AVOIDING THE PITFALLS OF SHARING BUSINESS AIRCRAFT

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Executive Summary

Individuals involved in business aviation are increasingly likely to encounter aircraft sharing arrangements. From occasional users to industry veterans, this article provides an analytical framework for them to determine the appropriate sharing structure. Common issues (and even some that are more obscure) are addressed from legal, regulatory, operational, economic, tax, liability, and disclosure perspectives. The article analyzes specific sharing structures (such as Time Sharing, Interchange, Joint Ownership, Dry Leasing, and Fractional), including an assessment of their advantages, limitations, and economic implications, and addresses their use in common planning scenarios.

Introduction

Sharing corporate aircraft has never been more popular. Aircraft that in the 1980s might have been seen as expensive perquisites today are often subject to rigorous financial justification. To meet today's tougher standards, many operators turn to aircraft sharing during otherwise idle periods.[1] This trend has contributed to record industry activity levels.[2]

Anyone involved in the business (manufacturers, brokers, management companies, charter companies, flight departments, pilots, insurers, accountants, attorneys, and consultants) is likely to be exposed to some form of sharing arrangement. Because the issues are complex (even mind-boggling to the uninitiated) and the stakes high,[3] I will summarize the various sharing structures and their applicability in particular planning environments. This should provide an analytical framework for determining the best sharing mechanism, while avoiding the numerous and often obscure pitfalls that lie in wait for the unsuspecting.

First, because the relevant considerations can vary by user type, Table 1 contains several categories of business aircraft users, in order of diminishing level of industry involvement.

[1] The ability to defer costs, or even make a profit, in these instances often can make or break the financial viability of the aircraft—or even of the flight department.
[2] Sales for most manufacturers hit record levels in 1997.
[3] The implications of using the wrong structure can be severe, ranging from exposure to FAA enforcement actions that could ground aircraft or crew, to expensive detrimental tax consequences and even to potential risk that the aircraft liability insurance policy could be invalidated.

Table 1. Categories of Users

CATEGORY	DESCRIPTION
<u>Industry Players</u>	Derive their revenues primarily from the operation or support of business aircraft
1. Charter Operators	Hold Part 135 air taxi certificates and charter out full-service, non-scheduled flights to third parties. Licensed and inspected by the FAA. Can charge market prices. Some own or lease their own aircraft. Increasingly, they charter out aircraft owned by third parties.
2. Fractional Program Managers	In existence for over a decade, Fractional Programs involve multiple Program Participants, each of which owns a share in an individual aircraft, all of whom agree to swap time on their respective aircraft with all the other Program Participants. Program Managers provide the same sorts of services as Management Companies, and, by the same theory, have done so under Part 91.
3. Management Companies	Provide a host of services requiring aviation expertise (such as providing flight crews, arranging maintenance, fueling, hangar, insurance, and scheduling). Although in existence for many years, not defined by the FARs. Function primarily under Part 91 on the basis that the aircraft owner is the operator and the Management Company merely provides services.
<u>Other Operators and Users</u>	The aircraft tends to be secondary to an unrelated primary business
1. Private Fleet Operators	Typically large companies that operate more than two aircraft for their own business travel needs. Usually have large internal flight departments comprising pilots and maintenance experts.
2. Small Flight Departments	Operating one or two aircraft, these companies ordinarily have small internal flight departments.
3. Management Customers	Typically operate one (sometimes two) aircraft but have no internal flight department. They arrange for a Management Company to serve as their "external" flight department.
4. Fractional Program Participants	Owners (or increasingly lessees) of Fractional shares, typically not previously active in aircraft operations. Attracted to ownership, turnkey services, and guaranteed costs. Typically need 100 to 300 flight hours per year and acquire access to Program's pool of aircraft for 200 hours per year for a ¼ share (Programs offer shares as small as one-sixteenth). Sometimes used to augment existing fleet.
5. Occasional Relationship Users	Occasionally use an aircraft owned by an unaffiliated company with which there is some relationship. Typically do not wish to become sophisticated aircraft operators. Rather, desire use on a limited basis, without commitment, expense, and resources normally required. But for the relationship, they would probably not use business aircraft at all, or perhaps would charter in.
6. Charter Customers	The purest of occasional users, they make no long-term commitment to business aviation but simply charter in when convenient. Most use business aviation aircraft less than 100 flight hours per year. Aircraft owners often charter in as well to fill schedule or mission gaps.

Checklist of Planning Considerations

Although their import varies by user, there are many factors to consider when determining the best structure in any particular case. In this section, I will identify the most common. Reviewing each should facilitate the planning process.

Usage Profile. The starting point for any user should be developing a thorough understanding of its own aircraft usage requirements. Often, this will narrow the range of planning options.

Operational Analysis. Each party involved should carefully review historical and forecast use, determining the flight hours used and their distribution, the city-pairs and airports visited, and typical passenger loads. Newcomers to business aviation should audit their historical commercial airline travel requirements to determine which flights could be replaced by business aviation. This will hasten a determination of the type of aircraft required as well as its likely use and availability for sharing.

Flexibility Requirements. Business aircraft users should also consider their requirements for operating flexibility. The FARs[4] restrict the operational flexibility of Part 135 (air taxi) operators to a much greater degree than they do private, Part 91 operators. For example, Part 135 operators are subject to pilot flight and duty time restrictions, are prohibited from conducting “look see” approaches,[5] have less flexibility in operating out of airports that lack weather reporting stations on the field, and must calculate minimum takeoff and landing distances using stricter rules.

Many of Part 135’s constraints increase the margin of safety and should therefore be followed, but their impact on flexibility cannot be denied. For planning purposes, then, the best solution for private operators often is to create a structure that allows Part 91 operations, while complying with Part 135’s requirements on a voluntary basis.[6] In any case, the user should determine the degree of operational flexibility required before implementing any shared-use structure.

Economic Considerations. Next, consider the financial aspects of sharing use. Operational needs impact the type of aircraft and number of flight hours required. The user then can calculate the expense of acquiring and operating the aircraft, usually with the help of industry experts. If the acquisition cost is too high, consider partners to share the purchase price, provided that usage requirements are complementary and that scheduling and liability concerns can be managed. Alternatively, a fractional share could be considered.[7]

[4] The U.S. Federal Aviation Regulations. This discussion applies only to U.S. operators.
[5] Attempting an instrument approach when the reported weather is below the relevant landing minimums in the hopes of breaking out before the decision height is reached. Part 135 operators cannot attempt the approach if the reported weather at the airport is below minimums.
[6] Of course, if a structure constitutes providing transportation for hire, Part 135 (or other commercial) operations are mandatory.
[7] This option is now becoming available for pre-owned aircraft as well. The author has assisted several clients in the legal and financial aspects of developing fractional programs for used aircraft.

