

On the map with Aircraft Leasing

As we move into 2018, we explore four aircraft leasing regimes worldwide to assist your decision making process for new leasing opportunities.

While Ireland will continue as the global centre of aircraft leasing, other centres will offer opportunities and benefits for different classes of investors and different markets.

We envisage that lessors and investors will continue to adopt a multijurisdictional strategy to doing cross border leasing. At the same time, international tax developments place more emphasis on aligning profits and substance. Lessors need to think about how they allocate business functions and human resources across their platforms to the best effect.

1 Why choose Ireland?

Ireland at a glance

The aircraft leasing industry in Ireland traces its roots back to the establishment of Guinness Peat Aviation in Ireland in 1975, and with it the birth of the aircraft leasing industry. Over the following 40 years Ireland established itself as the primary global hub for aircraft leasing. Here, we examine the key factors that make Ireland such an attractive location.

Government policy, reinforced by successive Irish governments, provides key support to the industry in Ireland. Irish governments have continued to encourage investment in the industry locally by introducing measures which ensure Ireland remains a favourable location for aircraft finance and leasing. This speaks to the importance of the industry in Ireland and the appetite at a government level to both retain existing companies within Ireland, and attract new entrants in the market to establish operations.

From a practical perspective, Ireland's business environment, and central time zone, provides an ideal setting for a global industry such as aircraft leasing. Ireland has a well-developed, English language, legal and regulatory regime, based on a common law system. This is supported by a nexus of professional advisors available locally, including tax advisors, lawyers, accountants, service providers, technical and marketing professionals, etc, with expertise developed over 40 years dealing with aircraft leasing and finance.

Ireland is one of the few EU countries where the Cape Town Convention, the international treaty governing moveable property, is part of national law. In addition to the Conventions registry of aircraft equipment being located in Ireland, the Irish High Court is also appointed as the international centre for aircraft leasing disputes under the Convention. Aircraft registration with the Irish Aviation Authority (IAA) also remains one of the most desirable registrations globally.

Irish fiscal policy has focused on maintaining and advancing Ireland's competitive regime for aircraft finance and leasing. There are a number of key tenets to the Irish tax regime which support this including;

- ▶ 12.5% corporate tax rate on lease rental income, and gains on aircraft, where an aircraft lessor is regarded as carrying on trading activity;
- ▶ Accelerated tax depreciation over eight years, with the claw back limited to where sales proceeds exceed tax basis;
- ▶ An extensive double tax treaty network of over 73 treaties, which minimise or eliminate withholding and income taxes on inbound lease rental payments;
- ▶ No withholding tax on lease rental payments, and broad domestic law exemptions from withholding tax on interest and dividends paid from Ireland to countries with whom Ireland has a tax treaty in place;
- ▶ 0% VAT regime for aircraft leasing with full recovery on aircraft leasing activities; and

- ▶ Exemption from stamp duty on aircraft and certain aircraft related transactions.

In addition to the above, there are generally no transfer taxes on the sale of aircraft in Ireland and currently no onerous thin capitalisation, CFC or exit tax rules.

Securitisation

Ireland is internationally recognised as a location of choice for securitisation vehicles. The holding and leasing of aircraft is permitted through the Irish securitisation tax regime. The regime provides a tax neutral solution to facilitate the securitisation of aviation assets for investment by non-Irish resident investors in a capital market transaction. Irish securitisation vehicles can also generally access Ireland's double tax treaty network.

Islamic finance regime

Islamic finance is an increasingly popular source of funding for many companies and specific legislation has been put in place to encourage Islamic investment into Ireland. The Irish tax rules aim to treat certain Islamic finance transactions on the same basis as non-Islamic transactions.

Regulated alternative investment funds

Ireland is also a leading global jurisdiction for investment management activities offering regulated alternative investment structures that are suitable for holding investments in leasing assets. Regulated alternative investment funds are targeted at sophisticated and institutional investors, who meet minimum subscription and financial resource requirements. They are essentially exempt from Irish tax and there are no Irish taxes on investment returns to non-resident investors.

Personal tax in Ireland

Employment income: Most payments made by an employer, including salary, bonuses, benefits in kind, certain equity income and expense allowances, are subject to income tax.

Employers' PRSI at a rate of 10.85% also applies to any benefits provided to employees.

In general, nonresidents are subject to income tax on employment income, regardless of their domicile, if their duties are carried on, and if their salary is paid, in Ireland.

