

MALTA'S INTERNATIONAL ADVISORY FIRM

Malta - Aircraft Registration & Operation



Aviation in Malta

Aviation has been highlighted by the Maltese Government as a growth industry and is actively encouraged through the relatively straightforward registration process and attractive fiscal benefits. By virtue of the Aircraft Registration Act of 2010, a modern system of registration of aircraft and their engines has been put into place, giving Malta a competitive edge in the field of aviation.

Malta, an EU member state, has acceded to key international conventions in matters of aviation. In this regard, it has implemented the standards of the European Aviation Safety Agency for the operation of aircraft (IR-OPS).

Key Information

Malta Aircraft Registration

Registration may be private or commercial, depending on the intended use of the aircraft. The Malta aircraft registry is a public registry - information is public so that transactions will have effect against third parties.

Any qualifying natural person, company, trust or undertaking may register aircraft in Malta if they are:

- The owner of the aircraft who operates said aircraft
- Owner of an aircraft under construction or temporarily not being operated or managed
- Operator under temporary title which satisfies any prescribed conditions
- Buyer of aircraft under conditional sale or title reservation authorised to operate the aircraft or satisfying any prescribed conditions

'Qualifying persons' are:

- Government of Malta

- Citizens of EU member states, EEA or Switzerland having a place of business or residence therein
- Companies or other undertakings in a form recognised by Maltese law, having its registered office, central administration & principal place of business within EU, EEA or Switzerland;
- Individuals who are citizens of, or a recognised undertaking established in, an OECD member country, or country approved by the Government of Malta, if such individual: (i) can legally own or operate an aircraft; (ii) appoints a Malta resident agent to represent the owner's registration interests in Malta; and (iii) complies with applicable regulations
- Trustees (qualification of the beneficial owner is considered, rather than the nationality of the trustee)

Benefits of Maltese Registration of Aircraft

The aircraft's nationality is granted upon registration, which in turn confers several benefits:

- Flexible registration requirements
- Recognition of fractional ownership
- Registration of irrevocable deregistration and export power of attorney, and other special powers of attorney granted as security over the aircraft and parts
- Research and development schemes for aviation companies
- Visibility of interest-holders and right-holders upon request (public registry)
- Private use of aircraft not treated as a fringe benefit (conditions apply)
- Local aviation services available to meet operator needs (including industrial space)

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Registration and Operation of Aircraft in Malta

- Airside facilities for the aviation and related industries in compliance with the aviation standards set out by the International Civil Aviation Organisation and the European Aviation Safety Social Security rates

Registration under Construction

An aircraft may be registered while under construction, provided it is uniquely identifiable. The manufacturer's details, the serial number and the model designation of the proposed aircraft are to be provided. This mechanism is particularly helpful when obtaining financing for the aircraft, as mortgages to secure the debt can also be registered on Maltese aircraft.

Fractional Ownership

An aircraft's title can be split between co-owners in fractions or percentages; each fraction can be financed and secured by different creditors. At least 50% of the owners must be qualified persons. Where the aircraft's operation is being effected by more than one person, each operator must be a qualified person.

Each fractional ownership interest may be:

- Noted in the National Aircraft Register – certifications issued by the Director General of Civil Aviation
- Treated as separate international interests via the Cape Town Convention – each interest capable of being separately registered in the International Registry

Fractional ownership means that the Director General of Civil Aviation will Issue a Certificate of Registration in relation to each fractional interest.

Security of Creditors' Interests

Security Interests may be registered both on the domestic level (through the Act) and on an international level by virtue of Malta's ratification of the Cape Town Convention of International Interests in Mobile Equipment & Aircraft Protocol, which ensures added security to creditors which in turn gives rise to the possibility of 'Cape Town discounts' on interests' rates for financiers.

Security interests are considered separate and distinct assets within the owners' estate and therefore, creditors wanting to enforce a security interest over a secured aircraft or engine

would have priority over all other creditors with respect to the aircraft or engine.

Domestic mortgages are registered in the National Register, while cross-border mortgages may also be registered in the International Register ('international mortgages').

A self-help mechanism is available with respect of mortgage defaults under the Maltese legal system: upon the mortgagor's default, the mortgagee can enforce his remedies without the leave of the courts, in order to take possession of, sell or lease the aircraft, collect or receive income or profits arising from the management or use of the aircraft - and this, after notifying the debtor.

The Schedule to the Aircraft Registration Act of 2010 regulates 'international mortgages', which have priority over national mortgage registrations, even if the international mortgage registration took place after the domestic mortgage registration. Under the Act, it is possible to subject the registration of subsequent mortgages to the consent of the mortgagee.

Mortgages can be executed in favour of a security trustee who would be entitled to exercise all rights in relation to the mortgage. A pool of financiers may appoint one among themselves (or a third party) to expedite or oversee matters relating to the mortgage

Owners' Priority

In bankruptcy or insolvency matters, owner's claims have security preference over unsecured creditors. Security (whether attached or not) over an aircraft and/or the engine is separated in so far as the assets are the property of different owners.

Malta Tax Opportunities

Malta has over 70 double-taxation agreements, easy re-domiciliation procedures and a competitive fiscal set-up. Some general benefits include:

- Companies effectively managed in Malta but incorporated outside Malta are taxed in Malta only if income received in or remitted to Malta
- Profits from ships or operation of aircraft in international traffic are taxable only in the jurisdiction where the

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Registration of Aircraft - Malta

company is effectively managed, as per double taxation arrangements.

