



Aviation in Malta

Aircraft Registration | Air Operator Certificates | Aircraft Finance & Leasing | Tax Highlights



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The Aviation sector in Malta is growing steadily, with an increasing number of aircraft owners, operators, financiers, service providers and others operating within the sector, choosing Malta as their preferred jurisdiction to carry out aviation related activities.

Growth in this area is no coincidence, but rather, the result of a concerted and continuing effort by successive governments and stakeholders to develop a sound legal framework and regulatory regime that is attractive to a multitude of players operating within the aviation industry.

The most notable of such efforts was the introduction of the Aircraft Registration Act (ARA) in 2010 – a milestone for aviation in Malta - which saw the modernisation of the National Aircraft Register and the implementation of the Cape Town Convention and its Aircraft Protocol into domestic law. More recently, in 2016 and 2017, further improvements were made to the law through amendments to the ARA, the Civil Code and other laws, so as to meet the needs of a fast evolving industry. Malta draws on its experience and success in the shipping industry, in which it has long been established as a leading jurisdiction.

Apart from a solid and reliable legal and regulatory backdrop, the fact that Malta has an attractive corporate and individual tax regime, added aviation specific tax incentives, an excellent international reputation, the benefits of full EU membership, a skilled multi-lingual workforce, an easily accessible geographic location, English as a national language and a welcoming climate, make it an attractive prospect for investors and businesses across a number of different sectors, with aviation being no exception.



Aircraft Registration

The Maltese Aircraft register is one of the fastest growing registries in Europe, having witnessed a substantial rise in the number of registered aircraft in recent years.

The growth of the register is the result of a number of factors, outlined below, which draw operators towards the Maltese Registry, whilst meeting the needs, and giving the comfort and legal certainty required by owners and aircraft financiers.

WHY REGISTER IN MALTA?

- The Maltese National Aircraft Registry is a reputable aircraft register, which adopts high standards in line with EU and international regulation. Such high standards contribute towards preserving the value of the registered aircraft to the benefit of owners and financiers;
- The Maltese corporate and individual taxation regimes offer significant benefits, both through generally applicable rules, as well as through sector specific incentives aimed at bolstering the aviation industry in Malta (See section on Tax Highlights);
- Registration costs payable to the Civil Aviation Directorate (CAD), as well as costs for setting up and maintaining corporate entities in Malta are relatively low. Incorporating Maltese companies is a quick and straightforward process that may be completed in as little as 24 hours from submission of required documentation;
- The aircraft registration process is also straightforward, and the CAD processes applications for registration expeditiously, provided all required documentation is in order;
- Malta is a neutral state enjoying political and economic stability;
- Maltese authorities transact in the English language, with multi-lingual capabilities.

Registration of an aircraft in the Maltese National Aircraft Register is effected by submission of the appropriate form to the Civil Aviation Directorate, accompanied by the requisite documentation, such as proof of ownership, an operating agreement (where applicable), a de-registration certificate and the appropriate corporate authorities.

ELIGIBILITY FOR REGISTRATION IN MALTA

The National Aircraft Register is an operator register. Aircraft may be registered by operators under temporary title (lease) and owners of aircraft can only register them if they also operate the aircraft or if the aircraft is still under construction or otherwise temporarily out of service. The buyer of an aircraft under a conditional sale or title reservation or similar agreement may also request the registration of an aircraft subject to certain conditions provided he is authorized to operate the aircraft.

THE FOLLOWING PERSONS MAY APPLY TO REGISTER AN AIRCRAFT IN MALTA:

