



Global Taxation Environment:

Outlook for Investors in Aircraft and
Engines – Plotting a Course for Lessors

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BEPS & the Multi-Lateral Instrument



What is the MLI?

- As part of BEPS project, the OECD has proposed significant changes to the global tax rules, including to double tax agreements.
- The Multilateral instrument (“MLI”) is a legal instrument under which countries, including Ireland, set out a range of changes which they are willing to adopt into their double tax treaties.
- These changes will be adopted where equivalent choices are made by the tax treaty counterparty and enacted into the law of both countries. Some changes are “minimum standard” (i.e. required), others are “best practice” (i.e. some level of optionality).
- On 7 June 2017, representatives from over 70 jurisdictions, including Ireland & Hong Kong, participated in an OECD ceremony for the signing of the MLI (US did not sign up but already has many similar provisions).
- Once implemented by all signatories, expected to impact over 1,100 international tax treaties currently in force globally. The OECD expects the number of modified tax treaties to continually increase as additional jurisdictions sign the MLI.



Impact of MLI for Irish Lessors

In terms of the aircraft leasing business, choices made by countries on the following aspects of the MLI are very relevant:

- 1) Dependent Agent permanent establishment (“PE”) threshold;
- 2) Changes to treaty preamble; and
- 3) Introduction of Principle Purpose Test (“PPT”) and/or Simplified Limitation on Benefits provision (“LOB”).

Other changes may have an impact on aircraft lessors depending on the exact group circumstances.



PE changes - impact for aviation sector

- Lowering threshold for non-independent agents to create a PE from “habitually concludes contracts” to:

➤ “..habitually concludes contracts, or habitually plays the **principal role** leading to the **conclusion of contracts** that are routinely concluded **without material modification**..”

- Potentially significant for leasing groups which have people travelling internationally and involved in buying, selling and leasing aircraft. The changes are targeted at on the ground teams that negotiate the terms of contracts but do not formally conclude contracts.
- Key issue for leasing sector given the fact that senior executives/ marketing personnel regularly visit local customers to discuss contract terms.
- Important to evidence ‘head office’ decision making on – needs to do more than merely ‘rubber stamp’ the final contract. Financial & compliance impact as need to file tax returns in PE jurisdictions.
- Not a minimum standard – will not get adopted into treaties unless both parties agree – less than half of countries who signed up to MLI have elected to impose in the first instance**



PPT/LOB and preamble changes

- New approach to address tax treaty shopping arrangements, measures include:
 - Clear statement not to avoid tax (including treaty shopping);
 - Then either an **Limitation on benefits clause (“LOB”)** which focuses on ownership, base erosion and activity (criticised for its complexity) or a **Principal purposes test (“PPT”)** which focuses on whether one of the main purposes is accessing tax treaty (criticised for its uncertainty).
- Most parties to MLI have chosen PPT – very subjective, open to different interpretation by countries.
- Emphasis on commercial purpose – focus on structure and substance. For lessors who have robust commercial substance and direct leases, should be able to continue to rely on the benefits of the relevant Irish treaties.
- For intermediary lease structures high degree of uncertainty as to whether these will continue to operate as currently in a post-MLI world. In time, greater substance may be required in lease intermediary jurisdictions in terms of people, ability to generate profit and number of aircraft under lease in order to sustain certainty of access to treaty benefits. The position is unlikely to be the same in each country.

