



Use of Aircraft Ownership Trusts & International Registry Issues in Aircraft Acquisitions

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Upcoming 2020 Webinars



Income Tax Considerations: Family Offices & Business Aircraft	September 17 1 pm ET
Tax Matters for Airplane Purchases <i>The 30,000 foot view</i>	October 22 1 pm ET
Federal Income & Excise Tax Implications of Personal & Entertainment Use of Business Aircraft	November 19 1 pm ET
Sales & Use Taxes on Aircraft: Latest Developments & Key Planning Tools	December 17 1 pm ET

Ownership Trusts & International Registry Issues

Disclaimer



This presentation is being provided for general information and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult your attorney or other advisor concerning your specific situation and for any specific legal or financial questions you may have.

GKG Law, P.C.

About Us



- Aircraft Purchase & Sale Transactions
- Aircraft Ownership & Operating Structures
- Federal & State Tax Planning
- Aircraft Ownership Trusts
- IRS, State & FAA Audits & Enforcement Actions
- Personal Use Guidelines & Calculations

AIRCRAFT OWNERSHIP TRUSTS



Aircraft Ownership Trusts

Who Can Register an Aircraft in the U.S.?

- The FAA is an owner registry. Aircraft registered in the U.S. must be registered in the name of the aircraft owner.
- In order to register an aircraft in the U.S., the owner must be:
 1. A “Citizen of the United States” (as defined under Federal law and FAA Regs); or
 2. A citizen of a foreign country who is “lawfully admitted for permanent residence in the United States;” or
 3. A corporation that is formed under the laws of the United States or a U.S. State but doesn’t meet the statutory/regulatory citizenship requirements, but only if the aircraft is “based and primarily used” in the United States

Aircraft Ownership Trusts

U.S. Citizenship Test for Business Entities

Under 49 U.S.C. §44102(a)(1)(A):

- A partnership where each of the partners is an “**individual**” U.S. citizen
- A corporation or association (including LLCs) organized under the laws of the United States or a State thereof of which:
 1. The president is a U.S. citizen
 2. At least two-thirds of the board of directors and other managing officers are U.S. citizens; and
 3. At least 75% of all voting interests are owned or controlled by U.S. citizens
- Applies to all entities in the applicant’s chain of ownership
 - If the parent is not a citizen, the subsidiary likely is not a citizen

Aircraft Ownership Trusts

What if my company does not qualify as a U.S. Citizen?



- ✓ Based and primarily used (BAPU)
- ✓ Voting Trust
- ✓ Owner Trust



Aircraft Ownership Trusts Based and Primarily Used (BAPU) Registrations

“Based and primarily used” or “BAPU” registration (14 C.F.R. 47.9) can only be used by *corporations* that do not qualify for U.S. citizenship:

Requirements:

- 60% of total flight hours per each six-month period must be within the U.S.;
- Flight hour reports must be filed with the FAA for each six-month period

Aircraft Ownership Trusts

Problems with BAPU Registrations

- BAPU registration can only be used by corporations (LLCs, partnerships and other business entities are not eligible)
- Must maintain records showing that 60% of total flight hours in each six-month period are within the U.S.
- Only flights that are non-stop and point-to-point in the U.S. qualify
- Every six months, the corporation must file a signed report with the FAA that details the total time in service and total flight hours in the U.S.
- Corporation must maintain flight records for three years
- Failure to report or failure to reach the 60% threshold will invalidate aircraft's registration

Aircraft Ownership Trusts

Voting Trusts



A Voting Trust structure can be used by a corporation or LLC that satisfies all citizenship requirements except the voting control test:

- The corporate or LLC and the holder of that entity's voting rights must enter into a Voting Trust Agreement with an independent voting trustee
- Voting Trustee agrees to hold the holder's voting rights in trust
- Voting Trustee must be truly independent and free from the holder's control
- Voting Trustee can only be removed for cause

Aircraft Ownership Trusts

Problems with Voting Trusts

- Only available to corporations and LLCs; partnerships and other business entities do not qualify
- The corporation or LLC must satisfy the other three parts of the citizenship test:
 1. Corporation or LLC must be formed and existing pursuant to the laws of the United States or a State thereunder;
 2. The President must be a U.S. citizen;
 3. At least two-thirds of board and managing officers must be U.S. citizens

Aircraft Ownership Trusts

The Basics



- Most common and flexible structure used by companies that do not qualify as U.S. citizens for FAA registration
- Owner Trustee holds legal title to the aircraft on behalf of Trustor/Beneficiary
- Owner Trustee leases the aircraft back to Trustor/Beneficiary, who then operates and maintains the aircraft

