



By Christopher Sykes

Your Private Jet - Planning for Purchase

Christopher Sykes explains how you can save money and safeguard your interests when buying a private jet

With long queues at check-in desks and delays when using airlines, affluent individuals and businesses are looking for easier and more convenient ways to fly. As a result demand for travel by private jets has soared. After having sampled the benefits of flying by private jet, more and more entrepreneurs and businesses are looking to purchase one. The costs need not be prohibitive especially when the costs of travelling on scheduled airlines are taken into account and the income earned from chartering the jet when not needed is added back. There is the additional saving in time and accommodation costs abroad. In the USA the FAA recently reported that for every airline aircraft in the US skies, there are two corporate/private aircraft. This trend is being repeated in Europe.

An aircraft is a major purchase; it is the equivalent of buying an expensive property or a small business. You should undertake the same due diligence as you would for these assets. There are legal, commercial, practical and tax issues which need to be considered and blended together. By care and skilful planning before you sign a contract to buy your dream jet you can minimise risk and save money.

YOUR TEAM

To get matters started you will need the services of a team of professionals to deal with the various aspects of the purchase. Mainly these will be a reputable agent/broker, an aircraft surveyor to carry out any inspection or testing, a solicitor with experience in handling both the contractual and corporate side, an accountant, a lender (if not paying by cash) and a specialist insurance broker. Depending on the country of purchase and whether an off-shore purchase vehicle is used, there may be the need for advice or services in those jurisdictions, but this will normally be handled by your appointed solicitor.

THE CONTRACT

There are many contract issues which need to be looked at. Some of these will be dependent upon whether you are buying a new or a used aircraft. The issues include verifying the title of ownership; making sure that the sale will be free of any mortgage or lien (in some instances if the country in which the aircraft is registered will not record mortgages e.g. the Republic of Ireland), warranties and when the risk passes. The use of an escrow agent who holds the deposit and purchase monies which are only handed over on completion after the prepurchase inspection and testing to see that all the correct documentation is in place is recommended.

Specification is an important issue. You should check this sufficient for your purpose and also that it will meet the requirements of the registering authority in the country in which it is to be registered. Timing of payment and delivery - if it is a new aircraft, will you be given sufficient notice of the "ready for delivery date" to enable you to be able to organise pre-delivery inspection and testing? What are the default provisions? - In some manufacturers' standard contracts, these give them the right to terminate the contract for minor default and to forfeit your deposit. You should be given notice of default and have time to remedy it.

Substitution clause - Manufacturers are generally unhappy about permitting open ended assignment or "turning" of the contract. However, you should at least have a provision which allows you to take the aircraft in the name of a special purpose company, although if the manufacturers are in the US, they will probably wish to ensure that the beneficial ownership does not breach the Patriot Act. You should certainly not simply accept the standard form contract which is provided to you.

It is necessary to make sure that the purchase contract complies with any lender's requirements, particularly if they are making stage payments for a new jet. They will want security, such as the benefit of the contract assigned to them and a mortgage on the aircraft. As one would expect, the lender will need to be satisfied as to the specification and airworthiness of the aircraft, proper maintenance with a licensed operator and insurance. They will typically want the operator to continue maintaining the jet in the event of any repossession.

WHO IS THE BUYER?

It is common to buy a jet in the name of a specially formed limited or similar corporate vehicle ("SPV"). The key issues here are ring fencing liability and the tax structure. The SPV could be formed in the UK but is sometimes offshore, in jurisdictions such as in the Cayman Islands or the BVI. The country of ownership should not be confused with the country of registration of the aircraft, as these are separate, although related, issues. The choice of ownership vehicle has important tax considerations including benefit in kind and capital allowance issues. Both of these tax considerations can have a very significant effect on the bottom line overall cost to you and should be checked carefully. There is not a one size fits all solution here.

COUNTRY OF REGISTRATION

A decision here would be driven by a mixture of commercial and practical issues, such as where and how the jet is to be used. Most registering countries have nationality restrictions. If the jet is registered in the UK with the CAA, then the owner must be in the EU or the UK or the Commonwealth.

"Commonwealth" here includes British Overseas Territories, such as Cayman or BVI. If you intend to keep the jet in the UK and have it available for public charter then it must be registered with the CAA. Otherwise if it is only for private use then it is possible to have the jet registered outside of the nationality restrictions. The other registers may have lower compliance costs than the CAA. The specification of the aircraft needs to be acceptable to the registering authority concerned. For example a jet compliant with the FAA requirements in the States would not be acceptable to the CAA and vice versa and indeed would probably require expensive modification.

TAX

The key issues here are capital allowances, deduction of expenses, benefits in kind and VAT.

VAT - This will be relevant on purchase or import into the EU and also possibly in connection with running costs. If the aircraft is over 8 tonnes then it is zero rated for VAT although there are still customs formalities if the aircraft is being imported. There are complex provisions relating to temporary import into the UK.

Capital Allowances - There are special rules relating to the capital allowances you can claim for jets and you will need to think about how the cost of the jet can be set off against your other income especially from any trading business you own. This can be very tax efficient though care is needed as there are a number of pitfalls which may not be entirely obvious.

Deductions of expenses - often private jet owning companies charter the jet to both a connected trading company and to outsiders. The jet owning company will seek to pass on as much of the net costs to the trading company for it to obtain a deduction against trading profits. This may well be possible but needs to be thought through in each case.

Benefits in Kind - this is a problem if the jet is being used for non business trips as will be inevitable from time to time. There are a few steps to take to minimise the risks here which can involve an assessment based on 20% of the value of the benefit.

FINANCE

Banks are usually reluctant to asset finance jets in any way which involves the bank owning the

asset. The usual route is for loan finance to be made to a special purpose vehicle which is used for both tax purposes and as a way to ring fence liabilities.

INSURANCE

If you are obtaining finance, insurance will be governed by the lender's requirements. There are a limited number of specialist brokers in the UK. As well as the main players there are now a number of smaller ones coming to the market, with competitive premiums. As with all insurances, the extent of cover and of excess, usage and conditions need to be checked carefully as well as the claims handling and back up offered.

In short owning a jet can make powerful business sense for entrepreneurs running businesses in different countries and especially for those who do not have easy access on scheduled flights. A starting point is often to look at your latest set of accounts and see what your travel costs were for the previous accounting period. You should then speak to a reputable jet broker to see what the net cost is, after credits for third party chartering, of owning a private jet.