If operating costs exceed budget, examine shared usage options that allow for defraying some of these costs. The FARs limit this ability; certain structures allow only the recovery of actual, direct operating expenses (usually including twice the cost of fuel and oil), while others allow cost recovery on a fully-allocated basis (that is, direct costs plus an allocation for overhead and ownership). Chartering out allows charging third parties on an unlimited "cost-plus" (that is, profit-motivated) basis. Because the need for cost-recovery flexibility often drives the configuration chosen, the precise "charge-back" restrictions for each shared-use arrangement are discussed below.

Degree of Control over the Aircraft. Some users feel strongly about maintaining a high degree of control over the aircraft. For them, structures that cede significant activities to third parties are unacceptable, despite potential cost advantages. The issue often relates to scheduling; certain executives require that "their" aircraft is always waiting, no matter the cost.[8] Consequently, they will have difficulty choosing a suitable sharing mechanism.

Ownership. The intangible benefits of ownership drive some structures. Fractional Programs have succeeded to some degree by offering Program Participants ownership, albeit of only a share. Other parties will go to great lengths to avoid ownership, desiring anonymity for their aircraft operations. Many companies wish to keep the aircraft "off-balance sheet," suggesting an operating lease arrangement.[9] Ownership also entails a host of potential aircraft registration issues, particularly relating to foreign ownership.[10]

Regulatory Status and Risk Profile. An extremely important (and rather complex) factor concerns the desired regulatory status of the operations and the level of related risk the user is willing to bear. As described above, Part 91 offers certain operational flexibility advantages as compared to Part 135, but decreased charging flexibility. Many operators wish to charge at will and enjoy Part 91's flexibility at the same time, creating an insurmountable regulatory tension. Thus, it is worth examining the regulatory background in which business aviation operations take place.

[8] The reasons can sometimes be personal as well: one of my clients stopped sharing his aircraft when he discovered that the "no smoking" policy was being violated.
[9] However, many companies that enter into lease arrangements without the appropriate degree of care fail to comply with the accounting and tax requirements for operating leases, potentially leading to "on-balance sheet" treatment or a recharacterization by the IRS as a sale.
[10] While most of these issues are relatively minor, and their detail is outside of this article's scope, they should be considered by skilled aviation counsel.

Traditional Private Operations. From an FAA perspective, Part 91 operations[11] are those private carriage flights where there is no transportation for hire, there is no "holding out" to the public that would constitute "common carriage," and the operation of the corporate aircraft is "incidental to the business of the company." The FAA clearly designed most of Part 91 based upon operations akin to "traditional" internal flight departments using the aircraft for company business. Accordingly, unless otherwise expressly allowed, any sharing of the aircraft for which compensation of any kind is received could be considered using the aircraft "for hire," mandating a commercial certificate.

Regulatory Pigeonholes. In Subpart "F" of Part 91, though, the FAA has created some limited, specific structures for sharing use and cost recovery. These structures – such as Time Sharing, Interchange, Joint Ownership, demonstration flights, and corporate family flights -- are outlined in §91.501 and discussed in detail below. Many of the activities in question might otherwise be considered providing transportation for hire, requiring a commercial certificate, but for this special exception.[12]

Scope of Subpart "F". Subpart "F" applies to "large [defined elsewhere as those over 12,500 pounds maximum takeoff weight] and of turbo-jet powered multiengine civil airplanes."[13] Pistons, turboprops, single-engine (or very light) jets, and helicopters are not automatically covered, but their operators can seek an individual waiver or take advantage of the blanket exemption the FAA has granted if they are (or become) members of the NBAA.[14] Be aware that Subpart "F" does not provide an exception to the licensing requirements where common carriage is involved or the use of the corporate aircraft is not incidental to the business of the company (more on this last point later).

A Limited Exception. Business aircraft operators engaged in sharing should keep in mind the nature of this activity. Charging for use of the aircraft would simply not be allowed under Part 91 if Subpart "F" did not exist. Section 91.501 contains a relatively narrow range of exceptions to this rule. As a matter of legal interpretation, then, what is not expressly allowed is generally forbidden. Thus, any sharing activity where compensation is involved that does not fit expressly within the types of arrangements provided for in §91.501 carries some degree of FAA enforcement risk. What seems "logical and appropriate" might lead to an enforcement proceeding, a pilot threatened with license revocation, or even an argument by the insurance company to deny coverage under the policy.[15] That said, I should note that the language and structure of this provision tend to

[11] Technically, Part 91 applies to all aircraft operations. Air taxi operators and airlines are subject to other sections (e.g., Parts 135 or 121) that contain additional requirements over and above the basic Part 91 rules. As shorthand, however, most people in the industry refer to "Part 91 operators" or "Part 91 operations" to indicate private carriage that does not require commercial operating certificates.

[12] Accordingly, Subpart "F" operations must follow certain procedures not otherwise required in Part 91.

[13] FAR §91.501(a).

[14] The National Business Aviation Association, the leading industry trade group. See FAA Exemption Number 1637S.

[15] Nearly all U.S. insurance policies require the insured to abide by the FARs. Failing to do so could give rise to a claim for coverage denial, particularly if it contributes to an accident or incident. Most insurance carriers tend to be fair to their insureds, but not all. In addition, some states (notably California) have enacted strict limitations on insurance companies' ability to deny coverage for technicalities. Fine, but do you really want to give your insurance company's lawyers any arguments for denying coverage on your $100 million liability policy?

be ambiguous and leave room for interpretation. In identifying the degree of risk undertaken, obtain competent advice from aviation regulatory experts familiar with Subpart "F" of Part 91.[16]

Citizenship. Individuals or companies that do not qualify as U.S. citizens must be especially careful when sharing aircraft. The U.S. Department of Transportation (DOT) prohibits "remuneration for hire" of "foreign civil aircraft" absent receipt of DOT economic licensing authority.[17] While it is not clear that business aircraft sharing arrangements lie within the scope of DOT's authority (to my knowledge, DOT has never asserted its authority in any such case), problems could arise where the aircraft is "owned, controlled or operated" by individuals who are not U.S. citizens.

Further, owners that cannot register the aircraft directly as U.S. citizens under the registration rules normally employ a voting or ownership trust arrangement. These devices can cause complications in complying with Subpart "F" (Joint Ownership, for example, can be thorny) and can sometimes require attention to specific language in the insurance policy. Suffice to say, if non-U.S. citizens are involved, proceed carefully and with sound advice.

Tax Implications. Sharing simply should not be engaged in without examining potentially critical tax implications. These can be divided into three areas: the FET, state taxes, and other federal taxes.

