

# VAT AIRCRAFT LEASING

BDO Malta



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Servicing clients requiring legal advice in a wide range of areas of practice, including tax planning and corporate law, financial and gaming services (including obtaining remote gaming licenses from the Malta Gaming Authority), trusts and foundations, maritime and VAT on the leasing of yachts amongst others. In this respect, please find listed hereunder the numerous services we offer:

1. Tax and VAT Consultancy
2. Tax and VAT Compliance
3. Incorporation / Formation of Companies
4. Banking Services (Maintenance and Opening of Bank Accounts)
5. Legal and Consultancy Services
6. Correspondence and Administrative Services
7. Company Secretarial Services
8. Accountancy
9. Full outsourcing of bookkeeping and accountancy services
10. Directorship
11. Audit & Assurance
12. Yachting and Marine Services
13. Licensed agents for Individual Investor Programme (IIP)
14. Acting as Key officials for Gaming Companies
15. Formation of Trusts and Foundations

Malta provides for a private aircraft leasing set-up, by means of which a lower effective VAT rate can be availed of. In fact, the Maltese VAT Department issued a set of official guidelines relating to the VAT treatment of leasing of privately operated aircraft which are meant to simplify the VAT treatment and establish liability to VAT of the lease at attractive rates on the use of such aircraft within the EU airspace.

### **What is a leasing agreement of an aircraft?**

A leasing agreement of an aircraft is an agreement whereby the lessor (the owner of the aircraft) contracts the use of the aircraft to a lessee (the person who leases the aircraft) for a consideration. In addition, after the end of the lease period, the lessee may opt to purchase the aircraft at a percentage of the original cost. The final purchase is strictly an option which may be exercised by the lessee for a separate consideration.

### **Leasing in terms of Maltese VAT law**

The Maltese VAT Act provides that the a lease of an aircraft for private purposes, is deemed to be a supply of services which is considered to take place where the aircraft is put at the disposal of the customer if the lease is for a continuous period of not more than 30 days. For leases exceeding 30 days, the place of supply is deemed to be where the customer of such service is established.

For Maltese VAT purposes, (other than aircraft used by airline operators in international traffic), the lease of an aircraft is a supply of a service which is subject to VAT with the right of deduction of input VAT by the lessor (where such right applies). This service is taxable according to the use of the aircraft attributed within the airspace of the European Union. However, since it is very difficult to identify the movement of an aircraft in order to determine the period that the aircraft is used within the airspace of the EU and the time that it is used outside the EU, the Maltese VAT Department, through the 'use and enjoyment' provisions, provides that, the estimated percentage portion of the lease occurring within the EU airspace, is calculated on the basis of an expert technical study. VAT at the standard rate of 18% is applied on the established percentage of the lease which is deemed to be related to the use of the aircraft in EU airspace. Based on a minimum deemed use of 30% within Malta, the aircraft lease would be subject to an effective VAT rate of 5.4%.

The guidelines issued by the VAT Department establish the percentage of the lease which is subject to VAT based on a formula which takes into account the following components:

- Aircraft type;
- Maximum Take Off Mass in kg;
- Fuel Burn;
- Maximum Fuel Capacity in kg;
- Optimum Altitude in feet; and
- Optimum Cruising Speed in Knots.

The deemed percentage of use within the EU can be established from the following Maltese VAT Department's website: <http://www.vat.gov.mt/en/Pages/Aircraft-Leasing.aspx>

The leasing structure must be between a lessor which is established in Malta and a lessee who is also established in Malta and who would not be eligible to claim input tax in respect of the lease. The lease agreement must be for a period not exceeding 60 months, with the lease installments payable monthly;

Prior approval must be sought in writing from the VAT Department. The Director General (VAT) may impose other conditions which he may deem appropriate and may require the lessor to submit details regarding the use of the aircraft. Where after the end of the lease the lessee exercises the option to purchase the aircraft, a VAT paid certificate will be issued provided that all the VAT due has been fully paid.

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