

# Cleared for Take Off: The IRS’s New Business Aircraft Campaign Poised to Examine Large Corporations, Large Partnerships, and High-income Individual Filers

By: Michel R. Stein & Michael Greenwade

## Background

Using a portion of the tens of billions of dollars now set aside for enhanced IRS enforcement under the Inflation Reduction Act of 2022 (the “IRA”),<sup>1</sup> the IRS announced a new campaign under its Large Business & International (LB&I) Division: The Business Aircraft Campaign (the “BAC”) on February 21, 2024.<sup>2</sup> In an effort to ensure tax compliance and increase awareness related to the business aircraft regulations and reporting requirements, the IRS<sup>3</sup> plans to substantially increase its issued-focused examinations to determine whether large corporations, large partnerships, and high-income individual filers are properly allocating private aircraft flights between business and personal use and whether fringe benefit inclusions are properly addressed.<sup>4</sup> While this is part of a larger effort<sup>5</sup> the IRS is taking to ensure large corporate, large partnerships and high-income individual filers are paying their fair of taxes, the IRS will begin with “dozens” of these BAC audits.<sup>6</sup>

After flying under the radar for the past decade, the business and personal use of private aircraft has recently drawn higher scrutiny with increased requests for the IRS to implement advanced analytics and resources to more closely examine the area.<sup>7</sup> In a letter dated March 10, 2024, six United States Senators welcomed the BAC and encouraged the IRS to go further by closing a tax loophole they say allows corporate executives and wealthy taxpayers to undervalue and minimize taxes paid when they use business aircraft for personal travel.<sup>8</sup> Additionally, the BAC has been initiated while the White House’s federal budget proposal, released March 11, 2024, simultaneously recommends increases to the cost of owning and operating private

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<sup>1</sup> The amount was once \$80 billion but was decreased to \$60 billion by the Fiscal Responsibility Act of 2023; <https://www.congress.gov/bill/118th-congress/house-bill/3746>.

<sup>2</sup> [https://www.irs.gov/businesses/corporations/lbi-active-campaigns#collapseCollapsible1709079673889\\_469816](https://www.irs.gov/businesses/corporations/lbi-active-campaigns#collapseCollapsible1709079673889_469816).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The IRS’s news release discussing new initiatives using the IRA: <https://www.irs.gov/newsroom/irs-ramps-up-new-initiatives-using-inflation-reduction-act-funding-to-ensure-complex-partnerships-large-corporations-pay-taxes-owed-continues-to-close-millionaire-tax-debt-cases>.

<sup>6</sup> IR-2024-46 (February 21, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> <https://www.warren.senate.gov/imo/media/doc/2024.03.10%20Letter%20to%20IRS%20and%20Treasury%20on%20corporate%20jets.pdf>.

aircraft, altering a tax write-off for private jet purchases and increasing tax rates on fuel used for private jets.<sup>9</sup>

In announcing the BAC's arrival, IRS Commissioner Danny Werfel stated, “[w]ith expanded resources, IRS work in this area will take off. These aircraft audits will help ensure high-income groups aren’t flying under the radar with their tax responsibilities.”<sup>10</sup> He continued: “We are adding staff and technology to ensure that the taxpayers with the highest income, including partnerships, large corporations and millionaires and billionaires, pay what is legally owed under federal law.”

### **The Focus of the BAC’s Examination: Business Use vs. Personal Use**

Given the IRS believes some companies overstate deductions while using aircraft for nonbusiness use and individuals may not be reporting personal trips via corporate aircraft as income,<sup>11</sup> Commissioner Werfel indicated the BAC will look for potential violations of qualified business use and business aircraft depreciation rules,<sup>12</sup> personal use disallowance rules for aircraft,<sup>13</sup> and income inclusion rules for fringe benefits like air travel.<sup>14</sup>

In general, Internal Revenue Code (the “IRC”) Section 162(a) allows a business deduction for expenses of maintaining business aircraft if the aircraft is utilized for a business purpose.<sup>15</sup> However, because business aircraft is often used for personal reasons by partners, shareholders, executives, and the like, the aircraft usage must be allocated between business use and any such personal use.<sup>16</sup> This allocation process is essential because the amount of personal use of the aircraft can impact the eligibility for certain business deductions, result in income inclusion by the person using the aircraft for personal travel, and affect the business’s eligibility to deduct costs related to the personal travel.<sup>17</sup> A method generally used to help allocate between business and personal use of an aircraft is called the “primary purpose test.”

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<sup>9</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/07/fact-sheet-president-biden-is-fighting-to-reduce-the-deficit-cut-taxes-for-working-families-and-invest-in-america-by-making-big-corporations-and-the-wealthy-pay-their-fair-share/>.

<sup>10</sup> IR-2024-46 (February 21, 2024).

<sup>11</sup> <https://www.cnbc.com/2024/02/21/irs-to-crack-down-on-corporate-jets-used-for-personal-travel.html>.

<sup>12</sup> IRC § 280F.

<sup>13</sup> Treas. Reg. § 1.274-10.

<sup>14</sup> Treas. Reg. § 1.61-21.

<sup>15</sup> IR-2024-46 (February 21, 2024).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Under the “primary purpose test,” travel expenses to and from a destination are deductible if a taxpayer travels to the destination and the trip is related primarily to the taxpayer’s trade or business, regardless of whether the taxpayer engages in both business and personal activities at the destination.<sup>18</sup> However, if the taxpayer’s trip is primarily personal in nature, none the travel expenses to and from the destination are deductible, even if the taxpayer engaged in some business activities at the destination (please note that expenses while at the destination that are properly allocable to the taxpayer’s trade or business are deductible).<sup>19</sup> Taxpayers should contact their tax professionals to help determine whether the primary nature of their trips are business or personal.

### **Implications of the BAC and Things to Consider**

The IRS states that it will be using advanced analytics and resources from the IRA to more closely examine this area, which has not been closely scrutinized during the past decade as agency resources fell sharply. The number of audits related to aircraft usage could increase in the future as the IRS continues hiring additional examiners.

Because business and personal use of an aircraft can be difficult for professionals to track, business aircraft owners should seek guidance from tax professionals, who could assist with gathering information relevant to calculating deductions taken in prior years and prepare for any potential BAC related audits. The information should accurately reflect a business purpose for the use of the aircraft, substantiate expenses related to usage, and may include the reconstructing of air mileage and contemporaneously maintained calendars listing dates of travel, meetings and events, flight histories, board and committee meetings minutes supporting air travel, and related employee agreements pertaining to aircraft travel.

Taxpayers should also seek guidance from tax professionals for corporate planning to ensure the entities owning business aircraft are properly established to allow for available deductions, focusing on compliance with IRS statutory guidelines, Treasury regulations, and case law.

### **Conclusion**

Commissioner Werfel has repeatedly highlighted that although increased attention will be afforded to the largest and high-income entities and taxpayers, this should

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<sup>18</sup> Treas. Reg. § 1.162-2(b).

<sup>19</sup> Treas. Reg. § 1.162-2(b).

not be understood as accusing all large corporations and partnerships and high-income individuals of being noncompliant or purposefully acting with evasive measures.<sup>20</sup> Nevertheless, now is the time for high-income groups to work with tax professionals to confirm they are in compliance with IRS laws and regulations.

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<sup>20</sup> <https://tax.thomsonreuters.com/news/irs-crackdown-on-personal-use-of-corporate-aircraft-takes-off/>.