FET. The Federal transportation Excise Tax (FET) applies to "commercial" transportation activities. Anyone providing transportation services that the IRS deems commercial must charge and remit the FET[18] for domestic flights.[19] Unfortunately for operators, the IRS and FAA have contributed to the complexities of business aircraft sharing by defining and applying differing standards for what is deemed to be "commercial," and by ignoring each other's conclusions.[20] Activities that the FAA deems non-commercial can be (and, in some cases, are) subject to the FET. The FET status of each sharing arrangement is set forth below, so that this factor may be considered in determining the best mechanism to use.

[16] The vast majority of operators, lawyers, and so-called industry "experts" do not have a thorough understanding of the complexities and risks in this very specialized area. If budgetary concerns prevent obtaining appropriate expertise, I recommend contacting industry trade groups such as the NBAA for guidance.

[17] DOT Special Regulations Part 375.

[18] The rate is 8% from October 1, 1998 to October 1, 1999, at which time it drops to 7.5%. Flights using "rural" airports are taxed at 7.5%. There is also a small "segment tax" for each stage of the flight. I.R.C. §4261(e). Note that operators may apply for and receive a refund for fuel tax paid for flights where the FET is applicable (the two taxes are mutually exclusive).

[19] Those starting and ending in the U.S. or 225 miles of the continental U.S. I.R.C. §4261(a).

[20] For example, in Revenue Ruling 78-75, the IRS specifically determined that the FAA's classification of commercial transportation does not control for IRS purposes. While the entities have similar standards, they have applied differing tests, with the IRS focusing on the entity that has "possession, command and control" of the aircraft charging for its use. *See* Revenue Ruling 60-311. To be fair, these differences can be attributed to dissimilar objectives: the mission of the IRS is to collect revenues, as opposed to the FAA's safety oversight responsibility.

State Sales and Use Taxes. Most states impose a sales tax on the purchase and delivery of an aircraft within the state,[21] and nearly all have a similar tax on use of the aircraft within the state. Many operators take delivery in a tax-beneficial state and wrongly assume that they have avoided state taxation. The state where the aircraft is based usually has sufficient nexus to assert taxation, as well as any state where the aircraft is used to a significant degree. Some states also include leasing activities within the use tax, creating implications for any structure that amounts to a lease of the aircraft. Many states provide exemptions for commercial operators (especially those states where airlines have headquarters or large hub operations), creating a tax benefit for "commercial" operations fitting within the state's definition. Any sharing (or for that matter any operation) should involve careful state sales and use tax planning, considering all states that could assert a claim.

Federal Tax Issues. Federal tax matters often create the most significant financial structuring concerns. This section briefly addresses some of the more common issues.

Depreciation. Aircraft that are used in a trade or business or for the production of income, primarily operated domestically, and not used in common or contract carriage may be depreciated over a five-year MACRS (Modified Accelerated Cost Recovery System) schedule.[22] Aircraft used in common or contract (such as Part 135) carriage are depreciable under seven-year MACRS. Using a charter arrangement can therefore substantially impact the depreciation allowance.

When property is used partially in a manner that would qualify it for depreciation and partially in a manner that would preclude the ability of the owner to take depreciation, the IRS generally allows depreciation to the extent used in the qualifying manner. For example, if an aircraft is used half of the time for personal use and half in a trade or business of the taxpayer, and the other requirements for depreciation are met, then the taxpayer should be allowed to depreciate 50% of the aircraft.[23] Consider this when involved intensively in Personal Use.

To be eligible for deductions associated with an asset s use, such as the depreciation deduction, the property in question must be subject to wear, tear, exhaustion or obsolescence.[24] Accordingly, the IRS does not allow depreciation for property (including aircraft) that it considers inventory or stock in trade,[25] determined under a "principal purpose" test.[26] If the buyer's principal purpose of purchasing the aircraft is to use it in its trade or business or for the production of income, then the plane is not inventory and the associated expenses and depreciation are currently

[21] Several states have "fly-away" exemptions that allow a waiver from the tax if the aircraft is removed from the state within a certain time (e.g., seven or ten days) following its delivery. This is particularly true in states, such as Kansas, that house large aircraft manufacturing or refurbishment facilities.
[22] I.R.C. §167, 168; Rev. Proc. 87-56.
[23] *See*, Noyce v. Commissioner, 97 T.C. 670 (1991); Priv. Ltr. Rul. 9104002 (as a general rule Private Letter Rulings may not be cited as precedent, but they tend to reveal the position of the IRS).
[24] I.R.C. §167.
[25] Treas. Reg. §1.167-(a)(2).
[26] *See*, Malat v. Riddell, 383 U.S. 569 (1966); Priv. Ltr. Rul. 9811004.

taken into account. Conversely, aircraft principally held for sale to others, and not for "use" by the taxpayer in its trade or business or for the production of income, are considered non-depreciable inventory. This issue is particularly relevant in fractional programs and programs using brokers or sales entities.

Passive Loss Limitations. Even if depreciation otherwise is allowed to be taken, the current ability to recognize losses generated from certain activities might be restricted if the activity is deemed to be "passive."[27] For entities that are "flow-throughs" for federal tax purposes,[28] passive loss limitations are imposed at the level of the individual owners.[29] Therefore, if using flow-throughs, review the following sections carefully.

Passive losses can be taken in a tax year only to the extent that they can be used to offset passive gains from other activities. These often do no exist. The tax benefits of these losses are likely to be lost, or at best deferred.[30] Owners of flow-through entities engaged in significant sharing should determine whether they meet the passive loss tests. The issue often arises when the aircraft is placed in a separate leasing company in order to achieve regulatory or liability objectives.

Grouping of Activities. The easiest way to dispose of passive loss problems is to group activities, where allowed, so as to avoid having any passive losses altogether. The IRS gives taxpayers a good deal of discretion in determining which sets of income and deductions to group together as one activity. The regulations allow for any groupings that constitute "appropriate economic units for the measurement of gain or loss" in light of all the relevant facts and circumstances.[31] But if the taxpayer's groupings are determined to be unreasonable or abusive, the IRS may regroup them.[32] Additionally, grouping must be consistent from year to year. Finally, rental and non-rental functions usually must be considered separate activities.[33]

Rental Activities - the *Per se* Rule. If passive loss concerns cannot be avoided entirely by grouping to prevent losses, determine whether the group of unprofitable activities will be treated as passive." Rental activities are especially problematic because the IRS treats them as *per se* passive.[34] There are six regulatory exceptions to this *per se* treatment,[35] but they are often difficult to meet. Even if the taxpayer can

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[27] I.R.C. §469.
[28] I.e., S corporations, partnerships and LLC's not electing to be treated as C corporations or associations.
[29] I.R.C. § 469.
[30] They can be carried forward and applied against later passive gains, or against any capital gain (over and above depreciation recapture) upon disposition.
[31] Treas. Reg. §1.469-4(c)(1, 2).
[32] Treas. Reg. §1.469-4.
[33] Treas. Reg. §1.464-4(d). This is true unless one is insubstantial in relation to the other or the ownership interests in each are identical and the rental activity involves the rental of property used in the trade or business with which it is grouped.
[34] I.R.C. §469(c)(2, 4); Treas. Reg. §1.469-1T.
[35] The lease periods average seven days or less; the average period of customer use is 30 days or less and significant personal services are provided; gross rental receipts for investment or business property that do not exceed 2% of the lesser of the unadjusted basis or fair market value; leases to a related flow-through entity; the provision of extraordinary personal services where the use of the property is merely incidental to the services; or

apply an exception, the inquiry is not over. The individual owner of a flow-through entity must also pass the "material participation" test.