- A citizen of Malta or a citizen of a Member State of the European Union or of an EEA State, or Switzerland, having a place of residence or business in Malta, the European Union, the European Economic Area or Switzerland, including a person sharing in the ownership of such aircraft by virtue of the community of acquests subsisting between such person and a citizen as described above in whose name the aircraft is registered;
- A citizen of Malta, or a citizen of any other EEA State or Switzerland but not having a place of residence or business in Malta or in any other EEA State; or
- An undertaking formed and existing in accordance with the laws of Malta, of a Member State of the European Union, of an EEA State or of Switzerland and having its registered office, central administration and principal place of business within Malta, or the European Union, or the European Economic Area or Switzerland, whereof not less than fifty per cent of the undertaking is owned and effectively controlled by the Government of Malta, or by any Member State of the European Union, or by persons referred to in paragraph (b), whether directly or indirectly through one or more intermediate undertakings;
- Whilst the above may register any aircraft, the following persons may, subject to certain additional requirements, including appointment of a resident agent being habitually resident in Malta, register an aircraft under construction or one which is not used to provide air services:
- A citizen of Malta, or a citizen of any other EEA State or Switzerland, provided however, that each of the shareholders and directors of the undertaking are a citizen of, or an undertaking established in, an approved jurisdiction; or
- A trustee where the beneficiaries are persons mentioned in the two preceding paragraphs.
- A natural person who is a citizen of, or an undertaking established in, an approved jurisdiction;

APPROVED JURISDICTIONS

Albania, Algeria, Aruba, Bahamas, Bahrain, Barbados, Bosnia and Herzegovina, Brazil, Bermuda, British Virgin Islands, Cayman Islands, China, Croatia, Egypt, Georgia, Gibraltar, Guernsey, Honduras, India, Indonesia, Iraq, Isle of Man, Kosovo, Jersey, Jordan, Kazakhstan, Kuwait, Lebanon, The Former Yugoslav Republic of Macedonia, Malaysia, Marshall Islands, Monaco, Montenegro, Morocco, Oman, Panama, Philippines, Qatar, Russia, Saint Lucia, San Marino, St. Kitts and Nevis, St. Vincent and the Grenadines, Saudi Arabia, Serbia, Singapore, South Africa, Syria, Tunisia, Ukraine, United Arab Emirates.



OFFICIAL FEES

The following charges are payable to the CAD for the issue of a Certificate of Registration in respect of an aircraft (as at February 2020):

AIRCRAFT IN RESPECT OF WHICH APPLICATION IS MADE	CHARGE PAYABLE
Aeroplanes having an empty weight not exceeding 150 kg, a wing area of not less than 10 square metres, and a wing loading not exceeding 10kg per square metre at empty weight and which are designed to carry not more than 2 persons	€60
ANY OTHER AIRCRAFT WHOSE MAXIMUM TAKE-OFF MASS	
does not exceed 750 kg	€80
exceeds 750 kg but not 2730 kg	€150
exceeds 2730 kg but not 5700 kg	€220
exceeds 5700 kg but not 15 tonnes	€300
exceeds 15 tonnes but not 50 tonnes	€450
exceeds 50 tonnes	€750

Air Operator Certificates

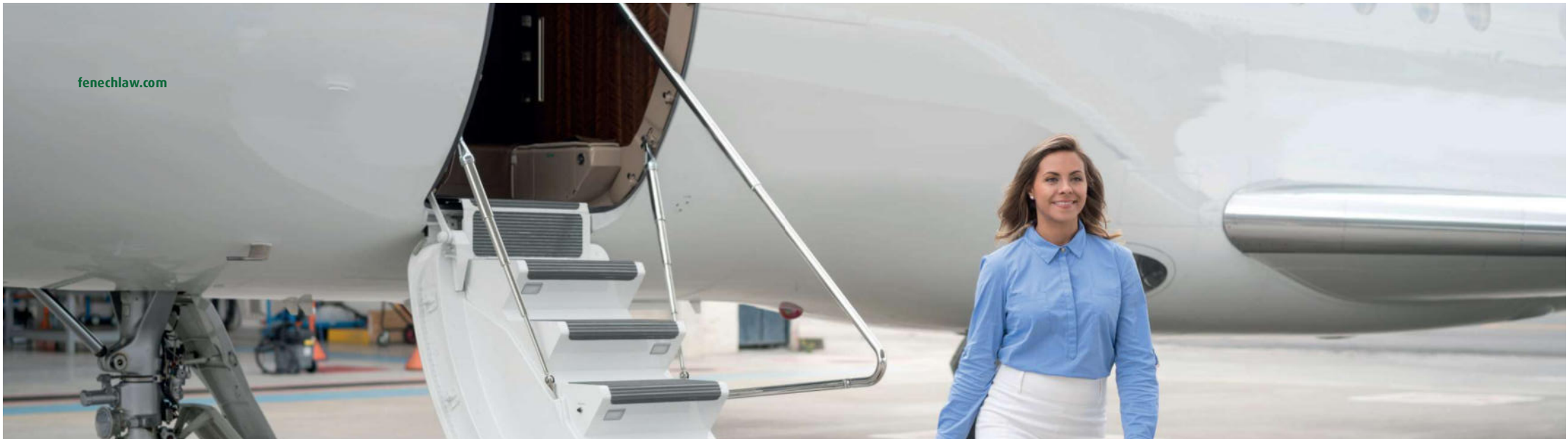
Malta is an attractive option for air operators in the international carriage of passengers and goods for reward. The reasons for which commercial operators may opt to apply for a Malta AOC are various.

