



## Aircraft Registration in Malta

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Following the success in the Maltese Maritime sector, Malta launched an Aircraft registry.

The Maltese Government has developed a comprehensive legal and statutory framework for the registration of aircraft (mainly business and private jets) by enacting the Aircraft Registration Act (Chapter 503 of the Laws of Malta) in October 2010, allowing business aircraft operators to benefit from local registration which was previously limited to commercial carriers who possessed air operator's certificates (AOCs). The Act also aims at regulating the registration and enforcement of aircraft mortgages and the implementation of the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol into Maltese Law, thus complying with international standards by granting secured lenders a higher degree of protection, more effective remedies and lower borrowing costs.

Malta operates within the EU's tax regimes and thus the jurisdiction is not an offshore tax haven, however the government has developed local tax schemes more attractive than anywhere else in the EU, such as corporation tax which can be reduced to 5% through a reimbursement scheme, a significant number of double tax treaties and a full imputation tax system which enables shareholders to claim 6/7ths tax refund of tax paid by the company on distribution of dividends.

## The Aircraft Registration Act 2010

The Act not only aims at regulating the registration of aircraft and aircraft mortgages through the creation of an easily accessible register which clearly distinguishes between commercial and private aircraft, but also gives greater security to creditors. Other novel concepts have been introduced through the act and other legislation, mainly:

- Recognition of fractional ownership
- Widening of registration of aircraft not used for air service
- Permitted registration of irrevocable de-registration and export power of attorney and other special power of attorney granted as security
- 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
- Competitive minimum depreciation periods for aircraft

## Who May Register Aircraft in Malta?

### Eligibility

- An owner of the aircraft who operates the said aircraft
- An owner of an aircraft still under construction or temporarily not being operated or managed
- An operator of an aircraft under a temporary title who satisfies conditions which may be prescribed from time to time
- A buyer of an aircraft under a conditional sale or title reservation agreement which satisfies the conditions which may be prescribed from time to time and who is authorised to operate the aircraft

The qualifying registrants vary depending on whether the aircraft is used as for commercial air services or only for private use.

### Commercial Aircraft

In the case of commercial aircraft, the qualifying registrants are the following:

- The Government of Malta
- 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 craft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered
- An undertaking formed and existing in accordance with the laws of Malta, of a Member State of the EU, or the EEA, or Switzerland, whereof not less than 50% of the undertaking is owned and effectively controlled by the Government of Malta or by any Member State of the EU or by the persons referred to above, whether directly or indirectly through one or more intermediate undertakings.

All operators of aircraft engaged in commercial air transport activity are required to be in possession of an Air Operator Certificate and an Operating Licence. The Civil Aviation Directorate at the Authority of Transport in Malta has the capacity to certify operators of aircraft in accordance with Annex III to Regulation (EC) 3922/1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation.

### **Private Aircraft**

A natural person who is a citizen of, or an undertaking established as a member country of the Organisation for Economic Co-operation and Development and any other country approved by the Minister by notice for the purposes of the Act (termed "International Registrant" in the Act), provided it;

- Has legal capacity to own/operate an aircraft in terms of law
- Appoints a local resident agent to represent the owner in Malta for matters concerning the registration of aircraft
- Complies with applicable regulations and guidelines.

The availability of the authorities together with a non-cumbersome registration process, are a valuable asset to Malta's aviation infrastructure. The National Aircraft Register distinguishes between mandatory and permitted information to be entered into the register:

### **Mandatory Information**

- Physical details of the aircraft and the engines attached to the aircraft and any replacement engines owned by the registrant to the extent they are designated for use on the aircraft
- Name and address of the registrant and in what capacity the registrant has registered the aircraft
- Details of any mortgages registered over the aircraft and subsequently all registrable transactions relating to such mortgages
- Details of any irrevocable de-registration power of attorney, or other power of attorney granted by way of security to the mortgage, or to a third party, granting powers to exercise rights relating to the aircraft or to the closure of the register on behalf of the registrant.

### **Permitted Entries in the Register**

- The ownership rights in the aircraft or an engine including when held by a trustee, by one or more owners, divided into fractional shares or held under an agreement with reservation of ownership rights or under conditions affecting title
- The lessee/lessor rights in relation to the aircraft or an engine
- The details of the resident agent where the registered agent is an international registrant
- Information regarding any international interest registered in the International Registry and the debtor thereof
- Any charge or reservation of ownership rights or lessee rights prior to the registration of a mortgage.

### **Security Registrable in the National Aircraft Register**

The registration of security of interests can now be made on a domestic level by virtue of the Aircraft Registration Act and also on an international level via Malta's ratification of the Cape Town Convention and Aircraft Protocol.

Security interests are treated as separate and distinct assets within the estate of the owners of aircraft and therefore any creditor having a registered security interest wishing to enforce his interest over the particular engine or aircraft, would be given a priority over all other creditors of the said owner.

By virtue of Malta's self-help remedy approach, upon the default of the mortgagor to pay the mortgagee, the latter may enforce his self-help remedies without obtaining prior authorisation from the Court by: taking possession of the aircraft; selling the aircraft or any share in respect of which the mortgage is registered; apply for any extensions; pay fees and do in general all things in the name of the owner to maintain the status and validity of the registration of the aircraft; lease out the aircraft; collect or receive any income or profits arising from the management or use of any such aircraft object; procure the export and physical transfer of the aircraft from the territory in which it is situated Notification in writing to the debtor is required in such cases.

### **Super-priority Privileges**

The debts listed below enjoy priority and any debts secured by a mortgage shall rank after such debts:

- Judicial costs incurred in respect of the sale of the aircraft and the distribution of the proceeds thereof pursuant to the enforcement of any mortgage or other executive title
- Fees and other charges due to the Director General arising under applicable law of Malta in respect of the aircraft
- Wages due to the crew in respect of their employment on the aircraft
- Any debt due to the holder of a possessory lien for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft
- The expenses incurred for the repair, preservation of the aircraft to the extent of the service performed on and value added to the aircraft
- Wages and expenses for salvage in respect of the aircraft

### **Malta Tax Considerations**

A company incorporated in Malta is taxed at a flat rate of 35% under the Provisions of the Income Tax Act (Chapter 123 of the Laws of Malta). On the other hand, companies incorporated outside the Maltese Jurisdiction but which is still actively managed from Malta would be treated as a tax resident only on:

- Chargeable income arising in Malta
- Chargeable income arising outside Malta but which is remitted to Malta and thus taxed only to the extent of such remittance
- Chargeable gains realised in Malta, chargeable gains realised outside Malta shall not be taxed even if remitted to Malta

Income derived by any person who owns, leases or operates any aircraft or aircraft engine which is used or employed in the international transport of passengers or goods shall be deemed to arise outside Malta regardless of the country of registration of the relevant aircraft or aircraft engine and to whether the aircraft may have called at or operated at any airport in Malta. Similarly, any company incorporated outside Malta but resident in Malta for tax purposes and which derives income from the ownership, leasing or operation of aircraft or aircraft engines would be only taxed in Malta on such income arising abroad and remitted to Malta.



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