Material Participation. Whether non-rental activities will be considered passive or active depends upon whether the individual owner meets one of the seven "material participation" tests,[36] applied on an activity-by-activity basis.[37] If the taxpayer materially participates, he or she may treat the non-rental activity as active. The same is true for rental activities, provided that the *per se* test is passed. In short, if using flow-throughs, especially for leasing, consider passive loss issues carefully.

Capital Gains Treatment. In 1997 Congress passed the Taxpayer Relief Act, lowering the maximum rate of tax levied on long-term capital gains of individuals to 20-28%. The IRS continues to tax ordinary income at rates as high as 39.6%. The character of items of income and loss as either capital or ordinary in the hands of a flow-through entity generally passes through to the individual owners. Operators generally prefer to obtain long-term capital treatment upon the sale of their aircraft.

Gain from the sale of inventory, stock-in-trade or property held primarily[38] for sale to customers is considered to be ordinary income and not capital gain.[39] Conversely, an aircraft owner may obtain capital gain treatment on the sale of non-inventory aircraft.[40] The IRS generally takes the position that where a taxpayer is engaged in both leasing and selling a certain type of property, gain recognized upon the disposition of all such property is ordinary in nature, including property that was previously leased for some

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customarily making the property available for non-exclusive use by various customers during business hours. Treas. Reg. §1.469-1T(e)(3)(ii).

[36] Treas. Reg. §1.469-5T(a). The tests include: participating in the activity for at least 500 hours during the year; participating in the activity at least 100 hours and meeting one of a few other circumstances; having a history of materially participating in the activity in question for five of the last ten years; engaging in an activity which is considered personal services; or a situation where the owner's participation amounts to substantially the entire participation of all individuals in the activity. Miscellaneous rules require the exclusion of the hours spent on an activity in an investor capacity or in managing the activity if a person other than the taxpayer either receives compensation for performing management services or spends more time managing that activity.

[37] Consider an owner's ability or inability to satisfy these tests when grouping activities for passive loss purposes.

[38] *See*, Malat v. Riddell, 383 U.S. 569 (1966), holding that the prospect of a sale being a "substantial" purpose of holding the property was not enough to characterize it as inventory.

[39] I.R.C. §1221, 1231. Capital gains treatment only applies to the excess after depreciation has been "recaptured" under §1231 as ordinary income and taxed at those rates. I.R.C. §1231(c), 1245, 1250. If you expect to sell the aircraft at a loss, consider attempting to classify it as inventory.

[40] I.R.C. §1231(b).

period of time.[41] If the sale is considered to be within the normal course of business of the taxpayer, then capital gain treatment will not be allowed.[42]

Similar to the depreciation issue addressed above, the matter arises if a company in the business of buying and selling aircraft holds the plane for sharing purposes. Any company intending to share use should consider its impact on capital gains treatment, along with the other significant federal tax issues discussed above.

Income Tax Treatment. Personal Use of the company aircraft can give rise to income tax liability. See the discussion below.

Liability and Insurance Issues. Aircraft sharers should consider carefully the liability aspects of any arrangement, and ensure that insurance policies allow the activity in question.[43] Similarly, the policy should cover all users (usually the owner is named insured and the others additional insureds). Parties using an aircraft owned by another entity should ensure that they are covered, given notice of termination of the policy, and that the policy contains appropriate clauses protecting their interests. If any complex sharing is planned, contact an expert in aviation insurance in the sharing context.[44] Because many structures created to attempt to minimize liability run afoul of the FAA's charging limitations (see the discussion below on "flight department companies"), companies generally should approach liability as an insurance, rather than structuring, matter. The greater the degree of sharing, the greater the liability coverage should be, and very extensive sharing might require the purchase of a policy designed, from a liability perspective, to cover charter companies, even though operating under Part 91.

[41] *See*, Rev. Rul. 80-37, 1980-1 C.B. 51; PLR 8406028. Some courts have endorsed the position of the IRS, though the authority is not uniformly against obtaining capital asset treatment for previously leased property. *See*, Crosswhite v. U.S., 438 F.Supp. 368 (D. Ore. 1977); Philber Equipment Corp. v. Commissioner, 237 F.2d 129 (3d. Cir. 1956), where sales were deemed to be sufficiently disconnected from a regular course of sales activity to obtain capital gain treatment. *But see*, International Shoe Machine Corp. v. U.S., 491 F.2d 157 (1st Cir. 1974); Recordak Corp. v. U.S., 163 Ct. Cl. 294, 325 F.2d 460 (1966); Honeywell, Inc. and Subsidiaries v. Commissioner, 87 T.C. 624 (1986), for cases that took the position that sales of formerly leased equipment were not eligible for capital gain treatment.

[42] Courts have considered the following factors in determining whether the taxpayer held the property primarily for sale: 1) the frequency of sales; 2) the amount of income from such sales; 3) the nature and extent of the taxpayer's business; 4) the taxpayer's purpose in acquiring and holding the property; 5) the length of time the property was held; 6) the seller's activities with respect to the property (i.e., is it to improve the property to gain from its sale or to hold it for investment or use in the taxpayer's trade or business); 7) the extent of advertising and other activities indicating the taxpayer was in the business of selling such property; and 8) the control, nature and extent of involvement of the taxpayer with respect to the sales. *See*, Major Realty v. Comm, 749 F.2d 1483 (11th Cir. 1985); Crosswhite v. U.S., 438 F.Supp. 368 (D. Ore. 1977).

[43] Many policies contain "intended use" provisions that call for only private operations where no charge is made.

[44] Unfortunately, many insurance brokers, and even some insurance carriers, are not familiar with the intricacies of sharing and its implications for insurance.

Public Company Disclosure Requirements. Finally, public companies must consider S.E.C. disclosure requirements. For example, individual executives that use the corporate aircraft for personal transportation might have to disclose the arrangement (analogous to a constructive dividend for tax purposes) if they are paying less than fair market value (FMV). This will be discussed further in the section on Personal Use.

Tools for Sharing Corporate Aircraft

With this examination of issues in mind, I will now address individual tools for sharing. The subsequent section examines the use of these tools in specific planning scenarios.

