

## Aviation Financing – Ireland <sup>1</sup>

May 2013

Ireland is a leading *on-shore* jurisdiction for aviation leasing and financing and is regularly used as the jurisdiction for the establishment of special purpose vehicles (“SPVs”) for secured lending and structured finance transactions. Having a favourable legal, tax and regulatory regime for the aviation industry facilitates finance and lease structures to be designed and maintained on the basis of competitive pricing with tax efficient arrangements. Access to an extensive double tax treaty network facilitates leasing to airlines and maximum use of Ireland as a leasing platform for lessors.

### Basic Facts about Ireland and Irish SPVs

1. Legal System – Ireland is a member of the European Community and OECD and the currency is Euro.
2. Company Type – separate legal personality ingrained in statute. The primary legislation is The Companies Acts 1963-2012. Types of companies include:
  - Private company limited by shares;
  - Unlimited liability private company; and
  - Public limited company.
3. Application: an application is made to the Companies Registration Office ([www.cro.ie](http://www.cro.ie)) for an SPV. It generally takes less than 5 business days from the date of submission of completed application to the date of incorporation, notification of company number and certificate of incorporation.
4. Directors: 2 natural persons required. 1 director must be Irish or EEA resident. If this condition is not met, an insurance bond may be required.
5. Address/Contact point: Registered office address is required in Ireland.
6. Capitalisation: Minimum capital to incorporate a SPV private limited liability company is €1 and single shareholder for private limited liability companies.
7. “Thin Capitalisation<sup>2</sup>”: there are no thin capitalisation rules for SPVs in Ireland.
8. Fees and Charges: fee payable to CRO for an application to incorporate an SPV is c. €100 (excluding legal fees or corporate service provider fees). Fees related to incorporation are in range of €1,200-2,000 upwards.
9. Ownership Structures: group or orphan entities
  - Orphan SPV - shares held by or on behalf of a share trustee for charitable purposes. Neither lender, arranger or airline has a shareholding in the SPV; or

<sup>1</sup> This document contains a general summary of issues relevant to setting up SPV's in Ireland as of May 2013 in the context of asset finance transactions. It is not a complete or comprehensive statement of all relevant laws or tax provisions. Specific legal and tax advice should be obtained where appropriate.

<sup>2</sup> “Thin capitalisation” refers to a situation in which a company is financed through a relatively high level of debt compared to equity. Thin capitalisation rules determine how much of the interest paid on corporate debt is deductible for tax purposes.

- Direct shareholding/subsidiary – single shareholder for private limited company; or
  - Joint venture and multi-shareholder/investor arrangements.
10. Annual reporting; compliance & outsourcing
- Corporate service providers – large selection of international corporate service providers available to choose from in Dublin & Shannon. Details of annual outsource/back office support fees available on request.
  - Annual audit - annual financial statements must be audited. Market rates for single aircraft audit available on request.
- Annual tax returns – tax computation and returns must be made annually. VAT returns are bi-monthly.
  - CRO annual return at ADR date.
11. Regulation: As of May 2013, aircraft leasing is not regarded as banking business in Ireland and is not a regulated activity by the Central Bank of Ireland.
12. Licences and approvals:
- No exchange control regulations in Ireland
  - Financial Transfers restrictions apply consistent with EU countries.

### *Asset Backed Securities and Capital Markets*

1. Listing: The Irish Stock Exchange's has become the largest European exchange for listing of:
- asset backed debt securities;
  - convertible securities;
  - debt securities; and
  - derivative securities
- such as those issued by SPVs`.
2. The ISE operates two (2) markets for listing debt securities. Issuers can opt to list debt securities either on the Main Securities Market<sup>3</sup> or the Global Exchange Market<sup>3</sup>. Currently over 200 High Yield deals listed on GEM from the EU and Latin America.
3. The ISE Regulation Department and the Central Bank of Ireland will return comments to the listing agent
- 3 days after initial submission an 2 days after subsequent drafts. Supplements are subject to quicker turnaround times.
4. The ISE and the Central Bank of Ireland have experience in approving and listing a vast range of debt and derivative transactions. Products listed include vanilla bonds, corporate bonds, high yield bonds, securitizations, structured programmes, credit linked notes, equity linked notes, commercial paper, covered bonds, derivative warrants, exchange traded commodities
5. *"As a stock exchange [our] challenge is to ensure sufficient flexibility of approach to embrace new product types, while maintaining the integrity of a listing on a regulated European Stock Market."*<sup>4</sup>
- More information is available by contacting Mason Hayes & Curran or [debtproducts@ise.ie](mailto:debtproducts@ise.ie)

<sup>3</sup> Information quoted appears on ISE website [www.ise.ie/Debt-Securities/Why List Debt on the ISE](http://www.ise.ie/Debt-Securities/Why List Debt on the ISE).