Aircraft Ownership Trusts

Regulatory Requirements Under 14 C.F.R. §47.7

- Owner Trustee must be a U.S. citizen
- Owner Trustee must submit the following to the FAA:
 1. A copy of each document “legally affecting a relationship under the Trust”
 - All operating agreements between Owner Trustee and Trustor
 - Any side letters/agreements between Owner Trustee and Trustor
 2. An affidavit stating that no non-US citizen Trustor or Beneficiary has “more than 25 percent of the aggregate power to influence or limit the exercise of the trustee’s authority”
- Can’t remove Owner Trustee
- Only option is to terminate the trust

Aircraft Ownership Trusts

Non-Regulatory Requirements Imposed by 2013 FAA Policy Clarification

- Informational Requirements:

- ✓ When requested, Owner Trustee must provide the following within **two business days**:

1. Identity and location of person operating the aircraft and having primary responsibility for operations
2. Location of maintenance records
3. Where aircraft is normally based and operated

- ✓ When requested, Owner Trustee must provide the following within **five business days**:

1. Information about operator and crew on specific dates
2. Additional details regarding maintenance records and other aircraft records
3. Current airworthiness status

Aircraft Ownership Trusts

Additional Issues



- Owner Trustee must will need to satisfy its Know-Your-Customer/Due Diligence requirements
- FAA Counsel's office at FAA Registry must review and approve Trust Agreement and related documents in advance
- Owner Trustee will need to be listed as additional insured and review insurance certificate
- If Aircraft will be financed, Owner Trustee must grant the security interest to the lender, so loan documents will need to be modified
- Time required to complete Know-Your-Customer/Due Diligence requirements, loan document modifications and review, and insurance review, and to receive prior approval from the FAA (All can impact closing timeline)

INTERNATIONAL REGISTRY ISSUES (In Layman's Terms)



International Registry Issues

What is the International Registry?

- Internet-based system
- Registers interests in aircraft
 - ✓ Contracts of Sale (i.e., Bill of Sale)
 - ✓ International Interests (i.e., liens, security interests, leases, etc.)
 - ✓ Prospective Contracts/Prospecting Interests
- In addition to, not in lieu of, FAA filings
 - ✓ Documents are filed only at FAA
 - ✓ FAA filings are registered at the International Registry
- NOT an aircraft registry
 - ✓ International Registry does not issue aircraft registration certificates
 - ✓ Registration not related to ability to operate internationally

International Registry Issues

Applicability

- Airframes – eight (persons) including crew or goods in excess of 2,750 kilograms
- Helicopters – five (persons) including crew or goods in excess of 450 kilograms
- Engines – at least 1,750lbs thrust or 550 rated takeoff shaft horsepower
- Airframes and Engines are separate objects
 - ✓ May apply to Airframe but not Engine(s)
 - ✓ May apply to Engine(s) but not Airframe
- Does not apply to propellers

International Registry Issues

Registration Terminology

- Transacting User Entity (TUE)
 - ✓ A party to a transaction (Buyer, Seller, Lender, Borrower, Lessor, Lessee, etc.)
 - ✓ Pre-requisite to registration of an interest
 - ✓ Registration valid for one year
 - ✓ Expiration of TUE registration has no impact on registrations of interests
- Administrator
 - ✓ Designated representative of TUE for IR matters
 - ✓ Must be an individual
 - ✓ Can be lawyer, in-house rep, PUE, etc.

International Registry Issues

Registration Terminology

- Back-up Contact
 - ✓ Responsible person affiliated with TUE
- Confirmation of Entitlement to Act
 - ✓ Similar to Power of Attorney
 - ✓ Used to Appoint the Administrator and Identify Back-up Contact
 - ✓ Must attach proof of existence (e.g., Driver License, Articles of Incorporation, Certificate of Good Standing, etc.)
- Professional User Entity (PUE)
 - ✓ Escrow company or law firm registering interests on behalf of TUE
 - ✓ Appointed by TUE for a particular transaction

International Registry Issues

Closing Transactions

- File Documents (Bills of Sale, Security Agreements, etc.) at FAA
- Escrow Agent must also file FAA Form 8050-135
- Upon filing 8050-135, FAA will provide an International Registry filing code
- Once filing code is received, PUE for one party will initiate registration of interest
- PUE for the other party must then confirm/consent to the registration of interest within 36 hours
- Typically, the escrow company or law firm handling FAA filings will act as PUE for both parties



Questions?

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