Self-employment and business income:

Individuals resident in Ireland are subject to tax on income from trades and professions carried on in Ireland and abroad. Nonresidents are taxed on income from trades and professions carried on in Ireland only.

Taxable profits normally consist of net business profits as disclosed in the financial accounts and adjusted to account for deductions not allowed or restricted by tax legislation.

Directors' fees: Directors' fees paid by companies incorporated in Ireland are taxable in Ireland, regardless of the tax residence of the director or the place where duties are performed. Directors' fees paid by non-Irish companies to Irish residents are taxable in Ireland. Non-domiciled individuals do not pay tax on directors' fees received from foreign companies if all of the duties are performed outside Ireland unless that income is remitted to Ireland.

Taxation of employer-provided stock

options: In general, employer-provided share options are subject to income tax, Universal Social Charge (USC) and employee PRSI at the date of exercise on the market value of the shares at the date of exercise, less the sum of the option and exercise prices by reference to the number of work days spent in Ireland during the vesting period.

Restricted stock units (RSUs) are generally taxed at the date of vesting.

Key Employee Engagement Programme

(KEEP): A share-based remuneration incentive is being introduced to facilitate the use of share-based remuneration by unquoted SME companies to attract key employees. Gains arising to employees on the exercise of KEEP share options will be liable to CGT on disposal of the shares, in place of the current liability to income tax, USC and PRSI on exercise. This incentive will be available for qualifying share options granted between 1 January 2018 and 31 December 2023.

Rates - Income Tax:

The following table presents the 2018 income tax rates. Nonresidents are taxed at the same rates as residents.

	Taxable income		Tax on lower amount EUR	Rate on excess %
	Exceeding EUR	Not exceeding EUR		
Single	0	35,550	0	20
	34,550	-	6,910	40
Married	0	43,550*	0	20
	43,550*	-	8,710	40

* This income bracket applies to a married couple with one spouse earning. If both spouses have income, the 20% income bracket is increased by €1 for every €1 received by the other spouse, up to a maximum income bracket of €69,100 with the balance taxed at 40%.

Rates - Universal Social Charge:

The Universal Social Charge (USC) is charged at the following rates and income thresholds.

Income		Rate
Exceeding EUR	Not exceeding EUR	%
0	12,012	0.5 (a)
12,012	19,372	2
19,372	70,044	4.75
70,044	-	8 (b)
100,000	-	11 (b)

(a) This income is exempt if income does not exceed EUR13,000.

(b) The 11% rate applies to "relevant income," excluding employment income that exceeds EUR100,000. Consequently, the 8% rate applies to employment income exceeding EUR100,000.

The USC applies to all income, including non-cash benefits-in-kind and equity compensation under an unapproved scheme, subject to certain exceptions. It applies to all income before relief for pension contributions and deductions for capital allowances.

Rates - Social Insurance (PRSI): 4% on gross income

The Special Assignee Relief Programme

(SARP). SARP is available to employees who are assigned to Ireland by a relevant employer. For this purpose, a relevant employer is a company incorporated and resident in a country with which Ireland has entered into a double tax treaty or an information exchange agreement, or an associated company of such a company. It applies to assignments commencing up to the end of 2020.

Under SARP, an exemption from income tax on 30% of employment income in excess of EUR75,000 is granted for up to five years. In addition, the cost of one return trip to certain home locations per year for the employee and his or her spouse and children can be provided tax-free. Also, the employer can pay or reimburse tax-free education costs of up to EUR5,000 per year per child. Under a certification procedure for the relief, the employer must certify within 30 days of arrival that the employee meets the conditions.

2 Why choose Singapore?

Singapore has become a global transportation and international maritime centre, assisted by an attractive overall business environment, extensive tax treaties with more than 80 jurisdictions, as well as targeted tax incentives such as the Aircraft Leasing Scheme (ALS).

Aircraft Leasing Scheme (ALS)

Under the ALS, approved aircraft lessors and aircraft investment managers can enjoy the following tax benefits:

- ▶ Approved aircraft lessors enjoy a concessionary tax rate of 8% on income derived from the leasing of aircraft or aircraft engines and qualifying ancillary activities.
- ▶ Approved aircraft managers enjoy a concessionary tax rate of 10% on income derived from managing the approved aircraft lessor and qualifying activities.
- ▶ Automatic withholding tax exemption on interest and qualifying related payments on loans obtained for the purchase of aircraft or aircraft engines.