Private Carriage. Several sharing options allow operations under Part 91's private carriage rules, with its related operating flexibility.

Time Sharing. Specifically allowed under §91.501(c)(1), Time Sharing[45] is "an arrangement whereby a person leases his airplane with flight crew to another person,[46] and no charge is made" other than for the direct, out-of-pocket expenses associated with the flight including twice the cost of fuel.[47] This charging restriction is its main limitation. There also should be a true sharing: an occasional exception to the "time sharor's"[48] use of the aircraft for its own business. Despite the FAA's inclusion of Time Sharing under Part 91's private carriage provisions, the IRS has determined that it is "commercial" and therefore subject to the FET. Time Sharing constitutes a lease and is therefore subject to the FAA's "Truth-in-Leasing" provisions.[49]

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[45] The expression "time sharing" often is used incorrectly to describe Fractionals. The two are not the same. See the discussion of Fractional Programs.

[46] Despite the use of the word "person," there exists a degree of ambiguity as to whether individuals may act as time sharors or time sharees. FAA Chief Counsel interpretations, such as 1980-32, have suggested that individuals can be time sharees but not time sharors, but a statutory argument exists for arguing the opposite.

[47] See §91.501(d), which specifies the charges allowed, including twice the cost of fuel, oil, lubricants, and other additives but excluding pilot salaries, maintenance reserves, or an allocation of fixed costs.

[48] Usually the aircraft owner. If not true sharing, it could violate the "incidental to the business" standard, or, if advertising or other "holding out" is involved, amount to common carriage.

[49] Section 91.23 requires a written lease including specific clauses, mailing a copy of the lease to the FAA Aircraft Registration Branch within 24 hours of execution, carrying a copy on the aircraft, and notifying the local Flight Standards District Office at least 48 hours before the first flight. It does not apply if either the lessor or the lessee is a commercial air carrier, including Part 135 operators.

On the other hand, Time Sharing is very useful as a planning device because it allows provision of the aircraft and flight crew (commonly referred to as a "wet lease"[50]) with compensation, albeit limited, in return. It is most useful for short-term arrangements where fully-allocated cost-recovery is not essential.

Interchange. Also specified under §91.501(c)(2), Interchange is a very narrow arrangement useful for two (or more) companies, each of which owns an aircraft, to swap time. The exchange must be hour-for-hour (i.e., you can't trade two hours on a Citation for one hour on a Gulfstream), but an hourly charge may be made for the differential operating costs. The IRS has deemed it to be commercial[51] so the FET applies. Interchange is also a lease, meaning Truth-in-Leasing provisions must be followed. While the regulations do not say specifically, it appears the FAA intended to permit "wet" interchanges, whereby each party provides its aircraft and crew to the other. "Dry" interchanges have also been conducted (each lessee providing its own crew; see Fractionals), and logically should not be problematic because "dry" leasing has always been more clearly in the private carriage camp than "wet" leasing.

Dry Leasing. Dry Leasing is not a product of §91.501. Rather, it simply refers to an arrangement where the lessor provides the aircraft and the lessee is in "operational control," usually meaning that the lessee is providing (or contracting with independent parties for) its own flight crew and otherwise controls the operation of the aircraft. While subject to Truth-in-Leasing, Dry Leasing is private carriage from an FAA perspective, is not subject to the FET, and there is no apparent limit on the ability to charge. These attributes make it an extremely useful planning tool for sharing use.

Co-Ownership. For decades, companies have agreed to share ownership of aircraft. There is no prohibition on doing so in the FARs. Each co-owner may operate the aircraft independently, or contract out individually or collectively for management services. These arrangements would ordinarily be private from an FAA perspective, and not subject to the FET or Truth-in-Leasing provisions. The co-owners, though, would be unable to charge each other for operating the aircraft. Sometimes useful, this structure should be distinguished from Joint Ownership.

Joint Ownership. Joint Ownership should be viewed as a very specific arrangement whereby the FAA, in §91.501(c)(3), allows more charging flexibility among co-owners that are also the joint registered owners. One owner may furnish the flight crew for the aircraft and "each of the registered joint owners pays a share of the charge specified in the agreement" (note that an agreement is required). This structure is cumbersome, however, when large numbers of users are involved (especially dealing with registration and

[50] The regulatory interpretations and cases relating to "wet" and "dry" leasing are rather complicated. The FAA considers a lease to be wet if the lessor retains "operational control" of the aircraft, ordinarily requiring a commercial operator's certificate. Section 91.501 provides an exception for Time Sharing. The test of determining whether "operational control" has passed from the lessor to the lessee is based on the facts and circumstances, plus guidance from FAA Chief Counsel's interpretations, cases, and Advisory Circulars. As a simplifying matter, though, leases where the lessor (or an affiliate) provides both crew and aircraft are generally "wet."

[51] *See* Priv. Ltr. Rul. 93-16-035, which also says FET should be based on FMV, even if no cash changes hands.

insurance aspects) and care should be taken to ensure that "holding out" does not occur (which could amount to common carriage). The FET and Truth-in-Leasing do not apply.

Fractional Ownership. Fractional Ownership does not appear in §91.501, but amounts to a combination of concepts derived from Co-Ownership, "dry" Interchange and the use of a Management Company. As in any combination structure (see the discussion of the nature of Subpart "F", above), Fractionals operating under Part 91 carry some degree of regulatory ambiguity.[52] Program documents typically include an Ownership Agreement among the co-owners of each aircraft, a Master Interchange Agreement by which all Program Participants swap aircraft,[53] and a Management Agreement in which each Program Participant contracts with the Program Manager (analogous in this role to a Management Company) for management services.

Fractionals are useful sharing tools for Industry Players only if many parties and multiple aircraft are involved, and one party has significant resources and operational expertise to act as the Program Manager (including the ability to acquire and operate multiple "core-fleet" aircraft to support its contractual requirements). Fractionals are subject to the FET[54] and the Master Interchange Agreements are subject to Truth-in-Leasing.

Charter. In addition to these private carriage options, chartering should always be considered. Charter customers and Flight Departments can charter in for occasional flight requirements. Industry Players holding Part 135 certificates can charter out and enjoy a great degree of charging flexibility. Other parties can charter out by placing the aircraft on an Industry Player's Part 135 certificate, often in conjunction with aircraft management, with the owner typically receiving 15-20% of the charter revenues. Charter is too often overlooked when developing sharing devices, and is especially useful if lower operating flexibility is acceptable.

Combination Structures. Complex planning often involves using alternating mechanisms for various travel purposes. For example, an aircraft might be managed, chartered out to unrelated third parties, Time Shared to an Occasional Relationship User, Interchanged with another company, and Dry Leased to an employee for Personal Use.