BEPS/MLI influenced developments with airlines

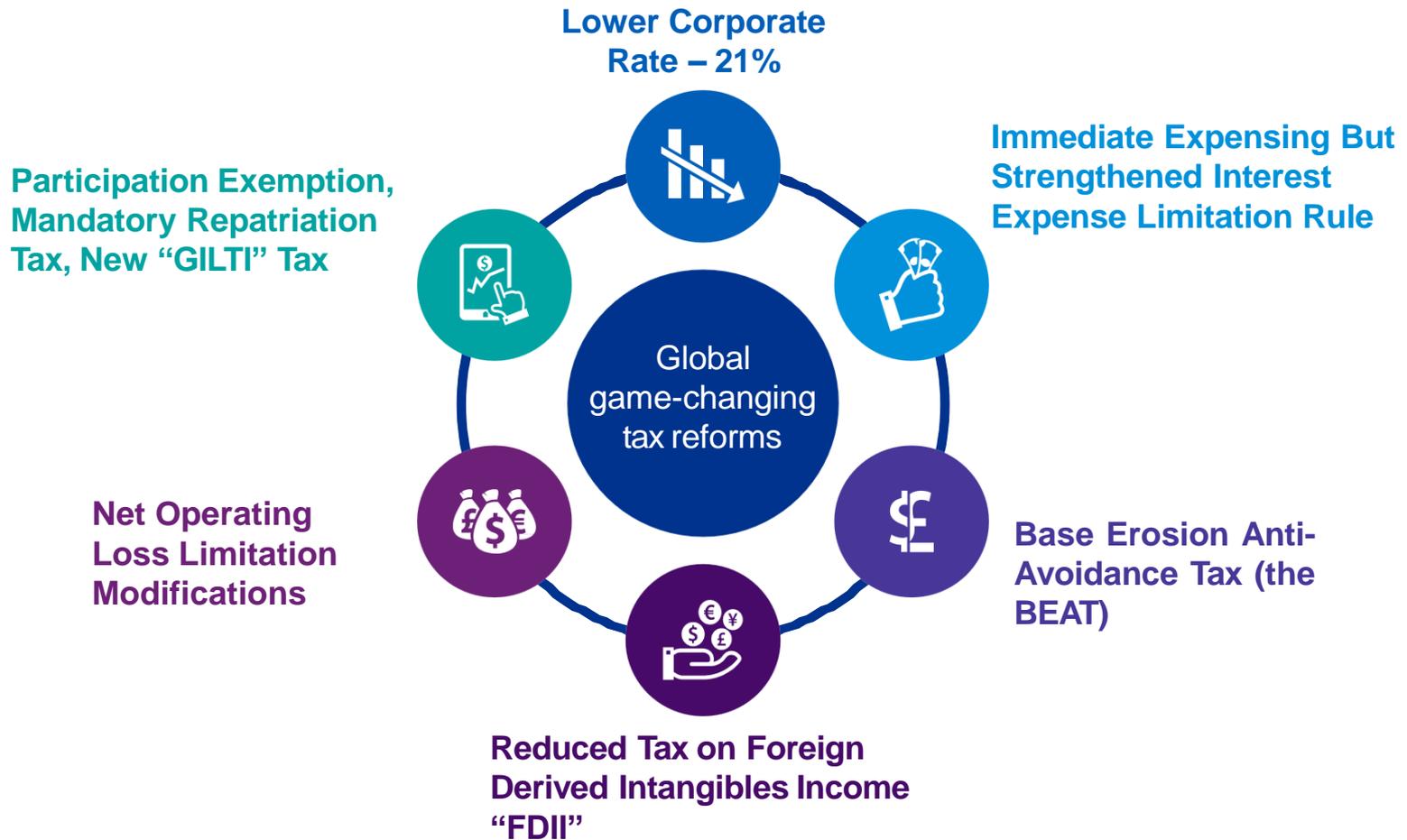
- Generally more focus on substance and beneficial ownership:
 - Russian airlines in relation to the application of Russia’s beneficial ownership rules.
 - Korean airlines in relation to the application of Korea’s beneficial ownership rules.
 - Indian airlines in relation to provisions that give greater comfort to the airline that the lease should not fall foul of India’s General Anti-Avoidance Rule (“GAAR”), including: (i) requests from that Lessors have “commercial substance” in their home jurisdictions; (ii) requests that Lessors are “actively” engaged in aircraft leasing.
 - Indonesia recently released more onerous treaty claim forms.
 - Ukrainian airlines have begun to requesting confirmations of beneficial ownership.
 - Beneficial ownership remains a sensitive point to French and Italian lessees.
 - Australian tax office have carried out reviews of LILO structures from time-to-time.