ALS is approved on a case-by-case basis by the Economic Development Board of Singapore. To qualify for the ALS, companies will be assessed on quantitative and qualitative aspects of the aircraft leasing operations such as establishing substantive activities and performing strategic functions in Singapore, headcount, total business expenditure, etc.

To continue to encourage the growth of the aircraft leasing sector in Singapore, the ALS was extended for another 5 years until 31 December 2022.

Other notable features:

The corporate income tax rate in Singapore is 17%. Singapore has no thin capitalisation rules and no CFC rules. Tax depreciation of an aircraft can be made over 3 to 20 years and there is no stamp duty on aircraft leasing transactions.

Singapore has signed double taxation agreements with more than 80 jurisdictions.

Personal Tax

A person is subject to tax on employment income for services performed in Singapore, regardless of whether the remuneration is paid in or outside Singapore. Resident individuals who derive income from sources outside Singapore are not subject to tax on such income. This exemption does not apply if the foreign-sourced income is received

through a partnership in Singapore. Foreign-source income received in Singapore by a non-resident individual is specifically exempt from tax.

Individuals are resident for tax purposes if they are physically present or exercising employment (other than as a director of a company) in Singapore for at least 183 days during the year preceding the assessment year.

Non-resident individuals employed for not more than 60 days in a calendar year in Singapore are exempt from tax on their employment income derived from Singapore. This exemption does not apply to a director of a company, or a professional in Singapore.

Frequent business travellers (foreign employees based outside Singapore but who travel into Singapore for business purposes) may have a tax liability arising from their presence in Singapore, depending on their total number of employment days in Singapore.

Under the Not Ordinarily Resident (NOR) scheme, a qualifying individual may enjoy tax concessions for five consecutive assessment years, including time apportionment of Singapore employment income, if certain conditions are satisfied.

Taxable employment income includes cash remuneration, wages, salary, leave pay, directors' fees, commissions, bonuses, gratuities, perquisites, gains received from employee share plans and allowances received as compensation for services. Benefits-in-kind derived from employment, such as home-leave passage, employer-provided housing, employer-provided automobiles and children's school fees, are also taxable.

A person who is a tax resident in Singapore is taxed on assessable income, less personal deductions at graduated rates ranging from 0% to 22% (tax rates applicable with effect from the year 2016).

The rates of tax applied to the income of non-resident individuals are as follows:

- ▶ Income from employment (other than directors' fees) - greater of 15% or tax payable as a resident.

Note: Employment income of non-resident individual employed in Singapore for no more than 60 days in a calendar year is exempt from tax.

- ▶ Income from directors' fees is taxed at 22%.

3 Why choose Hong Kong?

In order to attract aircraft leasing and aircraft leasing management businesses to Hong Kong, the authorities introduced a new dedicated tax regime offering incentives to qualifying aircraft lessors (QALs) and qualifying aircraft leasing managers (QALMs) in Hong Kong.

The concessionary tax treatment applies retroactively to amounts paid, received or accrued on or after 1 April 2017.

Concessionary tax regime for QAL and QALM in Hong Kong

Subject to certain anti-avoidance provisions, corporations that meet the specified conditions may make an irrevocable election in writing to avail of the concessionary tax regime. Under the concessionary regime:

- ▶ Qualifying profits of QALs and QALMs will be taxed at the 8.25% concessionary tax rate, i.e., 50% of the current 16.5% profits tax rate.
- ▶ In lieu of tax depreciation allowances, the deemed taxable income derived from the leasing of aircraft to an aircraft operator by a QAL will be equal to 20% of the lessor's tax base consisting of gross rentals less deductible expenses other than tax depreciation allowances, i.e. an effective corporate tax rate of 1.65%.
- ▶ An aircraft owned by a QAL and used for carrying out qualifying aircraft leasing activities for a continuous period of not less than 3 years is to be treated as a capital asset. The disposal of a capital asset is not subject to Hong Kong profits tax.
- ▶ Finance leases or hire purchase arrangements are ineligible for the concessionary tax treatment.

A QAL or QALM must meet "substantial activity requirement" by carrying out the profit producing activities by themselves in Hong Kong or arrange to carry out such activities in Hong Kong as one of the specified conditions of the concessionary tax regime. Recent guidance explains that the core income generating activities which produce the qualifying profits of a QAL or QALM include: raising funds; agreeing on funding terms; identifying and acquiring aircraft to be leased; soliciting lessees; setting the terms and duration of leases; monitoring and revising lease agreements; managing any risks and maintaining documentation.