[52] The FAA currently is reviewing the rationale for allowing Fractional Programs to operate under Part 91, as opposed to Part 135.The author has been a member of the Shared Aircraft Committee, a group representing the Fractional industry in its discussions with the FAA concerning the appropriate regulatory framework.

[53] Most programs do not comply with the "hour-for-hour" requirement. This is a result of discussions the Program Managers reportedly had with regional FAA representatives when initially establishing these arrangements. The FAA staffers reportedly felt more comfortable with aircraft swapping based on ratios, rather than hour-for-hour swaps plus adjusting payments.

[54] At least for the occupied hourly rate. *See* Executive Jet Aviation, Inc. v. U.S., 125 F.3d 1463 (1997).

Planning Attributes. Figures 1 and 2 present graphically some of the planning attributes of various structures in comparison to each other. These diagrams summarize much of the information addressed in this section for the four planning factors that tend to be the most critical: operating flexibility (Part 91 versus Part 135), charging flexibility, complexity (and related transaction expense), and utility in the planning environment.

Figure 1
Operating Versus Charging Flexibility

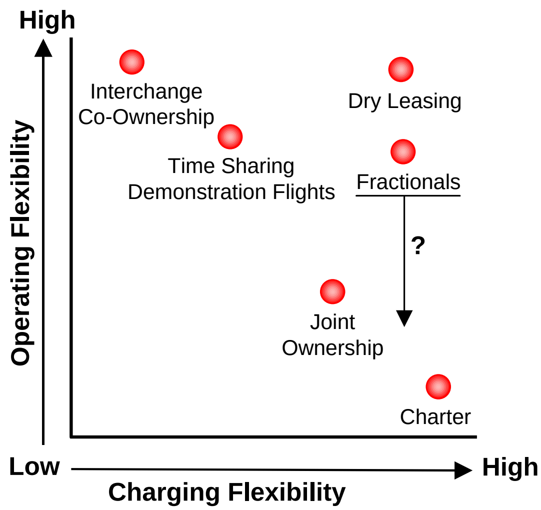
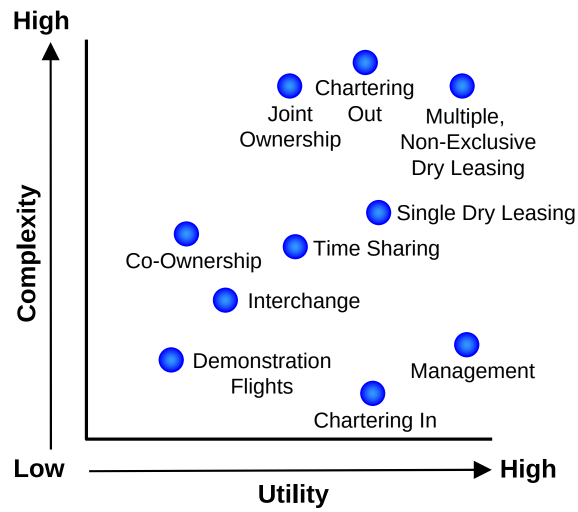


Figure 2
Complexity Versus Utility



Common Planning Scenarios

Certain scenarios for sharing aircraft repeatedly arise.

Corporate Family Use. Many Flight Departments are sharing use of the aircraft and don't even know it. This involves allowing affiliated companies, or companies within the "corporate family," to use the aircraft. If no charge is made, no problem exists. But charging can include internal accounting entries. If any compensation is involved, read on.

Flight Department Company Prohibition. A very high number of operators run afoul of the "Flight Department Company" rule. Often advised by corporate counsel for liability purposes, they place the aircraft and flight department in a separate company that operates the aircraft for the benefit of affiliates. Sounds reasonable, but the FAA has determined that a commercial certificate is required to own and operate the company aircraft unless its operation is incidental to the business of the company. Because the Flight Department Company typically has no other business to which the operation of the aircraft is incidental, it fails this test.[55] Typical solutions to this problem (which otherwise might actually increase liability) surround separating ownership of the aircraft from its operation (perhaps through a Dry Lease or use of an existing or spun-off external flight

[55] FAA Chief Counsel Interpretations 1975-15 and 1989-22, among others, state this rule.

department styled as a Management Company) or placing the aircraft directly in the hands of the entity with the most business use.

Use Among the Affiliated Group. Even when the Flight Department Company issue has been rectified, Corporate Family use can still be somewhat tricky. Section 91.501(b)(5) allows business use among affiliates (and their officials, employees and guests) if the travel is “within the scope of, and incidental to, the business of the company.” In other words, if the related company “borrowing” the plane is doing so for a legitimate business, the FAA doesn’t mind and will even allow an inter-company charge on a fully-allocated basis.[56] However, the borrowing company must have the proper degree of affiliation.

The FAA extends this allowance to “the parent or a subsidiary of the company or a subsidiary of the parent,” bureau-speak for parents, subsidiaries and brother-sister corporations, but note that companies owned by an individual do not comply (sometimes significant where flow-through entities are involved). The IRS is even more restrictive. It has determined that the “affiliated group exemption” from the FET for charges among affiliates only applies to chains of companies connected via at least 80% voting stock ownership to a common parent. For anything else, the FET applies.[57]

Potential Planning Solutions. For parties that do not comply with these restrictions, two planning options stand out: Time Sharing and Dry Leasing. Related companies can often employ Time Sharing. Its major weakness, limitation on cost recovery, often causes no great concern, particularly if the entities are flow-throughs owned by one individual. Although the FET applies, it would in any case if the companies do not meet the “affiliated group exemption” standard. Dry Leasing (perhaps using multiple, non-exclusive Dry Leases) can also be considered, whereby an external flight department is employed (either spun-off from the internal flight department or via contract with a Management Company). Charging is liberal, the FET does not apply, and Part 91 operating flexibility is available. Be sure to comply with Truth-in-Leasing and consider disclosure and passive loss issues where flow-throughs are involved.

Personal Use. Mechanisms for handling Personal Use of the corporate aircraft can be complex and can have tax implications for senior executives (that’s a subtle way of saying get it right or it could mean your job). Section 91.501(b)(5) restricts employee use to flights within the scope of, and incidental to, the business activities of the company.[58] If the flight is personal, the FAA prohibits any reimbursement from the employee for using the company’s aircraft under Part 91.[59] This creates difficulties for employees that would like to use the aircraft for personal travel, but feel it is only fair to pay at least some of the expenses. Indeed, if no payment is made the IRS could view the personal use of the

[56] The charge can equal, but not exceed, “the cost of owning, operating, and maintaining the airplane.” FAR §91.501(b)(5).
[57] There have been some rational improvements, though. The IRS recently dropped its constraint that any use of the aircraft by non-complying companies would cause all use during the tax quarter to be taxable under the FET, even use to companies clearly within the affiliated group.
[58] According to the FAA Chief Counsel, the flights must serve *bonafide* business purposes of the company in order to qualify as being "incidental to" the business activities of the company.
[59] FAA Chief Counsel Interpretation 1993-8.

aircraft as a taxable constructive dividend to the employee. Any sharing below FMV could also require disclosure if the employer is a public company. The five most relevant options for handling Personal Use are: (1) Standard Industry Fare Levels (SIFL) valuation; (2) FMV valuation; (3) Dry Leasing; (4) Time Sharing; and (5) charter.

