

Trusts, Estate Planning And The Family Jet

When a high-net worth family or individual is purchasing a jet that will be flown primarily for personal and family use, it can be useful to consider at the outset how the structure of the ownership and operation of the aircraft fits within the estate plan of the owner and any future ownership or usage by his or her heirs.

Early planning may help avoid the need for future transfers of ownership of the aircraft. Most States impose taxes on transfers of aircraft, and there may also be other state and federal tax issues involved. These often arise when trying to restructure the ownership of the aircraft and transfer it to a trust in order to satisfy estate planning needs.

Despite the many limitations on aircraft ownership and operations contained in the Federal Aviation Regulations, the US Federal Aviation Administration (FAA) does allow registration of an aircraft in the name of a Trustee of a trust. The FAA has requirements for Trustee's of trusts which own aircraft. Under FAR 47.7(c), each Trustee of the trust must be either a U.S. citizen or a resident alien. They must also submit an Affidavit of Citizenship from each Trustee and a copy of the Trust Agreement to the FAA. The Federal Aviation Regulations (FARs) also require that they submit a "copy of each document legally affecting a relationship under the trust."

There are special requirements which must be met if any beneficiary is not either a U.S. citizen or a resident alien. An Affidavit is required from each Trustee stating that "the trustee is not aware of any reason, situation, or relationship (involving beneficiaries or other persons who are not U.S. citizens or resident aliens) as a result of which those persons together would have more than 25 percent of the aggregate power to influence or limit the exercise of the trustee's authority."

If persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a Trustee, either directly or indirectly through the control of another person, the Trust Agreement must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a Trustee. However, the regulation does not prevent those persons from having more than 25 percent of the beneficial interest in the trust.

Trusts, frequently called "owner trusts" are commonly utilized to own and register an aircraft in the United States. If an existing trust or a trust organized for a different purpose is later utilized to own the aircraft, the Trust Agreement may need to be amended in order to satisfy the FAA requirements mentioned above. The FAA must approve all Trust Agreements used to register an aircraft. As such, confidentiality of the terms regarding other assets held in a trust which has multiple purposes can be a concern if an aircraft is added to an existing trust.

Addressing aviation issues in the trust created to meet other estate planning and family needs can quickly become complex. Deciding how to best handle each issue varies from person to person. Consulting an attorney experienced in corporate jet registration

and operations can assist by providing guidance on how to ensure FAA compliance while satisfying estate planning goals.

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