- Companies holding a Maltese AOC may benefit from various fiscal advantages;
- Costs for obtaining a Maltese AOC are competitive;
- Malta being a member of the EU, Maltese AOC holders enjoy access to the single aviation market, as well as all open skies arrangements between the EU and other countries;
- Obtaining a Maltese AOC is a structured process, split into well-defined stages. The CAD maintains a 24-hour service, and an AOC can be obtained within approximately 3-6 months, provided all documentation is in order;
- Maltese AOCs are issued in accordance with all EASA regulations and standards. Costs for acquiring premises as well as employing
- personnel in Malta, as may be required for the operation, are relatively low;
- There are various existing services providers and professional advisors to meet the need of air operators;
- English is an official language of Malta.

OFFICIAL FEES

Charges payable to the CAD for the first issue of an AOC are as follows (as at February 2020):

If the aircraft with the highest maximum total weight authorised does not exceed 1,500 kg.	€698.81
If the aircraft with the highest maximum total weight authorised exceeds 1,500 kg but does not exceed 4,000 kg.	€1,164.69
If the aircraft with the highest maximum total weight authorised exceeds 4,000 kg but does not exceed 15,000 kg.	€11,646.87
If the aircraft with the highest maximum total weight authorised exceeds 15,000 but does not exceed 50,000 kg.	€23,293.73
If the aircraft with the highest maximum total weight authorised exceeds 50,000 kg.	€46,587.47



Aircraft Finance & Leasing

The Maltese aviation law framework was developed with particular focus on the needs and concerns of aircraft financiers and aircraft owners/lessors. The law strives to protect the interests of financiers and owners/lessors, in the knowledge that this is also indirectly beneficial to existing or prospective owners or lessees wishing to obtain financing to take aircraft on lease.

The following are amongst the notable features of Malta as a jurisdiction in an aircraft financing or aircraft leasing context:

GENERAL

- Malta has a sound, stable, and well-developed legal system, with a clear legal framework within which any aircraft related disputes may be resolved.

FORMS OF SECURITY

- Maltese law provides for various forms of security over aircraft, including:
 - Creation and registration of mortgages over aircraft;
 - Creation and registration of international interests over aircraft;
 - Granting and registration of irrevocable de-registration and export request authorisations (IDERAs) as well as revocable or irrevocable powers of attorney granting powers relating to the exercise of rights relating to the aircraft, or the closure of the register;
 - Creation and registration of share pledges and other forms of security over aircraft owning SPCs;
 - Security by title transfer, which is expressly recognised as a form of security under the Civil Code, ensuring that assignments of rights in a financing context, by way of security, will be recognised, valid and binding.