- Malta companies are taxable on their worldwide income from International transport of goods and passengers, but a number of attractive allowable deductible expenses, claims for capital allowances and double taxation relief may be claimed
- Full imputation system: a non-resident shareholder can claim 6/7 of the tax paid by the company (fixed corporate tax rate of 35%) - effective tax leakage being 5%

Aviation-specific tax considerations include:

- Income deriving from ownership, leasing or operation of aircraft or their engines used for the international transport of passengers or cargo, is deemed to arise outside Malta, regardless of whether the aircraft may have operated from, or called at, a Maltese airport and is exempt from Maltese tax
- No withholding tax on lease payments made by Maltese lessors to non-residents in respect of aircraft operated in the international transport of passengers or goods
- No withholding tax on lease payments made by Maltese lessors to non-resident financial lessors
- Favourable VAT treatment of finance leases and operating leases
- Accelerated tax depreciation rates for aircraft and their engines (higher yearly deductions on wear-and-tear, decreasing the taxable profits during the first years of the owning company). These are:
 - Airframes, aircraft engines, or their overhauls - 6 years
 - Interiors or other parts - 4 years.
- Operating leases: the depreciation periods may be claimed by both lessor or lessee - depending on who bears the majority of the risks and reward of the aircraft, as well as on the parties' agreement. In the case of a finance lease, the lessee can avail himself or shorter depreciation periods and may deduct expenses for wear and tear.
- VAT exemption on the supply of aircraft destined to be used by airline operators chiefly for international transport for hire or reward
- VAT exemption on the supply to constructors, owners or operators of equipment used or incorporated in aircraft as well as supplies of services consisting in modification,

maintenance, chartering or hiring of aircraft engaged in international transport of goods and passengers

- Investment tax credits, for persons carrying on a trade or business in relation to repair, improvement or maintenance of aircraft or their equipment; these can be used against tax due in subsequent years
- Fringe benefits - private use of aircraft by non-resident individual being an employee or officer of an employer, company or partnership whose business activities include ownership, leasing or operation of aircraft or their engines engaged in international transport of goods and passengers not deemed as fringe benefits
- No import duty payable on civil aircraft
- Aircraft not chargeable assets in terms of duty on documents in Malta

Finance Leasing

The Commissioner for Revenue has issued guidelines on the finance leasing of aircraft, providing legal certainty on the tax treatment of this matter. The following tax treatment is adopted for each year of the duration of the finance lease:

- Lessor charged to tax on the annual finance charge, i.e. (total lease payments - capital element) / number of years of lease
- Lessee allowed deduction re: (i) finance charge; (ii) maintenance; (iii) repairs; (iv) insurance
- Lessee allowed capital allowances in respect of aircraft; parties may not opt to shift burden of proof of wear and tear onto lessor
- Where lessee exercises option to purchase aircraft upon termination of the lease, and lessor is not trading in the purchase and sale of aircraft, the purchase price received by Lessor shall be deemed of a capital nature and no tax payable thereon by lessee

Malta Company

A Malta company holding and / or operating an aircraft can be set up cost-effectively, affording several income, corporate and tax advantages.

Malta companies are regulated by the Malta Companies Act and must have at least one director and a company secretary. There are no restrictions on the nationality or the residency of shareholders and /or directors of Malta companies.



Malta - Registration of Aircraft

OUR SERVICES

- Tax structuring and optimisation of operators' business
- Registration, transfer and deletion of aircraft
- Registration, amendment, transfer and discharge of national and/or international security rights in respect of Malta-registered aircraft
- Chartering and leasing agreements
- Purchase and sale transactions
- Servicing, maintenance and repair agreements
- Searches of the Malta national aircraft register
- Searches of Maltese aircraft-owning entities
- Co-ordination of aircraft financing transactions, preparation and review of loan agreements, security agreements, statutory mortgages over aircraft body and engines, collateral deeds of covenants, issuing of legal opinions
- Structuring and implementation of aircraft re-finance transactions
- Co-ordination of all technical requirements for the operation of commercial aircraft with industry experts
- Enforcement of claims against Malta-registered aircraft and their engines, and aircraft situated in Malta

Acumum Legal & Advisory

How can we help?

Acumum is an award-winning boutique set of legal, tax and fiduciary firms - with an associated barristers' chambers, located in the EU tax & fiscal efficient jurisdiction of Malta and with representative offices in UK and Ireland. Our senior management of lawyers, accountants & tax advisers provide expert, trusted and cost efficient, bespoke services to an international clientele: individuals, family offices, corporations, Governments and other service providers.

Believing in long term relationships, we provide holistic, sustainable and practical solutions to clients, whilst being committed to a superb and personalised level of client service.

We can provide advice and support at all stages of the company incorporation if required, the aircraft registration process as

well as advising on application requirements, assisting with the process itself and providing expert support to ensure efficient progress towards successful completion.

To find out more or have a no-commitment initial conversation contact one of our Acumum offices.

Key Contact

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Director, Advocate

Qualifications

B.A. (Legal & Humanistic Studies), Dip. Notary Public, LL.D., Dip. Eccles. Trib., Mag. Jur. (EU & Comparative), LL.M. (IMLI)

Dr Geraldine Spiteri has been a Maltese advocate since 2002 and subsequently qualified in EU & Comparative Law (Magister Juris, University of Malta) and International Maritime Law (LL.M. IMO International Maritime Law Institute). Geraldine manages the maritime and yachting and aviation departments of Acumum, her main practice areas being maritime and yachting, aviation and corporate law.

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