



S110 Aircraft Finance Structures

S110 Background

On the 6th February 2011 the Irish Finance Act 2011 enacted changes to Section 110 (“S110”) of the Taxes Consolidation Act 1997 introducing aircraft and engines as qualifying assets (under the definition of “Plant and Machinery”) and creating a new class of aircraft finance structure in Ireland. As a result, the aviation industry has moved to take advantage of S110 and its benefits with an increasing trend to set up S110 aircraft finance special purpose vehicles (“S110 Aircraft SPVs”).

S110 was first introduced in Ireland in the ‘90s and has evolved and regularly been updated to facilitate the use of special purpose vehicles for use in a wide range of Capital Markets transactions. With the introduction of aircraft and engines to S110, it allows lessors and aircraft owners who had previously not established a full leasing platform or used Ireland in the past for their aircraft structures an alternative, simpler and more cost efficient option.

The main feature of S110 is that it allows for the creation of an effectively tax neutral special purpose vehicle with tax treaty access, that participates in a Capital Markets transaction. The special purpose vehicle is an ordinary Irish company which meets the qualifying criteria of S110 and elects to be treated as such with the Irish Revenue. It is subject to Irish Corporation Tax at the higher rate of 25% but this typically only applies to a nominal amount of profit. Other features include: certain Irish VAT exemptions, facilitating the issue of profit participating notes whose interest expense is deductible for tax purposes, providing an efficient profit extraction method.

At Bedell we have a team of professionals experienced in administering both S110 companies and traditional aircraft structures and are positioned to assist aircraft lessors and owners with their corporate administration needs in Ireland as they start to establish these new S110 Aircraft SPVs. Our services to special purpose vehicles include the provision of experienced directors, company secretary, day-to-day administration services, tax compliance, trust structuring and the preparation of management accounts and financial statements to fulfil its statutory obligations.

S110 Regime

Prior to the changes enacted in Finance Act 2011, S110 had limited application for the aviation industry only allowing the securitisation of the lease receivables in an aircraft portfolio. With the changes implemented actual aircraft and engines can now be classed as qualifying assets for the purposes of S110.

S110 applies to “qualifying companies” engaged in the holding or management of “qualifying assets” conducting business on an “arms length basis”.

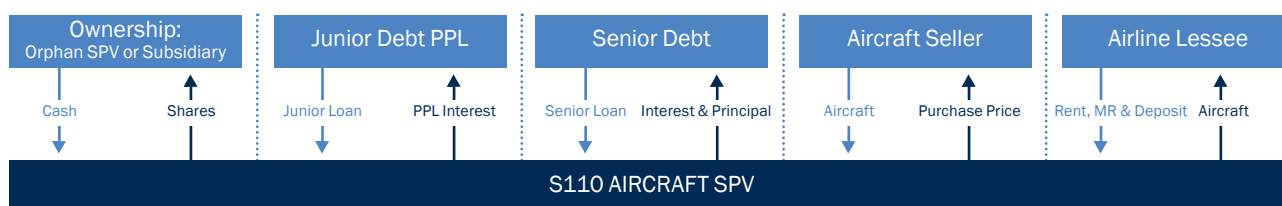
A qualifying company refers to a company which:

- is resident in the state and the market value of all qualifying assets held or managed or which the company has entered legally enforceable arrangements is not less than €10,000,000 on the day on which the qualifying assets are first acquired,
- acquires qualifying assets and holds or manages these themselves or has entered into a legally enforceable arrangement with another person which arrangement itself constitutes a qualifying asset,
- carries on the business of holding or managing these qualifying assets in the state and carries on no other activity which is not ancillary to this activity; and
- has notified in writing the Revenue Commissioners in Ireland that it intends to be a qualifying company under S110 of the Act.

A qualifying asset refers to an asset which consists of any of the following:

- financial assets including loans, deposits, receivables, swaps, derivatives, shares bonds etc.,
- plant and machinery including aircraft, ships, vehicles, oil rigs etc.,
- commodities including tangible assets which are dealt with on a recognised commodity exchange such as gold; or
- carbon offsets which includes and allowance, permit, licence or right to emit during a specified period, a specified amount of carbon dioxide or any greenhouse gas.

S110 Aircraft Finance Structure



- The S110 Aircraft SPV meets the criteria for a qualifying company and acquires aircraft(s) and/or engines typically using senior and junior debt provided on an arms length basis.
- The senior debt is provided at a rate of USD Libor plus a margin while the junior debt is a profit participating loan (the "PPL") at a rate of interest equal to the profit remaining in the S110 Aircraft SPV.
- The cost of funding of both the senior and junior debt along with operating costs are allowable expenses for tax purposes and result in a profit neutral company.
- The S110 Aircraft SPV specifically allows the exemption from withholding tax on interest payments to a person resident in an EU member state (excluding Ireland) or to person in a relevant territory (i.e. a country to which Ireland has a double taxation treaty in place) subject to certain anti-avoidance provisions.
- The S110 Aircraft SPV leases the aircraft out to an airline and if the airline is established in a tax treaty country there should be no withholding tax on the lease rentals receivable.

Who has utilised the S110 Aircraft SPV

The main industry professionals who have already utilised this S110 Aircraft SPV structure are:

- International lessors who have not established a full operational leasing platform in Ireland but want to gain access to the Irish tax treaty network especially for leasing to such places as Russia, India, and China.
- Private equity investors looking to establish capital market structures by acquiring a portfolio of aircraft.
- Lessors looking to access Capital Markets funding using a securitisation of aircraft or engine portfolios similar to the lease receivables securitisations established in the past.

Established Aircraft Finance Structures previously used in Ireland

Ireland is highly recognised as a popular choice for aircraft finance structures and this S110 Aircraft SPV structure compliments the existing leasing structures already commonplace in Ireland including:

- Traditional full leasing platforms (Trading Companies): These companies are recognised as full trading companies and taxed at 12.5% on its profits as long as it can substantiate that the company has sufficient substance in Ireland. With careful tax planning of cashflows the company can use accelerated tax depreciation allowances to minimise taxable profits
- Lease in: Lease out structures ("Lilo structures"): These are used where an aircraft is commonly owned in an offshore jurisdiction e.g. Cayman Islands, and leased into an Irish company. The Irish company then leases the aircraft to a lessee located in a jurisdiction with whom Ireland has a double taxation agreement with to avail of the treaty benefits to minimise any tax leakage due to withholding taxes.
- Export Credit Agencies ("ECA") - These are established for ECA backed financing arrangements which involves an Irish company acquiring an aircraft and leasing it to a lessee with the lease rentals servicing the debt.

For more information on [S110 Aircraft SPVs](#) or our [Aircraft Finance SPV Administration services](#) please contact:



Derek Maltby
Managing Director
Bedell Trust Ireland
T +353 (1)6336031
derek.maltby@bedellgroup.com



Nigel Woods
Director
Bedell Trust Ireland
T +353 (1)6336032
nigel.woods@bedellgroup.com

Bedell Trust Ireland Limited
19-20 City Quay
Dublin 2
Ireland

© Bedell Trust January 2012

www.bedellgroup.com