Grant Thornton
An instinct for growth™

Ireland as a location for aircraft leasing and financing

An instinct for aviation

Introduction

Over the past 35 years, Ireland has played a major role in the financing and leasing of aircraft and aircraft engines to airlines all over the world. Ireland was the birthplace of pioneering leasing companies such as Guinness Peat Aviation (GPA). Those companies provided the springboard for the development of expertise in aircraft financing and leasing in Ireland. Most of the world's major aircraft lessors, financiers and arrangers have established Irish operations from which they finance and lease aircraft globally.

The following content provides a high level overview of the reasons for using Ireland to finance and lease aircraft and the taxation of aircraft transactions structured through Ireland.

Aviation fast facts

72 double tax treaties

Willingness of **Irish** regulators to work with industry

8 year tax depreciation

12.5% corporation tax

Signed up to Cape Town Convention

90% of the worlds lessor operate through Ireland

35 years of indutry experience has resulted in a large pool of local expertise

Why Ireland?

The country of choice for structuring aircraft transactions, 14 of the top 15 aircraft lessors are headquartered in Ireland and over 50% of the world's fleet of leased aircraft is managed through Irish companies.

Excellent knowledge pool

Ireland has a history of success in the aviation industry and as a result the country has an unrivalled source of aviation skills and experience.
Ireland has experienced service providers including:

- corporate service providers;
- non-executive directors with extensive leasing experience;
- auditors;
- tax advisers; and
- legal advisers.

As a result, establishing a Special Purpose Company (SPC) in Ireland is relatively quick, straightforward and inexpensive.

Attractive to international investors

Ireland is an attractive place for international investors to do business for a number of reasons. Ireland:

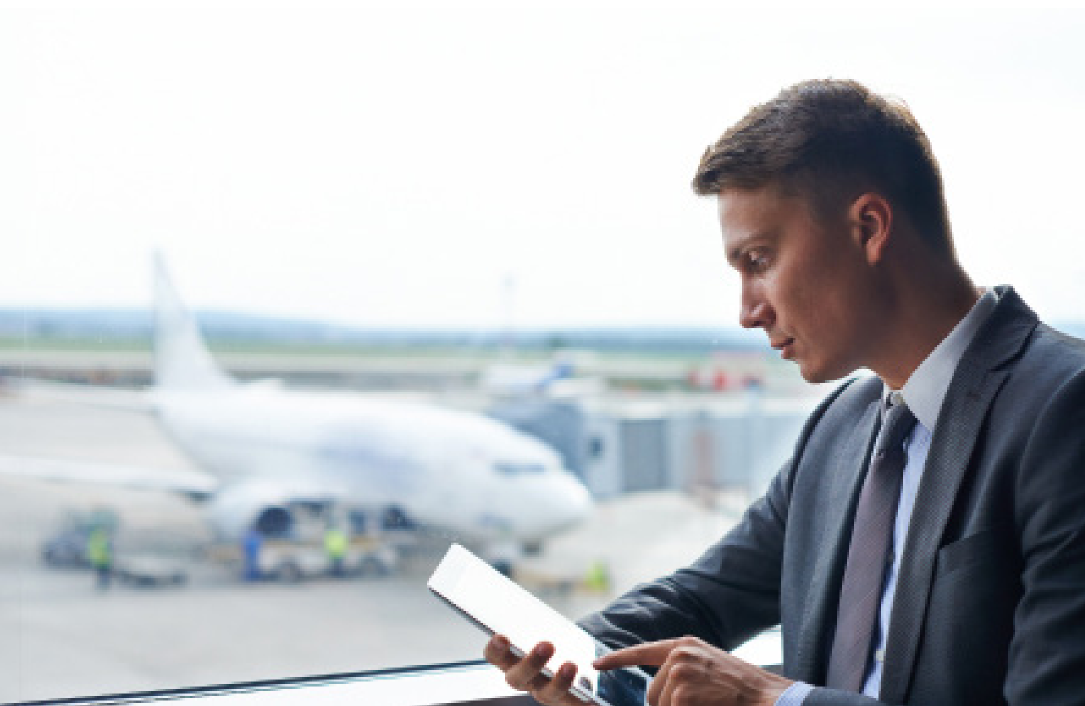
- has a government that is committed to the development of the aviation finance and leasing industry;
- is a longstanding member of the European Union and the Organisation for Economic Cooperation and Development (OECD);
- is an onshore jurisdiction;
- has a common law legal system which is familiar to most investors, promoters and financiers;
- is English speaking;
- is in the GMT time zone;
- is a contracting state to the Cape Town Convention and Aviation Protocol;
- has no thin capitalisation rules so an SPC can be established with a share capital of €1;
- ranked in the top five in the world for regulation and safety standards (2014 by ICAO); and
- rated as the "best country for business" by Forbes (2013).