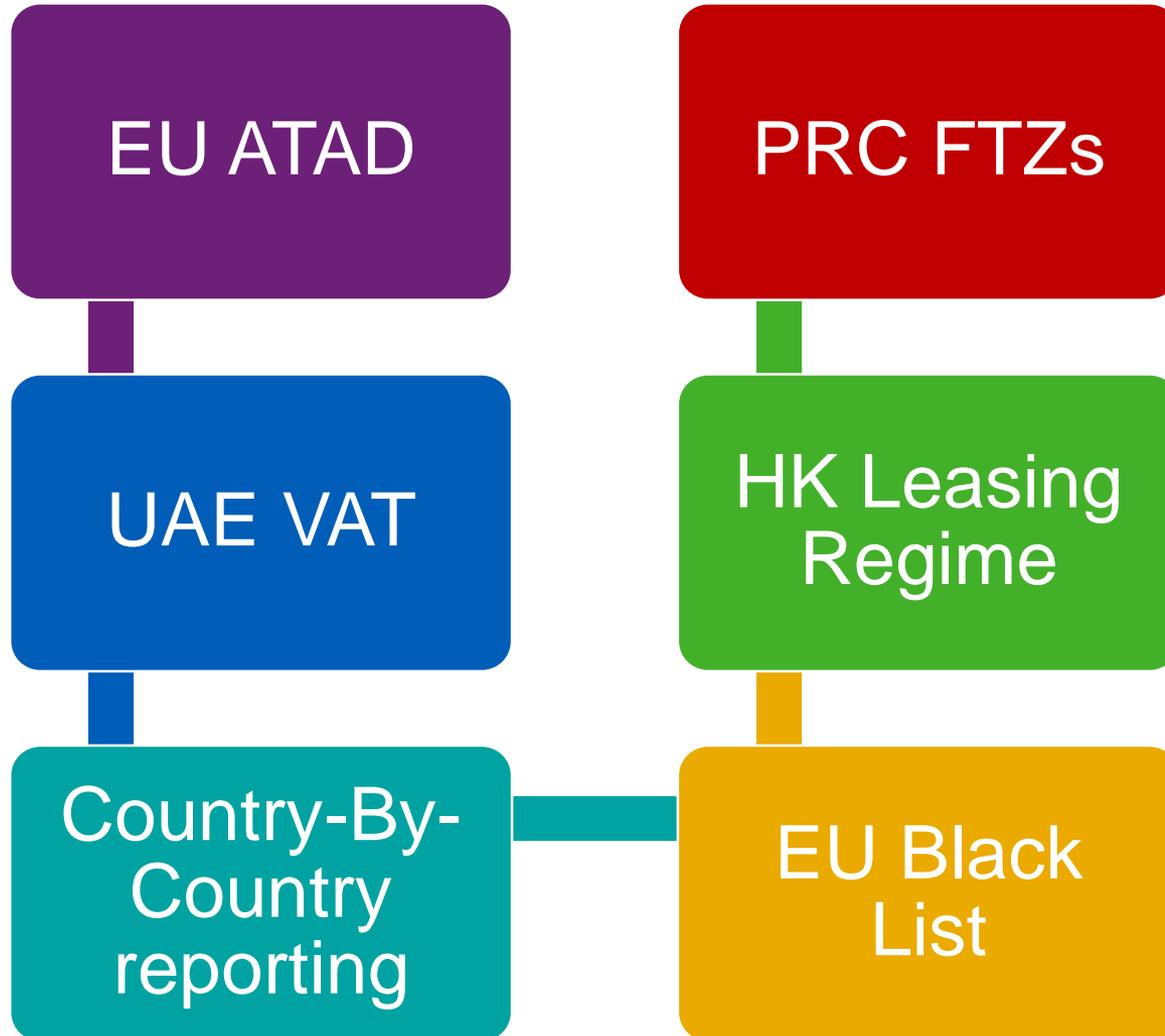
US Tax Reform



US TAX Reform - Impact on Lessors



Other Hot Topics





Thank you



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