

# Indian Tax Developments impacting Irish Aircraft Leasing Entities

Indian tax authorities have increased their focus on Irish entities undertaking aircraft leasing to Indian entities. Notices had been issued to some aircraft leasing companies, with the key issue under consideration being the **eligibility to treaty benefits under the India-Ireland treaty**.

Under the tax treaty between India and Ireland, the earnings from the leasing of aircraft are exempt from taxation in India, provided the lessor does not have a **permanent establishment in India** and the airlines are not obligated to withhold any tax before remitting rental payments to foreign lessors. However, this arrangement is now under examination, largely as both India and Ireland are signatories to the **Base Erosion and Profit Shifting (BEPS) Multilateral Instrument (MLI)** which aims to close gaps in international tax treaties that allow for tax avoidance and treaty abuse.

The '**principal purpose test**' (PPT) under the MLI provides that tax treaty benefits may be denied if obtaining a tax advantage is determined to be one of the principal reasons for an arrangement or transaction, i.e. in this instance, if the main reason for setting up operations in Ireland is to obtain treaty benefits under the Ireland-India DTA.

## Potential impact on your business

### If you have received a notice by the Indian tax authorities:

The company will be required to defend their position to the Indian tax authorities to show that your operations in Ireland are driven by legitimate commercial reasons rather than solely by tax benefits and has appropriate substance.

### If you have not yet received such notice from the Indian tax authorities:

The company should begin building supporting documentation/defence to support the commercial rationale of the operations and substance in Ireland, in case of a future notice being issued to the company by the Indian tax authorities.

## How can BDO support you

If you require further assistance on this matter, our team in collaboration with our colleagues in BDO India, would be happy to help. Please get in touch.



**Angela Fleming**

Partner and Head of Financial Services Tax  
+353 (0)1 470 0281  
afleming@bdo.ie

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