

THE TAX TREATMENT OF AIRCRAFT LEASING IN IRELAND



Ireland's position as a global leader in Aviation Leasing is firmly based on the highly advantageous tax regime strategically targeted towards supporting this sector. The long term reliability of this regime is underpinned by Ireland's membership of the OECD BEPS project; whilst the efficiency can be leveraged internationally through Ireland's extensive network tax treaty partners.

IRISH TAX RESIDENCE

The prerequisite to enjoying the benefits of the Irish tax regime is that the aircraft leasing company is tax resident in Ireland. In general, a company will be Irish tax resident if it is Irish incorporated or the central management and control is exercised in Ireland.

Commercial concerns such as asset financing security and limitations on liability often compel aircraft leasing companies to hold their aircraft in subsidiary Special Purpose Vehicles (SPVs). In these leasing groups each of the companies should be controlled in Ireland with their accounts and records kept and, where required, audited in Ireland.

CORPORATION TAX

Ireland's attractive 12.5% Corporation Tax rate will apply to the income of "active" leasing companies; those carrying on an operational business activity where substantiated value is added in Ireland. These companies must have the required expertise and skill to manage the operations based in Ireland.

Companies which only own an aircraft or lease which produces income without active operations would be subject to the 25% "passive" rate of Corporation Tax on this income. However, when subsidiary SPVs are part of an "active" leasing group they may also be deemed to be trading. We can seek a Revenue determination on trading status in advance where required.

Either way, in reality most aircraft lessors could significantly reduce or cancel out their Irish taxable profits by use of allowable tax deductions and structuring. The cost of an aircraft can be written-off against tax at a rate of 12.5% over 8 years, where the responsibility for wear and tear of the aircraft lies with the lessor. Through the use of a "Section 110" company interest in excess of market rates on debt used to purchase the asset can be a qualifying tax deduction.

Ireland's Section 110 regime can be incorporated into the financial structure of many aircraft transactions. Typically, aircraft or leases would be acquired using senior and subordinated debt and then leased on. The subordinated debt would be a profit participating loan with a rate of return equal to any profit after the servicing of the senior debt and operational costs. This means with efficient international structuring profits generated in Ireland through the aircraft lease may be tax neutral once the deductions for interest are factored in, and the rate of tax irrelevant.

VAT

Leasing services supplied to a non-Irish lessee made by an Irish lessor are outside the scope of Irish VAT as the place of supply for these services is the customer's location. In cases where the lease is to an airline chiefly operating on international routes for reward then the supply is zero rated. This means no VAT is payable on the lease but VAT incurred on costs by the lessor should be recoverable.

In cases where an Irish company is leasing an aircraft from outside Ireland that company would be obliged to register and self-account for the VAT in Ireland. Assuming the aircraft is to be put to a VATable use this VAT (along with VAT on other associated costs incurred) can be recovered immediately meaning there is no VAT payment required.

STAMP DUTY

The transfer of ownership, sale, or lease of an aircraft is exempt from Irish stamp duty.

WITHHOLDING TAXES

Whilst there are withholding tax obligations on Irish companies on payments of dividends and interest, there are wide ranging exemptions available which are of use to Aircraft Lessors can benefit from.

In the case of dividends, profits paid up by way of a distribution to an Irish or international parent company can be paid without being subject to Irish dividend withholding tax. Interest payments to a foreign lender based in another EU State or a jurisdiction covered by a double taxation agreement (DTA) can be exempt from withholding tax where:

- The DTA states interest is taxable where it is received and therefore exempt from Irish tax.
- The interest is not due to the lender through the operations of an Irish branch or agency.

There is no withholding tax on lease rental income in Ireland, meaning Irish lessees can pay the whole amount of rent due directly to the lessor.

TRANSFER PRICING

These regulations mean “arm’s length” pricing must be imposed on transactions between companies under common beneficial ownership; therefore limiting profit shifting. However, these rules do not apply to companies whose group has turnover of €50 million or less, total assets (regardless of liabilities) of €43 million or less, and fewer than 250 employees in total. Therefore the applicability of these regulations to aircraft leasing companies will vary on a case-by-case basis.

AVIATION

Moore is a leading accountancy firm with significant experience in the aviation sector. Through our international network of member firms we are able to offer the global coverage required to meet the needs of aircraft owners and operators of all sizes. Please contact a member of our experienced aviation team for support and advice on:

- Ownership Structures
- Advice on Import, Registration & Sale of Aircraft
- Value Added Tax
- Tax Registration and Compliance Requirements
- Accounting
- Crew payroll and benefits



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