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When Was The Last Time You Checked On The Jet?

By Michelle Wade and Dillon Strohm

Your company repeatedly audits its tax positions, scrutinizes its employment law compliance, and agonizes over its financial analysis, all to make sure that you stay in compliance with the multitude of governmental regulations. You know that every restructuring, merger or acquisition, or change in regulation can profoundly impact your risk analysis, tax positions, and business operations. But when was the last time you reviewed your corporate aircraft structure for compliance?

Maybe when you bought your plane a few years ago, your structure was simple. Or maybe it was complex, but you took the time to make sure it was compliant and efficient for your operations. Aircraft operations, like all other aspects of your business, require regular reviews to ensure that they evolve along with the many other facets of your company. Mergers, reorganizations, managerial shifts, and many other changes that happen as part of the ongoing business of a company can have serious impacts on whether your aircraft operations remain in compliance with applicable regulations, insurance policies, and financing requirements. Failure to remain in compliance can create serious and substantial risks to your company.

Here are a few issues that you may want to consider if you haven't checked on your aircraft's operations recently.

Registration

Generally, a corporate jet may be registered in the U.S. only when the corporate jet is owned by an individual or an entity

which satisfies the FAA's definition of U.S. citizen.

For FAA purposes, a U.S. citizen is defined as (i) an individual who is a citizen of the United States or one of its possessions; (ii) a partnership each of whose partners is an individual who is a citizen of the United States; or (iii) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States. If a restructure of ownership results in an entity in the chain of ownership which does not satisfy the FAA's definition of U.S. citizen, then the aircraft registration may be invalid and the insurance coverage may be void.

Operations

When companies restructure, it is common for non-aviation professionals to have the crew employed by the entity which owns the aircraft, particularly if it is a sole purpose entity with no business or other assets. Do not do this! The FAA does not allow aircraft operations by "flight department companies" which are organized solely for the purpose of owning and operating aircraft, unless they have obtained a charter certificate.

Aircraft operations which violate the Federal Aviation Regulations (FARs) can expose the company to civil penalties, additional taxes and may invalidate the insurance coverage. If a claim is made on

the insurance, the insurer might try to deny coverage if the company is operating differently than that stated in the original application and the new operations may not even be covered by the type of policy which was initially purchased. With a non-compliant operational structure, the liability protection the company assumed it had when reorganizing may be illusory.

Structuring and re-structuring the ownership and operation of a corporate jet is a very fact-specific and complex undertaking. A few of the factors that must be considered are what entities and which individuals will use the aircraft, how will the aircraft be utilized (business or personal), the applicable state sales/use tax laws, applicable state property tax laws, the FARs governing the proposed operation (e.g. Part 91 for non-commercial operations), which entity will employ the crew, liability issues, and how any personal use will be handled.

Due to the multiple issues and complexities involved in aircraft operations today, there is no standard structure and no single operation that works for everyone. A review by an attorney experienced in corporate aviation can help identify risks, ensure FAA, DOT, and IRS compliance, and add value by helping create a tailored corporate aircraft operational structure.

Michelle M. Wade and Dillon L. Strohm are attorneys with the law firm of Jackson & Wade, L.L.C. and counsel clients on the acquisition, financing and operation of corporate jets operated under Part 91 and Part 135 of the Federal Aviation Regulations. Jackson & Wade, L.L.C. can be found at www.jetlaw.com.

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