

No friends like old friends

Still flying solo or getting caught by the flock? The threats posed by Malta and Singapore to Ireland's position as a leading location for aircraft leasing.

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Those outside the industry may wonder at Ireland's long-established – and much-cherished – position as one of the places – if not the place – to base an aircraft leasing business. Ireland, specifically Shannon but more recently to a greater extent Dublin, boasts some impressive numbers: somewhere in the region of 3,500 commercial aircraft are managed from Ireland, amounting to roughly one in five of the global fleet and half of all leased aircraft worldwide. The value of those aircraft is put at more than €80 billion and the industry provides roughly 1,000 Irish jobs directly, many of them the kind of highly skilled, well paid jobs that governments everywhere crave.

This pre-eminence is attributable to



one man, the late Dr. Tony Ryan, who founded Guinness Peat Aviation (GPA) in Shannon in 1975. GPA is credited with pioneering the aircraft leasing model and although GPA's planned floatation failed spectacularly in 1992, the people and skills linked to GPA went on to create a more broadly based but still Ireland-centred industry.

For sure, the industry has benefited from a very favourable tax and regulatory regime but the factors that contribute to that regime can be, and are being, replicated and even improved upon in other jurisdictions. Malta is leveraging off its established reputation as a centre of maritime activity while Singapore emphasises its suitability as an Asian hub. At first glance, Ireland, Malta and Singapore have many similarities – small jurisdictions, each with a pronounced outward focus and English speaking. Ireland and Malta share EU and Eurozone membership, while Singapore trumpets its links to China and the fact that Mandarin is one of its four official languages. Malta and Singapore can boast about their climate – not something even the most patriotic Irish person would do.

So, what are the factors that make Ireland such a hub for aircraft leasing and how are Malta and Singapore addressing them?

REGULATORY AND LEGAL

Typically, Irish entities that own and/or lease aircraft (whether fixed wing or helicopters), engines or parts are not required to obtain any kind of licence or authorisation from any Irish governmental agency. Leasing operations are frequently housed in Irish incorporated private limited liability companies which can be formed easily and quickly but do have ongoing compliance requirements, for example independently audited financial statements that may be required to be prepared annually.

Although relatively few of the aircraft managed in Ireland are registered on the Irish aircraft register maintained by the Irish Aviation Authority (the IAA), the registration process itself is transparent and, as one would expect, the IAA is well used to dealing with leased aircraft.

Ireland was in the first group of

eight states (and was the first EU member state) to ratify the Cape Town Convention on International Interests in Mobile Equipment. The electronic international registry created by that Convention is based in Ireland, something which was achieved in the face of stiff international competition. The Irish High Court was appointed as the international centre for aircraft leasing disputes under the Convention. The existence, thanks to the Convention, of the international registry of financial interest in aircraft assets means the absence of a dedicated Irish (domestic) register of security interests in aircraft assets is no longer the weakness in Ireland's case that it once may have been.

Ireland has a sophisticated legal system based on the common law model, like that in the UK and the USA. As an EU member state, much of Ireland's legislation comes from Europe either directly or through implementing domestic legislation.

Looking at Malta and Singapore, their legal and regulatory regimes are very similar. In both jurisdictions, operating lease companies are largely unregulated; both have clear rules and procedures for the registration of aircraft on their respective aircraft registers (Malta having relatively recently overhauled the legislative framework for its registration regime); both are signatories to the Cape Town Convention; both have sophisticated common law-based legal systems and Malta is also an EU member state. So, no significant advantage appears to accrue to any of the jurisdictions under this heading.

GEOGRAPHICAL

Ireland likes to emphasise its European credentials but at the same time market its location as bridging the divide between the USA and Europe. Similarly, both Malta and Singapore claim their locations offer unique advantages. Malta points to its Mediterranean location as a natural hub for European, African and Middle Eastern business activity. Singapore offers clear advantages to those aircraft leasing operations seeking an Asian base, whether because of the increasing demand for commercial aircraft in Asia or the growing strength and significance of Chinese financial

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institutions. Each would claim an advantage here, but Ireland would point to its recent successes such as attracting a very significant level of business from China, including ICBC's establishment of a major operation in Dublin, and the decision by the Japanese Sumitomo Mitsui Banking Corporation to maintain the headquarters of SMBC Aviation Capital in Dublin after its multi-billion dollar acquisition of the aircraft leasing operation of Royal Bank of Scotland and argue that it is not necessary to be in Asia to do business there.

ACCESS TO THE CAPITAL MARKETS

GPA originated the first aircraft lease securitisation in Ireland in 1992 and that fact, allied to Ireland's reputation outside of the aviation industry as a good location for the establishment of special purpose vehicles to access the capital markets has kept Ireland at the forefront of this activity. That said, Singapore has a similar reputation, particularly in the context of Asian deals, and can point to its own list of newsworthy transactions. Malta would appear to be at a slight disadvantage in this area; advantage Dublin and Singapore here, then, but it is much harder to discern a clear winner.

WHAT ABOUT TAX?

Market intelligence indicates that tax is a decisive factor in the decision by aircraft leasing companies on where to locate and Ireland's corporate tax regime is one of its biggest selling points, as well as the cause for some of its most trenchant criticism.