<sup>4</sup> Quote from ISE website [www.ise.ie/Debt-Securities/Why List Debt on the ISE](http://www.ise.ie/Debt-Securities/Why List Debt on the ISE)

## *Outline of Taxes relevant to Asset Finance Transactions and Aviation SPVs in Ireland*

1. Corporation Tax: the rate of corporation tax applicable to trading companies' profits in Ireland is 12.5% Investment companies are subject to tax on profits at rate of 25%.
2. Section 110 Vehicles: s.110 Taxes Consolidation Act 1997 as amended permits qualifying Irish resident SPVs to engage in a wide range of financial and leasing transactions in a tax efficient manner. The qualifying assets include financial assets such as securities, commodities, plant or machinery including aircraft and aircraft assets. There is a minimum size requirement of qualifying assets of not less than €10 million which is generally easily achieved in aircraft related transactions. S.110 vehicles can give structural and tax advantages to complex funding arrangements.
3. Capital Allowances: available on capital expenditure on straight-line depreciation basis of 12.5% over 8 years.
4. Documentary Taxes and Stamp duty: stamp duty will not apply in Ireland on the documents entered into to give effect to purchase, sale or disposal of aircraft; and financing or security documents.
5. EETC & Loan Capital Exemption: Finance Act 2013 (signed on 27 March 2013) extended certain stamp duty exemptions to include issue, transfer and redemption of loan capital issued by a company to raise finance to acquire, develop or lease aircraft.
6. Double Tax Treaty network: At the end of 2012, Ireland had signed 68 tax treaties. In addition, Ireland offers unilateral foreign tax credit relief for foreign tax suffered on leasing trading income received by the Irish SPV.
7. Lease Equipment rentals: lease equipment rentals are not subject to withholding tax in Ireland.
8. Withholding Taxes: Structured finance transactions are designed to achieve tax efficiencies in so far as all payments to counterparties including third party investors are required to be made gross. Ireland has a wide range of domestic exemptions from withholding tax on interest which supplement and enhance the attractiveness of Ireland tax regime and jurisdictional comparative advantages. In some cases appropriate applications for clearance may be required.
9. VAT: supply of goods and services are subject to VAT and a chargeable activity in Ireland. There are a number of exceptions or zero rated activities. In particular the provision of leasing services to airlines or entities engaged primarily to international air transport is zero rated for VAT.
10. Certificate of Tax Residency for SPV: generally available on application to the Revenue Commissioners in Ireland.
11. Tax Rulings: generally not required. Irish tax opinion given by Mason Hayes & Curran to address relevant tax issues and transaction taxes.
12. FATCA: In December 2012, Ireland signed the Foreign Account Tax Compliance Act Intergovernmental Agreement with the USA. This agreement is expected to materially reduce cost and time dealing with FATCA.

## *Basic Facts about Aircraft Registration in Ireland*

1. Aviation Authority: The Irish Aviation Authority ([www.iaa.ie](http://www.iaa.ie))
2. Operator Registry: The register is one of nationality. The applicant for registration does not have to be the legal owner of the aircraft and registration does not verify or acknowledge legal ownership.
3. Applicant for registration of aircraft must satisfy conditions set out in the IAA Nationality and Registration of Aircraft Order, S.I. 634 of 2005.
4. Safety First: IAA primary concern is the safe operation of aircraft under its supervision. Applicants for registration of aircraft are required to demonstrate to the IAA that it has required technical professionals on staff or contracted locally to liaise with the IAA.
5. Deregistration Powers of Attorney: Aeronautical Notice NR A.102 IDERA will be accepted by IAA in form prescribed.
6. Delegation: in certain instances IAA will agree to delegated supervision to another jurisdiction in accordance with Art 83 *bis* agreements.

## *Basic Facts about Security & Cape Town Convention*

1. Aircraft Security filings: short particulars of all charges created by Irish SPV to be filed in Companies Office within 21 days after creation (similar to UK)(s.99 Companies Act 1963). Certain charges are required to be notified to the Revenue Commissioners within same time period.
2. Aircraft Mortgage: the IAA does not maintain an aircraft mortgage register (CAA and FAA maintain aircraft mortgage registers).
3. The Cape Town Convention became part of Irish law with effect from 8<sup>th</sup> March 2006. Registration of an international interest constituted by an aircraft lease, conditional sale or reservation of title agreement, or security agreement (as defined in CTC) is permissible.

## *Conclusion*

Ireland is a well-established, sophisticated and proven jurisdiction for aviation transactions including the establishment of SPV for aircraft financing transactions which can achieve dual benefits of bankruptcy remoteness and tax efficiencies.

If you are considering Ireland or would like to discuss the outline information provided here, please do not hesitate to contact any of the Mason Hayes & Curran people named below or your contact in the firm.

*For further information, please contact:*



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## *Recent Awards*



## *What Others Say About Us*

### *Financial Services*

Department head Christine O'Donovan impresses sources with her deep knowledge of aviation finance. One client states: "She leads from the front and is a formidable deal maker".

Chambers & Partners Europe,  
Europe's Leading Lawyers, 2013

### *Tax*

"There is quality across the board and the team has a dynamic, can-do approach."

Chambers & Partners Europe,  
Europe's Leading Lawyers, 2013

### *Tax*

John Gulliver heads Mason Hayes & Curran's 'very experienced, quality tax team', which also includes Robert Henson.

Legal 500, 2013

### *Financial Services*

"Mason Hayes & Curran's finance lawyers are 'top class and can hold their own with any of their peers', with key partners including aviation finance expert Christine O'Donovan".

Legal 500, 2013

### *Financial Services*

Christine is recommended as a lawyer in the area of banking and finance. She is particularly strong in asset finance, with clients hailing her as a "titan of the aviation industry."

Chambers & Partners Europe,  
Europe's Leading Lawyers, 2012