SIFL Valuation. When an employer provides property or a service, such as an aircraft or a flight, to an employee, the FMV of that property generally is considered constructive income to the employee.[60] SIFL constitutes a regulatory valuation method in calculating the imputed income for Personal Use flights. The SIFL rules require that the employee and employer agree to value all such flights consistently for the tax period,[61] and the IRS adjusts the rates semi-annually.[62] "Control employees" must recognize income under an increased schedule.[63] However, the employee is not required to recognize income for themselves or their immediate family if 50% or more of the aircraft seating capacity is used by others traveling primarily for the employer's business purposes.[64]

The SIFL rates apply to guests of the employee as well, but passengers less than two years of age are excluded.[65] While using the SIFL rates generally reduces the imputed income to the employee (the rates are often a mere fraction of the true out-of-pocket costs), the employee is still prevented from reimbursing the employer.

SIFL potentially has an even more severe limitation. A 1997 IRS private ruling[66] suggests that an employer's ability to deduct aircraft operating expenses for Personal Use flights is limited to the amount the employee recognizes as income. If this position were followed, SIFL could have negative tax consequences for the employer. However, in an apparent moment of common sense, the U.S. Tax Court in a more recent case[67] rejected the IRS's argument that deductibility should be limited to the amounts allowed under the SIFL formula. While the IRS could appeal, this decision seems to favor full deductibility.

FMV Valuation. If the SIFL rules are not used and no charge is made, the general valuation rule for imputing income is applied. The IRS would impute income to the employee based on FMV, most likely using charter rates.[68] The main advantage is that the employer would likely be able to take the entire deduction. The disadvantage is that the boss has to pay a large tax.

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[60] I.R.C. § 61(a)(1); Treas. Reg. § 1.61-21(a)(1). The exception is for *bonafide* security concerns. If for valid security reasons (such as death threats and the like) the employer requires the employee to travel on the corporate aircraft, the value can be excluded from the employee's income.
[61] Treas. Reg. § 1.61-21(g).
[62] *See*, e.g., Rev. Rul. 97-33,1997-34 I.R.B.4.
[63] Treas. Reg. § 1.61-21(g)(7).
[64] Treas. Reg. § 1.61-21(g)(12). This is the so-called "empty seat rule."
[65] Treas. Reg. § 1.61-21(g)(1).
[66] Technical Advice Memorandum 9715001 (released April 11, 1997).
[67] Sutherland Lumber-Southwest, Inc. v. Commissioner, United States Tax Court (March 28, 2000).
[68] *See*, Ireland v. Commissioner, 621 F.2d 731 (5th Cir. 1980); Treas. Reg. § 1.61-21(b)(6)(ii). Employees that reimburse at FMV do not recognize income. Treas. Reg. 1.61-21(b)(1); Harbor Medical Corporation v. Commissioner, T.C. Memorandum 1979-291, 38 T.C.M. 1114.

Time Sharing. Time Sharing might be useful for Personal Use, especially if the employee tends to travel with many guests (meaning high SIFL rates). A Time Sharing employee may reimburse for the actual out-of-pocket expenses and twice the cost of fuel and oil.[69] Because this amount is less than FMV, the IRS could argue that the differential constitutes constructive income to the employee and (as in SIFL) disallowable expenses for the employer. However, because the differential is smaller and the amount charged is the maximum legally allowed, there is less risk, as compared to SIFL (and even there the risk is probably small today, given the *Sutherland* decision described in note 67), that the IRS will take this position. Time Sharing can be conducted under Part 91, but the FET and Truth-in-Leasing apply. Note that taxpayers cannot switch easily between Time Sharing and SIFL; they must be consistent for the tax period.

Dry Lease. The employee could also Dry Lease the aircraft from the employer and contract independently for pilots.[70] If the lease rate is at or near FMV, no income is imputed and the FET would not apply. Dry Leasing can be conducted under Part 91. This structure is particularly useful if the employer Dry Leases the aircraft from a third party, especially if it also contracts for flight crews from an independent Management Company. The employee and employer would each Dry Lease on a non-exclusive basis from the independent lessor and contract separately for crews with the Management Company.

Charter. Additionally, a certificate holder could operate the flights under FAR 135. The employee can be charged FMV or above and the FET applies. If the rate is FMV, no income should be imputed. Table 2 contains a summary of these Personal Use options.

Table 2. Summary Of Personal Use Options

Option	Maximum Amount Charged Employee	Income Imputed to Employee	Deduction for Company	Operations Under Part 91?	FET Applies?	Truth-in-Leasing?
SIFL	Zero	Low – SIFL Rates	Could be Limited but not likely given Sutherland case	Yes	No	No
FMV	Zero	FMV	Full	Yes	No	No
Time Share	Limited to Twice Fuel	Probably Zero	Probably Full	Yes (but some risk)	Yes	Yes
Dry Lease	No Limit	0 or FMV minus amount charged	Full	Yes	No	Yes
Charter	No Limit	0 or FMV minus amount charged	Full	No	Yes	No

[69] There is some ambiguity on the issue of whether Time Sharing amounts to a narrow exception to the FAA's prohibition on charging for personal flights under Part 91. While the interpretations and regulations are far from clear, most practitioners in the area believe that Time Sharing to individuals is appropriate under Part 91. Users should request an analysis of this issue and consider their own appetite for regulatory risk.

[70] The entity providing the pilots must be truly independent from and unrelated to the employer. Employees that are pilots might fly the aircraft themselves, but will incur the associated liability.

Unrelated Third-Party Use. For occasional use among non-affiliated entities, Dry Leasing or Time Sharing might be attractive. They are particularly helpful if Occasional Relationship Users are involved. If each company has an aircraft, consider Interchange. Managed Charter (using a Management Company, which also charters out the aircraft to third parties) could also be attractive. For more intensive use, consider shared ownership options such as Co-Ownership or Joint Ownership, or perhaps chartering out. Some parties also have set up Charter Pooling arrangements, in which each party commits to purchasing a certain number of charter hours from the Charter Company that either owns or manages the aircraft.