- Malta is a party to the Cape Town Convention and its Aircraft Protocol, which has been transposed into Maltese law through the Aircraft Registration Act, allowing for creation and registration of all forms of security provided for in terms of the Convention and Protocol, including interests in aircraft objects as well as IDERAs. Furthermore, Malta has made the necessary declarations under the Cape Town Convention to enable it to qualify for the application of Cape Town Convention discounts allowed by the OECD.
- Maltese law expressly recognises the concept of 'security trustees', allowing for the use of structures whereby security over aircraft is held by a security trustee on behalf on multiple creditors, which may enforce their rights through the security trustee where necessary.
- Maltese law also recognises foreign mortgages and foreign security interests subject to certain criteria being met.
- The Civil Code includes provisions specific to aircraft lease agreements giving lessors added protection through full recognition and enforceability of aircraft lease agreements on the agreed terms and rights of termination and repossession without the need for court intervention.

ENFORCEMENT

- Under Maltese law aircraft constitute separate and distinct assets within the estate of their owners for security of actions and claims to which the aircraft is subject, thereby insulating the aircraft from third party creditors having claims unrelated to the aircraft.
- Maltese law grants extensive remedies to secured creditors and aircraft lessors, including various self-help remedies, as well as all remedies available under the Cape Town Convention and its Aircraft Protocol, as transposed into Maltese domestic law, allowing for effective and expeditious enforcement where necessary.
- Recent amendments to the Aircraft Registration Act reassure financiers and lessors that the relation between parties to an agreement will be governed by the contractual terms agreed on, which terms will take precedence over provisions of local law in the case of conflict. This creates the highest degree of certainty in terms of protection of the interests of financiers and lessors, who may contractually agree on remedies exercisable in any event of default, in the knowledge that there will be no mandatory legal provisions hindering recourse to such remedies.
- Ownership interests may also be evidenced through notation in the National Aircraft Register, and will appear on the aircraft's Certificate of Registration, strengthening the position of financiers or lessors seeking to repossess aircraft on the basis of ownership rights.
- It is expressly laid down in the law, that a request for de-registration by a creditor authorised by means of a registered IDERA or power of attorney, ensuring that such creditors will not meet obstacles in seeking to de-register aircraft in the course of enforcement.

- The Civil Aviation Directorate is accessible and flexible, and operates in a manner which allows for ease of communication and diligent action in an enforcement context.
- Where court involvement is required, the Maltese Courts are bound, and have in fact proven to act expeditiously in aircraft related matters, recognising that delays may be highly prejudicial to the parties to the dispute.

INSOLVENCY

- The Aircraft Registration Act strives to protect financiers and lessors in the event of insolvency of the debtor, with insolvency proof remedies made available to them in terms of law.
- Through recent amendments, specific rules applicable to aircraft owning companies were introduced, which derogate from the rules applicable to the dissolution and winding up of companies generally, with the specific purpose of protecting the interests of financiers and creditors in an insolvency context. One such measure is the ability to restrict the rights which third parties would ordinarily have to the request the court to order the winding up of an aircraft owning company.

OTHER

- The adoption of high standards by the CAD, in line with EU Regulation and International Conventions contributes towards preservation of the value of Maltese Registered Aircraft, enhancing the security of financiers.

Tax Highlights

GENERAL CHARACTERISTICS OF THE MALTESE CORPORATE TAX REGIME

The below are some of the main features of the corporate tax system in Malta:

Basis for taxation: Companies ordinarily resident and domiciled in Malta are subject to income tax on their worldwide income and on some chargeable capital gains. Companies that are either resident or domiciled in Malta but not ordinarily resident and domiciled in Malta are chargeable to tax in Malta on (a) income and chargeable gains arising in Malta, (b) income arising outside Malta and remitted to Malta.

Full Imputation System:

When a company distributes dividends out of profits on which it had paid tax, no further tax is due by the shareholders, as a credit for the tax paid by the distributing company is available to the shareholders.

Rates of tax & Refunds:

The standard rate of tax on income and chargeable gains is 35%. Shareholders may, in certain cases, obtain a refund of all or part of the tax paid by the Company. The overall Malta tax liability after refund will generally range from 0% to 10%. The standard refund (e.g. generally for business profits) is 6/7 of the Malta tax (grossed up with any relieved foreign tax, subject to certain conditions), going up to 100% in the case of profits derived from a participating holding and down to 5/7 on profits derived from passive interest and royalties.