For lessors that are established as a special purpose vehicle (SPV) to hold an aircraft, guidance states that it may be necessary to consider whether the SPV has sufficient nexus with the active conduct of aircraft leasing activity in Hong Kong, including the engagement of an aircraft leasing manager carrying on business in Hong Kong, to be treated as a QAL.

Taxpayers are required to submit a realistic business plan for carrying out their aircraft leasing activities in Hong Kong in the year of commencement for the assessment of the "substantial activity requirement." Taxpayers who wish to have certainty regarding their eligibility for the concessionary tax regime may apply for an advance ruling.

There are safe-harbour rules under which a corporation not dedicated solely to carrying out the qualifying aircraft leasing management activities would still qualify as a QALM.

Onshore aircraft leasing

QALs that lease their aircraft to a Hong Kong aircraft operator (i.e., onshore aircraft leasing) can remain under the normal tax regime without making the concessionary tax regime election. Under the normal regime, QALs will generally be entitled to tax depreciation allowances for the aircraft and be taxed at the 16.5% standard tax rate.

Features of general tax regime

- ▶ Hong Kong does not impose withholding tax on dividends paid to domestic or foreign shareholders. In addition, dividends received from foreign companies are not taxable in Hong Kong.
- ▶ Hong Kong does not impose VAT or sales tax.
- ▶ Generally, income derived from or arising outside Hong Kong is exempt from tax under the territorial taxation system.
- ▶ Hong Kong has signed comprehensive avoidance of double taxation agreements with 38 jurisdictions.

Islamic Finance

A special legislative framework provides comparable tax treatment in terms of stamp duty, profits tax and property tax for some common types of Islamic bonds (sukuk), vis-à-vis conventional bonds. However, no special tax incentives are conferred on Islamic bonds.

Personal Taxation

Individuals earning income that arises in or is derived from a Hong Kong office or Hong Kong employment, or from services rendered in Hong Kong during visits of more than 60 days in any tax year, are subject to salaries tax. Hong Kong observes a

territorial basis of taxation; therefore, the concept of tax residency has no significance in determining tax liability, except in limited circumstances.

Employment income: Taxable income consists of all cash emoluments, including bonuses and gratuities. Benefits in kind are largely non-taxable, unless they are convertible into cash or specifically relate to holiday travel or the education of a child. The provision of accommodation by an employer creates a taxable benefit equal to an amount ranging from 4% to 10% of the employee's other taxable income, depending on the type of accommodation.

An employee is subject to salaries tax if his or her employment income is sourced in Hong Kong, even if he or she is not ordinarily resident in the territory. However, except for directors' fees, a specific statutory exemption applies if an employee renders all his or her services outside Hong Kong or if an employee renders services in Hong Kong during visits to Hong Kong not exceeding a total of 60 days in a year of assessment. Conversely, if a non-resident engaged in non-Hong Kong employment renders services in Hong Kong during visits totalling more than 60 days in a year of assessment, he or she is taxed on a pro rata basis.

Directors' fees: Directors' fees derived from a company that has its central management and control in Hong Kong are subject to salaries tax in Hong Kong. Otherwise, directors' fees are not taxable.

Taxation of employer-provided stock options: Employer-provided stock options are generally taxable at the time of exercise. However, for an individual who has non-Hong Kong employment and is taxed on a pro rata basis by reference to the number of days of his or her services in Hong Kong only, part or all of the option gain may be excluded from taxable income. The amount excluded depends on various factors including whether the option is granted conditionally or unconditionally, and, if granted conditionally, the number of days on which the individual performed Hong Kong services during the vesting period.

Taxation of employment-related share awards: Employment related share awards are generally considered to be perquisites from employment and taxed as part of the remuneration. In general, they become taxable when an employee is entitled to the full economic benefit of the shares awarded. If the employee has a non-Hong Kong employment, proration of the income by reference to the number of days of his or her services in Hong Kong that is similar to the proration applicable to stock option benefits may also be allowed.

Rates: Three separate income taxes are levied in Hong Kong instead of a single unified income tax. The following rates are the applicable rates for the three taxes for the period from 1 April 2017 through 31 March 2018:

- ▶ Profits tax: levied on non-corporate professional, trade or business income at a flat rate of 15%
- ▶ Property tax: levied at a flat rate of 15% on rental income, after a standard deduction of 20%
- ▶ Salaries tax: levied on net chargeable income (assessable income less personal deductions and allowances) at progressive rates ranging from 2% to 17%, or at a flat rate (maximum rate) of 15% on assessable income less personal deductions, whichever calculation produces the lower tax liability

The following are the progressive rates for salaries tax for the period from 1 April 2017 through 31 March 2018.