Demonstration Flights. Special rules apply to demonstration flights. For companies in the business of selling aircraft, demonstration flights to prospective customers arguably are within the scope of and incidental to the business of the selling company, allowing fully-allocated cost recovery under §91.501(b)(5)'s provisions relating to "guests" of the company. I find this argument to be somewhat aggressive. In any case, the sales company and other parties trying to sell (or lease) their private aircraft could also rely on §91.501(b)(3)'s special provisions for demonstration flights. Like Time Sharing, they are allowed to charge twice the fuel and other allowable expenses (as long as common carriage is not involved).

Carrying Elected Officials. Yet again, special rules apply to carriage of elected federal[71] officials. These rules reflect the tension between the Federal Election Commission regulations that prohibit the provision of products and services to elected officials at below-market rates and the FAA's limitations on charging for use of the aircraft. While the FAA has recognized the FEC's rules[72] and allows operations under Part 91, the IRS considers the payments to be of a commercial nature and therefore subject to the FET.

The scenarios discussed in this section represent only a small sample of the types of situations that arise, and also grossly over-simplify the issues. Any party intending to engage in aircraft sharing should closely examine their own relevant business objectives and usage patterns to determine the best structure for them. This simply must be done on a case-by-case basis. However, Table 3 reflects my attempt to consolidate many of the issues involved in the hope that it will prove to be a useful analytical planning tool.

[71] Individual states also have regulations relating to payments to state officials.
[72] See §91.321. The FEC rules are detailed and beyond the interest of most readers of this article. If you're going to carry elected federal officials, you should contact the NBAA and ask for its January 1997 publication on the subject.

Table 3. Matrix of Planning Considerations and Structures

Issue	Corp. Family	Time Sharing	Inter-change	Dry Leasing	Co-Ownership	Joint Ownership	Fractional	Management	Charter
Usage Profile[73]	Liberal	Occasional	Liberal	Liberal	Liberal	Liberal	100-200 hours[74]	Liberal	Liberal
Operating Flexibility	Part 91	Part 91	Part 91	Part 91	Part 91	Part 91	Part 91, evolving	Part 91	Part 135
Acquisition Expense	No impact	No impact	No impact	No impact	Reduced	Reduced	Reduced	No impact	None
Cost Recovery	Fully-Allocated[75]	2 times fuel	Swap plus Adjust.[76]	Liberal	Apportioned	Fully-Allocated	N/A	N/A	Profit
Ownership Form	Own/lease	Own/lease	Swap	Own/lease	Split	Split	Split/Swap	Own/lease	None
Citizenship Issue	Registration	DOT Licensing	DOT Licensing	No Issue	Registra-tion[77]	Registration, DOT	Registration, DOT	No Impact	None
FET Applicability	80% Rule[78]	Applies	Applies	None	None	None	Applies	Usually No Impact	Applies
State Sales/Use	Normal	Lease Tax?	Lease Tax?	Lease Tax?	Normal	Normal	Special[79]	Normal	Maybe Reduced
Depreciation Issues	Normal	Normal	Normal	Normal	Split	Split	Split	Normal	7-year schedule
Passive Loss	Normal	Rental Activity	Rental Activity	Rental, passive	Normal	Normal	Normal	Tends to be Passive	Normal
Demo Flights	N/A	Yes, or use 91.501(b)(3)	Possible	Possible	N/A	N/A	N/A	N/A	Liberal
Liability/ Insurance	Additional Insureds	Additional Insureds	Non-owned[80]	Lease cover[81]	Split[82]	Split	Fleet[83]	Normal or Fleet	Fleet
Disclosure Issues	< FMV[84]	Legal Cap	N/A	< FMV	N/A	N/A	N/A	N/A	< FMV

[73] Ability to share use with others or typical hour requirements, as applicable.
[74] Typical range of required hours for Program Participants. They can also be used to augment an existing fleet.
[75] If within the corporate family from an FAA perspective.
[76] Refers to the adjusting payment discussed in the section on Interchange.
[77] Does not require joint registration, potentially alleviating foreign registration issues.
[78] FET applies unless within the affiliated group connected by 80% voting stock to a common parent.
[79] Because aircraft in Fractional Programs are often based at states other than that of the owner, and can be used all over the country, they can create special states sales and use tax issues. Program Participants should examine the laws of the state where the aircraft is likely to be based and those where it will operate.
[80] For Interchange, each party can add the other as an additional insured. More typically, the use of the other party's aircraft would come under the non-owned aircraft coverage in the policy.
[81] In Dry Leasing, the requirement of obtaining insurance might be shifted to the lessee. The lessor should ensure that it is a named insured with notice of termination and waiver of subrogation.
[82] Each owner is a named insured to the extent of its interest.
[83] The aircraft typically is added to the fleet policy of the Program Manager.
[84] Disclosure requirements arise when using a company aircraft for less than FMV.

Conclusion

Corporate aircraft can provide great advantages in meeting business transportation needs. Sharing them allows companies and individuals to find the most efficient operational and financial structure. But the obvious complexities require the unfamiliar to proceed cautiously and carefully. To anyone contemplate sharing, I would recommend that they plan very carefully, and plan as early in the process as possible. Planning even prior to acquisition is advisable. The choice of structure will drive the proper acquisition vehicle, the ownership and lease structure, aircraft registration, and insurance requirements. It can even influence the type of aircraft chosen by impacting the economics.

Early planning also reduces overall transaction costs. It is often more expensive to modify existing structures that have been poorly planned than to plan thoroughly from the outset. This is particularly true if adjustments require transfer of the aircraft from one company to another, potentially creating a tax liability. Most importantly, early and thorough planning will allow the corporate aircraft user to identify and limit risks in its use of business aircraft.

About the Author

Michael Fleming is an attorney-consultant with nearly two decades of experience as an aviation attorney and financial consultant. Mr. Fleming has represented dozens of aircraft operators in aircraft sharing, aircraft transactions and aviation regulations matters, including regulatory, legal, operational and financial advice. His practice encompasses aircraft transactions, aircraft finance, dry-leasing, time-sharing, joint ownership, interchange, personal use, corporate family use, fractional ownership, charter, aircraft management and FBO matters. Mr. Fleming has authored several articles on the corporate aviation sector, and has frequently spoken at industry events.

Mr. Fleming has also provided strategic advice and financial analysis to several major companies in the business aviation sector, relating to mergers and acquisitions, new business ventures, strategic partnering, innovative ventures and entry into new markets. Prior to joining The Wicks Group, Mr. Fleming spent over a decade with a boutique aviation law firm and its affiliated aviation consultancy. He also worked for several years as a financial analyst for United Airlines and an economic/financial analyst and contracts specialist for an executive aircraft manufacturer.

Mr. Fleming holds a Juris Doctorate and MBA from the University of Georgia, both awarded with honors. Mr. Fleming is also an instrument-rated private pilot, is admitted to the Bar of the District of Columbia, and serves as The Wicks Group's contact to the NBAA and the National Air Transportation Association.