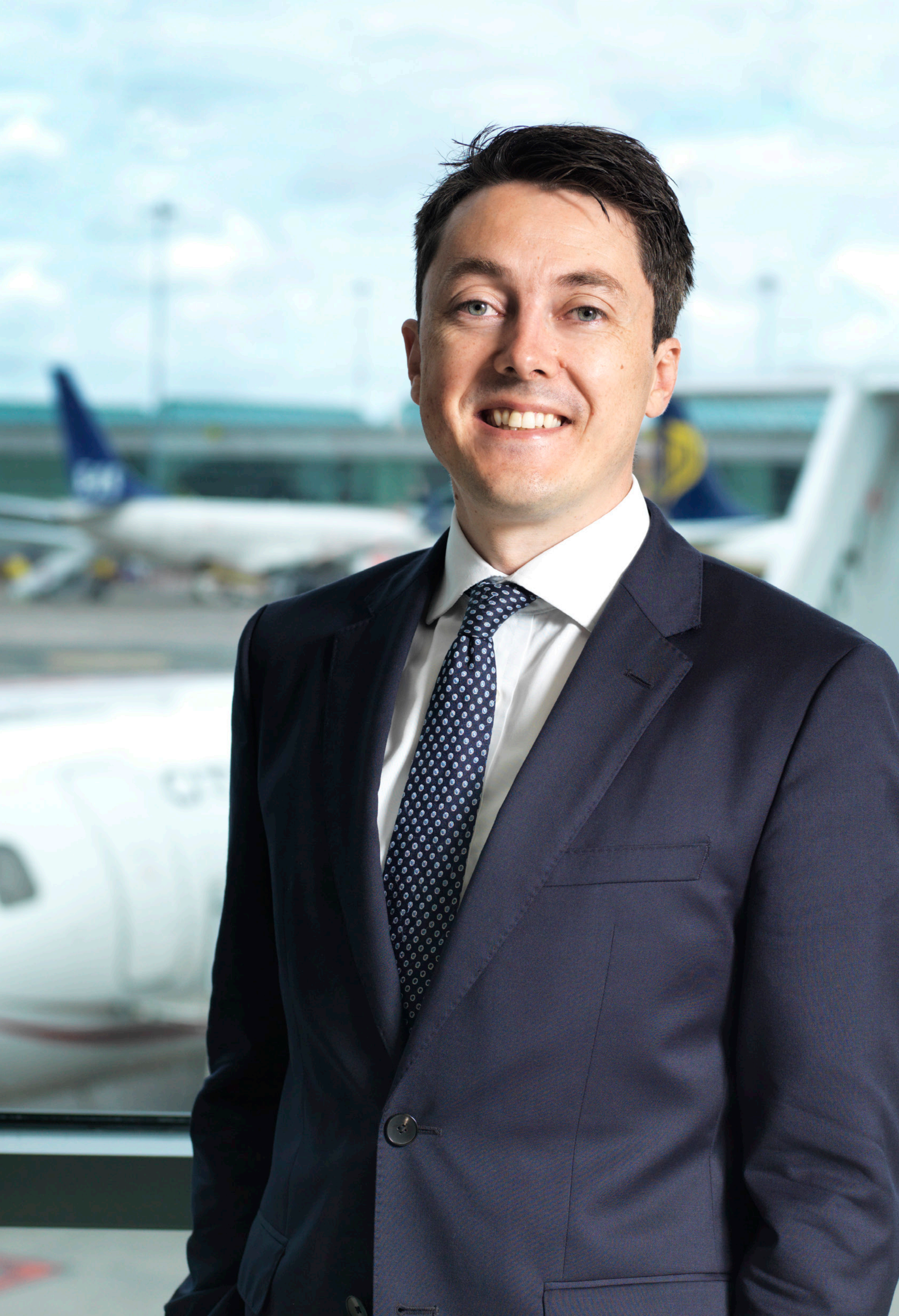
Onshore low tax jurisdiction

Ireland is an onshore location.
The Irish tax authorities are supportive of the leasing industry as it encourages economic development and employment.