Participation Exemption:

Income deriving from a participating holding (generally a 10% equity holding, partnership interest, holding in an investment fund or other interest – there are alternative tests) in a non-resident entity, and gains from the disposal thereof are exempt from tax. Companies registered or resident in Malta may also opt to apply the participation exemption to any profits or gains that they may derive from overseas branches or other forms of permanent establishment, subject to fulfilment of applicable statutory conditions.

Double Taxation Relief:

Malta has a vast network of Double Tax Treaties with over 70 countries. Treaties are generally negotiated on the basis of the OECD Model Convention and ensure the elimination of double taxation allowing for the creation of tax efficient structures for cross-border business.

Withholding Tax:

No withholding taxes are levied on outbound dividends. There are also no thin capitalisation or CFC rules currently in force.

SECTOR SPECIFIC INCENTIVES

There are a number of fiscal incentives which are aimed specifically at the Aviation Industry, including the following:

Foreign Source Rule:

Where a person owns, leases, or operates aircraft or aircraft engines, irrespective of the country of registration, which are used for the international transport of passengers or goods, any income of such person derived from the ownership, leasing, or operation of such aircraft or aircraft engine is deemed to have arisen outside Malta, regardless of whether the aircraft may have called at, or operated from, any airport in Malta. This rule may be highly beneficial to aircraft owners, lessors, or operators, when applied by a foreign incorporated entity which is tax resident in Malta (by having its effective management and control in Malta). Any such entity would be taxed in Malta only on income or chargeable gains arising in Malta, and on foreign source income or gains only if remitted to Malta.

Through application of the 'foreign source rule', all income derived from ownership, leasing or operation of the aircraft is deemed to be foreign source income, and would consequently not be chargeable to tax in Malta unless remitted to Malta. Furthermore, the said income may, in certain cases, not be taxable in the source territory, where a double tax treaty provides that income derived from the operation of aircraft in international traffic is taxable only in the state where the effective management of the enterprise is situated.

Finance Leasing & Capital Allowances:

Capital allowances in respect of aircraft equipment are calculated over a minimum prescribed number of years, as follows:

- Aircraft airframe – 6 years
- Aircraft engines – 6 years
- Aircraft engine or airframe overhaul – 6 years
- Aircraft interiors and other parts – 4 years

In terms of the general rules on capital allowances, a lessee under a finance lease would be entitled to deductions in respect of wear and tear of the aircraft. However, the Finance Leasing Rules set out specific rules which would apply to 'qualifying finance leases' which meet certain criteria. Under the said rules, the finance lessor will be charged tax on the income from lease payments, whilst being entitled to all deductions for wear and tear (in addition to deductions normally allowed). The lessee, on the other hand, will be entitled to deduct all lease payments from its chargeable income.

Qualifying Employment in Aviation Rules:

Through the enactment of the Qualifying Employment in Aviation (Personal Tax) Rules in 2016, certain employees of undertakings operating in the aviation sector may, subject to certain conditions, qualify for a special reduced tax rate of 15% on their employment income if they occupy certain roles, including Chief Executive Officer, Chief Operations Officer, Chief Financial Officer, Chief Risk Officer, Chief Financial Officer, Chief Technology Officer, Chief Commercial Officer, Accountable Manager and a number of other roles.

Fringe Benefits Exemption:

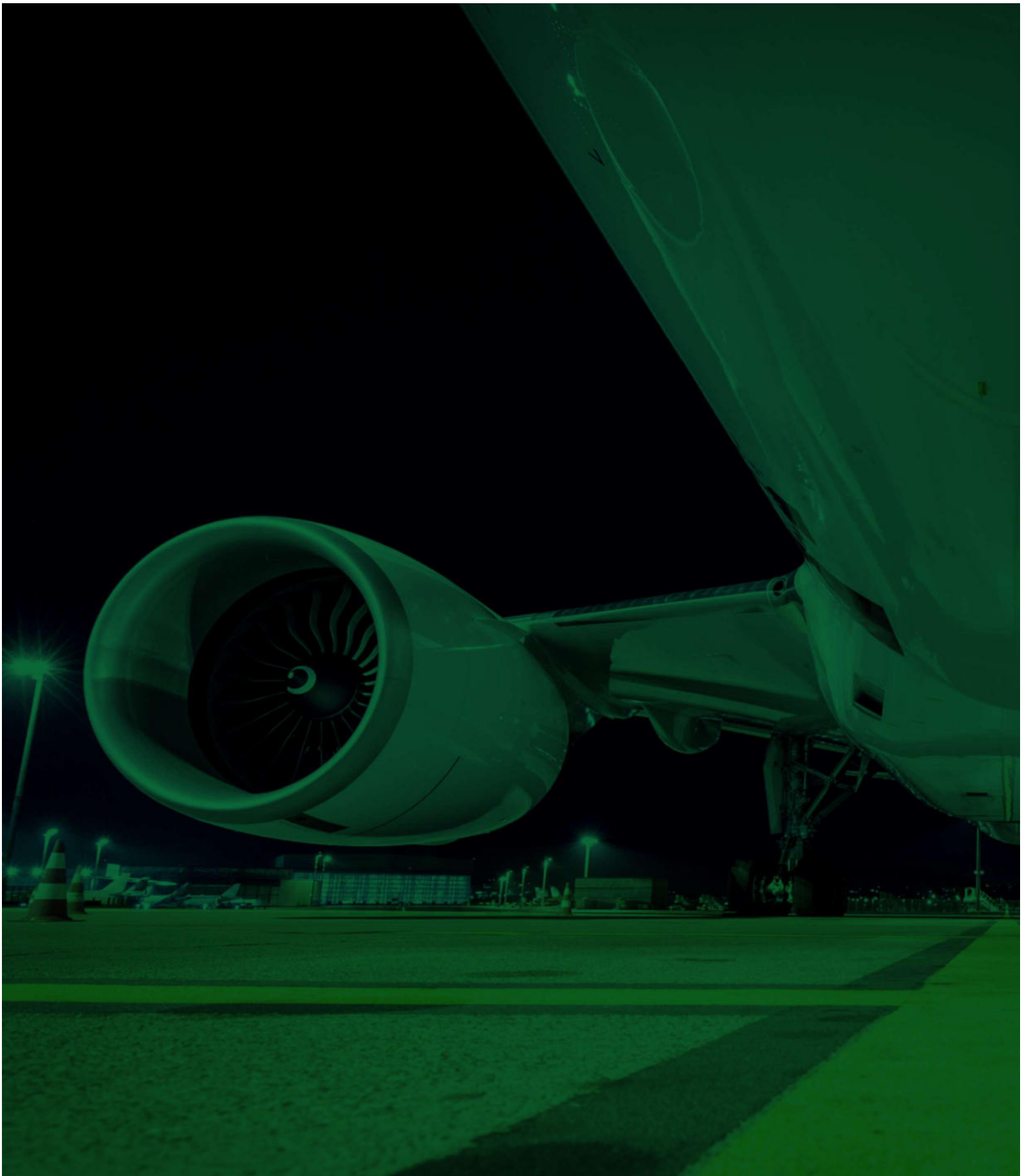
Whilst as a general rule fringe benefits given to employees are taxable, the private use of an aircraft by an individual who is not resident in Malta and who is an employee or officer of an employer, company or partnership, whose business activities include the ownership, leasing or operation of any one or more aircraft or aircraft engine which is used for or employed in the international transport of passengers or goods would not be considered as a fringe benefit, and would consequently be exempt from tax.



Our Services

The aviation team at Fenech & Fenech Advocates is highly experienced in advising on and representing clients in aviation law matters, and is thus able to provide a comprehensive service to aircraft owners, financiers, operators and other industry players. Our team has also handled various disputes involving aircraft in Maltese Courts and arbitration tribunals, and was indeed the first to successfully execute an aircraft arrest in Malta. We aim to assist aviation clients to identify the best possible solutions in each client's particular circumstances, and offer them a one-stop-shop for legal services related to aircraft.

For any queries relating to aviation law email:
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