The main points are well known:

- A headline corporation tax rate of 12.5%



- Tax depreciation (capital allowances) for the cost of equipment and plant and machinery (which includes aircraft and engines) over eight years and a clear intention to introduce accelerated tax depreciation for certain hangars and ancillary facilities which a view to making Ireland a centre for aircraft maintenance and warehousing
- An extensive range of exemptions are available from withholding taxes on interest and dividend payments and there are no withholding taxes on lease rentals
- A very extensive network of double taxation treaties – Ireland has signed comprehensive double taxation agreements with 68 countries, of which 64 are in effect
- A very favourable stamp tax (stamp duty) regime – instruments transferring aircraft are exempt and an exemption for enhanced equipment trust certificates (EETCs) is almost certain to be introduced in the next few weeks
- Zero per cent value added tax (VAT) on international aircraft leasing

Again, Ireland's EU and OECD memberships count in its favour as

does the certainty offered by its tax regime, the co-operation between the key industry stakeholders and the clear domestic political imperative to preserve (at a minimum) the current tax regime.

Ireland offers aircraft leasing companies various options when it comes to structuring their affairs – they may choose between being a trading company, a non-trading company or a qualifying company. There is a wealth of detail behind the various alternatives but, in very broad terms:

- Leasing activities that are sufficient to constitute a trade qualify for the 12.5% corporation tax rate on trading profits with a deduction generally being allowed for expenses of a revenue nature incurred “wholly and exclusively” for the purpose of trade. Interest expenses that meet this test are generally deductible and the eight year tax depreciation regime should be available.
- Leasing activities that do not satisfy the trading test are generally taxed at 25% (the so-called passive rate) with a deduction for most expenses. This is a popular choice for straight-forward lease-in / lease-out structures through Ireland where

the margin between head lease and sub-lease rentals is small.

- A qualifying company (or so called Section 110 company) is one which holds qualifying assets, which now includes plant and machinery such as aircraft and parts. Originally a creature of Ireland's successful structured finance / securitisation industry, leasing companies employing this strategy are typically tax neutral as taxable profits can be eliminated with appropriate structuring.

How do the others compare? Malta's headline corporate tax rate is higher (at 35%) but Malta operates a refundable tax credit system, so the effective rate can drop to as low as 5%. Singapore has a headline rate of 17% but under its Aircraft Leasing Scheme incentive, the applicable rate on qualifying income can drop to 10% or even 5%. Both Malta and Singapore have similar stamp tax (stamp duty) regimes to Ireland. Malta's VAT regime is (unsurprisingly, given it is an EU-inspired tax) similar to Ireland's while Singapore's VAT equivalent, its Goods and Services Tax (GST), in many cases zero rates activities associated with aircraft leasing. Both jurisdictions

take a similar approach to Ireland on withholding taxes but neither has as extensive a network of double tax treaties as Ireland, with Singapore's coming closer than Malta's. Neither Malta nor Singapore is an OECD member. The devil is, as always when it comes to tax, in the detail and it is difficult to discern a clear winner here, except – and importantly – when it comes to treaty network where Ireland is some way ahead. One cannot help but feel, though, that this lead cannot last forever.

AND THEN THERE ARE THE PEOPLE ...

Ireland has historically based its tourism marketing around the concept of the Irish “céad míle fáilte” or “hundred thousand welcomes” and the sense that Irish people are naturally warm, welcoming and inclusive – the country's single biggest asset. When it comes to aircraft leasing, Ireland's single biggest advantage over its competitors is arguably its people. The depth and breadth of expertise that comes from doing as much of this business as Ireland has over a near forty year long period cannot be underestimated. Whether one is looking for commercial, financial or technical know-how, or want a corporate service provider or to engage an accounting, tax or legal professional, Ireland has any number of highly skilled and experienced people and organisations from which to choose. Building that extensive a skill set takes time and that is where Dr. Ryan and GPA really gave Ireland an edge. There are, without doubt, highly skilled people and organisations in all these fields in both Malta and Singapore but Ireland would say that the pool of talent it offers is substantially larger and more proven.

SO, STILL ADVANTAGE IRELAND THEN?

Yes, principally due to its superior tax treaty network, pool of human resources and OECD membership, but it is not as clear a margin as would have been the case just a few years ago. All in all, this is just yet another example of just how incredibly competitive all aspects of the aircraft leasing industry are and how even established players are having to work even harder not just to win new business but to retain the business they already have.

BIOGRAPHIES OF AUTHORS



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Conor joined Dillon Eustace in September 2006 and has been a partner in the firm's Banking and Capital Markets group since August 2007. Conor's practice has a particular focus on secured lending, asset finance and leasing. He has acted on a wide range of banking transactions for financial institutions and corporates, both domestic and foreign. Conor has a wealth of experience in the areas of aviation financing and leasing; he has advised financiers, lessors and operators on transactions involving a wide range of aircraft types, including freighters, wide and narrow body passenger aircraft, regional and corporate jets as well as helicopters. He also completed a secondment in a leading aircraft leasing company.

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Headquartered in Dublin, Ireland, the firm's international practice has seen it establish offices in Tokyo (2000), New York (2009), Hong

Kong (2011) and Cayman Islands (2012) In tandem with Ireland's development as a leading international financial services centre, Dillon Eustace has developed a dynamic team of lawyers representing international and domestic asset managers, investment fund promoters, insurers, banks, corporates, TPAs and custodians, prime brokers, government and supranational bodies as well as newspapers, wind energy companies, aviation and maritime industry participants and real estate developers.