Ireland has:

- a low corporation tax rate for trading companies (12.5%);
- an excellent double tax treaty network;
- no withholding tax on lease rental payments;
- straightline tax depreciation (12.5%) over eight years;
- zero per cent VAT on international aviation leasing;
- no stamp duty or transfer taxes on the transfer of aircraft or aircraft parts;
- wide exemptions from withholding tax on interest and dividend payments;
- credit for non - treaty withholding taxes
- Section 110 securitisation vehicles (tax neutral investment vehicles); and
- signed up to OCED BEPS project.





The reasons behind Ireland's success

Cape Town Convention

The Convention and Aviation Protocol establishes a common legal framework to register and protect contracts of sale and security interests in aircraft, aircraft engines and helicopters. The Convention and Protocol provides for the creation of an electronic international register of "international interests" which will give notice to third parties of such interests and will give priority to the registered interest over subsequently registered and unregistered interests.

An aircraft mortgage or aircraft lease agreement entered into by a foreign incorporated Irish tax resident company which owns and/or leases aircraft or engines may constitute "international interests" under the Convention and Aviation Protocol. Almost 50 countries have ratified the Convention and Aviation Protocol including:

- Ireland;
- United States;
- China; and
- India.

The Convention and Protocol came into force in Ireland on 1 March 2006. The International Registry is now well established and registrations with the International Registry must be done for all transactions which are covered by the Convention and Protocol. Lessors and lenders have the added comfort of knowing that Ireland is signed up to alternative a of the Protocol thereby obtaining definitive protection, rights and timeline in the case of aircraft repossession.

Registration with Irish Aviation Authority (IAA)

It is possible to register aircraft which are operated by airlines in countries other than Ireland with the Irish Aviation Authority (IAA). Aircraft lessors and financiers do so because they want to eliminate the deregistration risk and to ensure that the aircraft is supervised by a competent authority and maintained to a standard which will make the aircraft readily marketable and not adversely affect the residual value of the aircraft. Registration of an aircraft with the IAA can in certain circumstances facilitate the registration of an international interest for the purposes of the Cape Town Convention.

Taxation

International Leaders in aviation tax

The international tax system is changing quickly. Governments are working together to tackle perceived international tax avoidance. Ireland was one of the first countries to sign up to the OECD BEPS project and is committed to being a stable onshore tax jurisdiction.

All of Ireland’s double taxation agreements are negotiated with aircraft leasing as a target. As such Ireland is the best placed jurisdiction to mitigate withholding tax on lease payments.

Irish tax residence

In order for a company to avail of the tax regime in Ireland and to gain access to the network of Irish tax treaties, it is important that the company is tax resident in Ireland.

In general, an Irish-incorporated company is automatically treated as an Irish tax resident company unless it is considered to be resident in another country under an Irish treaty. However, a company does not need to be Irish incorporated to be Irish tax resident, a company will be Irish tax resident if its central management and control is exercised in Ireland.

Rates of taxation

The corporation tax rate of passive income is 25%. The corporation tax rate on trading income is 12.5%. Therefore it is important to establish whether a lessor is actively carrying on a leasing trade.

Trading status of lessors

The question as to whether a lessor is carrying on a leasing trade is dependent on the facts and circumstances specific to the case. However, the commercial and financing requirements in a lease transaction often impose specific requirements that could have implications in respect of the trading status of the lessor.

There are often commercial requirements that a leased asset be purchased and held in a SPC in order that the necessary security be granted to a financier and/or to provide legal protection in a bankruptcy situation. Where the activities of the SPC are limited to the leasing of a single asset or a small number of assets, the trading status of the company needs to be considered carefully, although the Irish tax authorities have confirmed that trading status should generally apply in many instances including in the context of a leasing group where the assets are managed by an active leasing company. In any particular lease transaction, it is possible to obtain an opinion from the Irish Revenue Commissioners as to the trading nature of a particular company or transaction.

In circumstances where a lessor is considered not to be carrying on a trade, the leasing profits would be taxable at the non-trading rate (25%). Tax depreciation allowances and deductions for financing costs should still be available.

Tax depreciation (capital allowances)

