exceed a period of 60 months. Where the lessee exercises the option to purchase the aircraft after the termination of the lease, a VAT paid certificate will be issued, provided that all the VAT due has been fully paid.

6. Exemption from Tax on Fringe Benefits

The private use of an aircraft by an individual who is not resident in Malta and is an employee/ officer of an employer/company/partnership whose business activities include the ownership/ leasing/ operation of aircraft used for international transport does not constitute a taxable fringe benefit.

HOW CAN WE HELP?

Whilst appreciating the complexity of this market, our aviation lawyers & consultants are also sensitive to the need for fast, yet high quality legal advice across this industry.

Our Aviation Unit offers a one-stop-shop service to operators seeking to relocate to Malta or in search of a back-up operation within an EU jurisdiction. Many of our services are provided in-house; other non-legal or financial services are provided through our network of trusted partners.

Our typical services would include advisory assistance in:

- Aircraft Registration
- Aircraft Finance
- Aircraft Leasing
- Aircraft Sale and Purchase
- Effective Tax Structures for Aircraft Importation
- Obtaining an Air Operator Certificate
- Malta office location
- Business plan drafting
- Recruitment and relocation services



Testimonial

"A wealth of expertise. An unfaltering commitment to providing optimal legal and accounting solutions to foreign clients worldwide and a level of professionalism and attention to detail that cannot be matched in the industry. Top qualities: Personable, On Time, High Integrity"

Alan Nee, Premier Aviation Services Ltd.



Firm Overview



Dr Jean-Philippe Chetcuti
Managing Partner



Dr Maria Chetcuti-Cauch
Senior Partner



Dr Priscilla Mifsud-Parker
Partner



Dr Charlene Mifsud
Manager
Corporate and Commercial Law

Our areas of practice include:

LEGAL

Art & Cultural Property
Aviation Law
Banking & Finance
Capital Markets
Commercial Law
Company Law
Dispute Resolution
Employment & Labour
Gaming Law
Immigration & Relocation
Insurance Law
Intellectual Property Law
Investments Funds
Investments Services
Maritime Law
Media & Entertainment Law
Property & Development Law
Public Service Law
Technology & Telecoms Law
Trusts & Estates Law

TAX

Tax Advisory
Tax Compliance

CORPORATE

Corporate Services
Accounting
Fiduciary
HR Management
Technology Management
Tendering & Funding

The information set out herein is for informational purposes only and does not constitute legal or professional advice. No responsibility will be accepted for loss occasioned directly or indirectly as a result of acting or refraining from acting, wholly or partially in reliance upon information contained herein.