Taxable income HKD	Tax rate %	Tax due HKD	Cumulative tax due HKD
First 45,000	2	900	900
Next 45,000	7	3,150	4,050
Next 45,000	12	5,400	9,450
Remaining	17	-	-

Hong Kong does not impose any social security taxes. Employers and employees are each required to contribute the lower of 5% of the employees' salaries or HKD 1,500 per month to approved mandatory provident fund schemes unless the employees are covered by other recognized occupation retirement schemes.

4 Why choose the China Free Trade Zone?

Aircraft leasing companies generally consider certain Free Trade Zones (FTZs) as the choice of location for setting up SPVs for their cross-border leasing transactions in China.

Currently, Tianjin Dongjiang Free Trade Port Zone is the most attractive and mature FTZ for major aircraft leasing companies and has the largest number of established aircraft leasing companies.

The FTZs provide a series of incentives by way of fiscal subsidies to the aircraft leasing companies invested in the FTZs. The fiscal subsidies are sourced from the locally retained fiscal revenues. The specific fiscal subsidies to be granted to each leasing company will be subject to case-by-case negotiation.

We list below the key tax implications which are applicable for the aircraft leasing companies and the possible forms of incentives offered by the FTZs to the aircraft leasing companies invested in the FTZs.

1. Corporate Income Tax (CIT) / Withholding Tax (WHT)

- ▶ For both operating leases and finance leases, the enterprises are in general subject to a standard CIT rate of 25%. Tax losses can be carried forward for up to five years.
- ▶ A foreign enterprise without an establishment in China is subject to WHT generally at 10%. The WHT rate can be reduced by the relevant articles in the double tax treaties. China has signed double tax treaties with 106 jurisdictions.

2. Value Added Tax (VAT)

- ▶ Leasing of tangible assets (including operating lease and finance lease) within China should be subject to VAT at 17%.
- ▶ Sale and lease back arrangements are regarded as loan arrangements from a VAT perspective and subject to 6% VAT.

3. Local Surcharges

The enterprises shall be liable for local surcharges, which are calculated based on the total amounts of VAT and Consumption Tax paid by the taxpayer.

4. Stamp Duty

- ▶ Operating lease agreements are subject to stamp duty at 0.1% of the rental income.
- ▶ The applicable stamp duty rate for finance lease agreements is 0.005% since they are categorized as loan agreements.

5. Individual Income Tax (IIT)

- ▶ **Employment income:** The types of taxable compensation under the China IIT law include, but are not limited to, wages and salaries, foreign service or hardship allowances, cost of living and automobile allowances, tax reimbursements, bonuses and equity compensation. The form of the individual income may be cash, physical objects, securities and economic interests in any other form.
- ▶ **Directors' fees:** Directors' fees are considered income from independent personal services and are taxed as income derived from labor services. However, directors' fees paid to a company director are taxed as "wages and salaries" if he or she is an employee of that company or a related company. If the director is not also an employee of the company, his or her directors' fees may be taxed under the "labor service" category.

- ▶ **Rates:** Income is not accumulated for purposes of calculating monthly tax liabilities. Income tax for individuals is computed on a monthly basis by applying the following progressive tax rates to employment income.

Taxable income CNY	Tax rate %	Tax due CNY	Cumulative tax due CNY
First 1,500	3	45	45
Next 3,000	10	300	345
Next 4,500	20	900	1,245
Next 26,000	25	6,500	7,745
Next 20,000	30	6,000	13,745
Next 25,000	35	8,750	22,495
Above 80,000	45	-	-

6. FTZs' incentives

The specific fiscal subsidies to be granted to each leasing company will be subject to case-by-case negotiation. The fiscal subsidies are sourced from the locally retained fiscal revenues:

- ▶ CIT / WHT, 40% retained locally
- ▶ VAT / withholding VAT, 50% retained locally
- ▶ Stamp Duty, 100% retained locally
- ▶ Local Surcharges, 100% retained locally
- ▶ Individual Income Tax, 40% retained locally
- ▶ Cost reimbursement, e.g. cash reimbursement based on registered capital, cash reimbursement on the certain percentage of office rental expenses in the stipulated period, cash reimbursement on pre-operating expenses, etc. ■