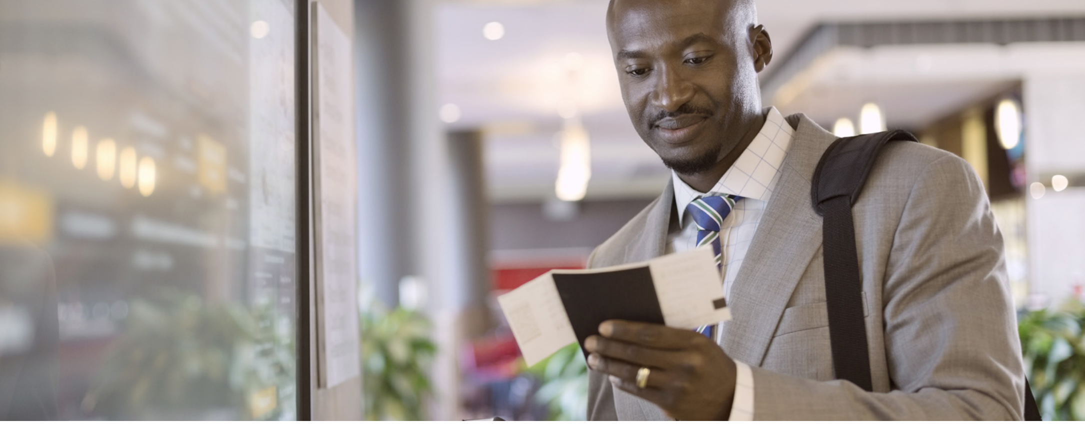
Tax depreciation on equipment is available on a straight-line basis over eight years with no residual value assumed so that the tax depreciation rate of 12.5 percent in each year. There is no half year or other similar convention in Ireland so that on the assumption of a full 12 month accounting period, capital allowances of 12.5 percent may be claimed in the year of expenditure notwithstanding that the expenditure is incurred late in the tax year. In the case of an accounting period which is shorter than 12 months (this may occur in the first year of business), the tax depreciation allowance is reduced pro rata to the length of the accounting period.

There are specific anti-avoidance rules which apply a 'ring fence' in relation to the utilisation of tax losses generated by tax depreciation claims in a leasing trade and from certain leasing transactions. Losses created through tax depreciation claimed on leased assets can only be used to shelter leasing income. The rule is relaxed for leasing groups meeting certain criteria by allowing such persons to shelter asset finance income with leasing losses. "Asset finance income" includes income from the leasing of plant and machinery, the financing of such assets, the provision of leasing services, the sale of machinery or plant and other ancillary activities. Companies can surrender excess losses to other group members but only against leasing income and asset finance income of the claimant company as appropriate.

In the case of operating leases, tax depreciation will be claimed by the lessor. Tax depreciation may be claimed by the lessee under a finance lease, and not by the lessor, where the burden of wear and tear is borne by the lessee, subject to a tax election being made by both parties.

VAT

Irish VAT is generally quite straight-forward for cross border leases. In general there should be no Irish VAT on rental income because the place of supply is where the lessee is located, which is usually outside Ireland.
Irish lessees should qualify for a 0% rate of VAT if the lessee is chiefly operating on international routes.



VAT costs on professional fees etc. are generally recoverable. There should be no Irish VAT on the acquisition of aircraft, provided the aircraft are physically located outside Ireland at the time of transfer. However there could be VAT on the importation of an aircraft into the EU.

Stamp duty

There is a specific exemption from Irish stamp duty for the transfer of ownership of an aircraft or an interest in such assets.

Section 110 regime

The Irish securitisation legislation is Section 110 of the Taxes Consolidation Act 1997 (Section 110). The purpose of Section 110 is to allow a bankruptcy remote Irish SPC from which there is no tax or profit leakage and from which all of the economic returns from the aircraft to be easily extracted.

A Section 110 company involved in aviation financing will typically acquire aircraft, engines or aircraft leases using senior and junior debt and enter into leasing transactions. The senior debt is provided at typical margins while the junior debt can be a profit participating loan which carries a rate of return equal to any remaining profit.

Provided an appropriate structure is adopted the cost of funding both the senior and junior debt, along with operating costs, should be allowable expenses and result in a profit neutral company. The Section 110 company is an ordinary Irish tax resident company which meets a number of qualifying criteria and notifies the Irish Revenue Commissioners of its status.

The Section 110 regime offers a number of advantages compared with lease in lease out structures:

- it eliminates the question of whether a company is trading and allows aircraft lessors and owners who do not have an operational leasing platform in Ireland to access Ireland's favourable tax regime and treaty network;
- although a Section 110 company is able to avail of a deduction for tax depreciation, such depreciation may not be a vital component of the structure;
- there are specific advantageous VAT rules which apply to Section 110 companies; and
- Section 110 companies can benefit from additional exemptions from Irish withholding tax on interest payments.

Key management contacts for our dedicated Aviation team include:

At Grant Thornton our Aviation team provides a single point of contact that works directly with local country teams in member firms globally. Your single point of contact will coordinate international efforts, handle inquiries, resolve conflicts, negotiate fees and ultimately ensure that Grant Thornton exceed your expectations.

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