

# Aviation and Taxation: U.S. and International Law

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# Types of Aircraft Owners and Operators

Foreign-owned U.S. registered Aircraft = N-Registration.

Types of ownership structures:

- U.S. owners of N-registered aircraft
- Foreign owners of N-registered aircraft
- Foreign owners of foreign-registered aircraft that visit the U.S.
- U.S. owners of foreign-registered aircraft that visit the U.S.

# Who is eligible to Register an Aircraft in the U.S.?

- If aircraft is not registered in another country.
- Aircraft owner must meet the FAA's strict citizenship requirements.

# FAA's Citizenship Requirements

The aircraft owner must be one of the following:

1. An individual who is a U.S. citizen;
2. A partnership where each partner is a U.S. citizen;
3. A U.S. Corp of which the president and at least 2/3 of the board of directors are U.S. citizens and at least 75% of the voting interest is owned or controlled by U.S. citizens;
4. An individual citizen of a foreign country lawfully admitted for permanent residence in the U.S.;
5. A U.S. government unit or subdivision; or
6. A non-U.S. citizen corporation organized and doing business under the laws of the U.S. or one of the states as long as the aircraft is based and primarily used in the U.S. 60% of all flight hours must be from flights starting and ending within the U.S.

# How may Foreign Persons own an N-Registered Aircraft?

- **Voting Trust:**
  - President and 2/3 of the board of directors and managing officers are U.S. citizens
  - 75% of the voting interest is owned or controlled by U.S. citizens or a non-citizen voting trust
- **Owner Trust:** Transfers ownership of the aircraft to a U.S. trustee, which then licenses the use of the aircraft to the aircraft operator.
- **60/40 Rule:** The aircraft is owned by a non-U.S. citizen corporation organized and doing business under the laws of the U.S. and the aircraft is based and primarily used in the U.S. (60% of all flight hours must start and end within the U.S.)
  - Must be a C-corp.

# Part 91 vs Part 135

- Part 91: Aircraft operations conducted by privately-owned aircraft are governed by FAA 91 regulations
  - Non-Commercial
  - No Reimbursements/ Compensation
- Part 135: On-demand, unscheduled air service
  - Flight Transportation for compensation or hire
  - Stricter Safety Standards
  - Commercial Certificate from the FAA

# Flight Department Company Trap

- Part 91 operators may not charge or accept reimbursements for flights
- The FAA requires an entity operating an aircraft under Part 91 to have a business purpose aside from simply operating the aircraft, and its operation of the aircraft must be incidental to such business purpose
- Sole purpose entities are seen as conducting flights for compensation

# Sales and Use Tax

- Tax Friendly Jurisdictions
  - States that Exempt Aircraft
  - Fly Away Exemptions
  - Limited/Max States
- Use Tax Structures
  - Lease Arrangements
  - Resale Exemptions



# U.S. Tax Considerations: Generally

- FDAP income
- Effectively connected income (ECI)
- Transportation Tax
- Federal excise Tax (FET)

# U.S. Source Rules

- Dividends: Residence of Payor
- Interest: Residence of Payor
- Services: Where performed
- Rents: Location of rental property / where it is used
- Sale of personal property: Seller's tax home
- Sale of *inventory*: Location where inventory is sold

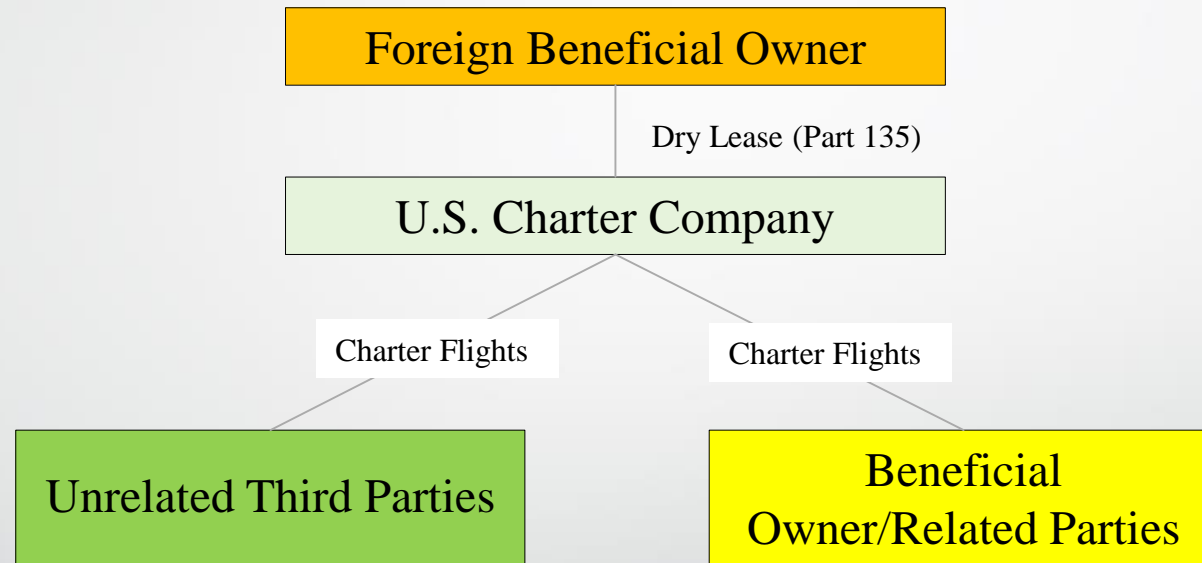
# FDAP Income

- Fixed, Determinable, Annual or Periodic income
  - Dividends, interest, rent, services, royalties
- Is the payment made from a U.S. person to a Foreign Person?
  - If yes, 30% rate of withholding on payment
  - Withholding agent files Form 1042-S
- Tax Treaties

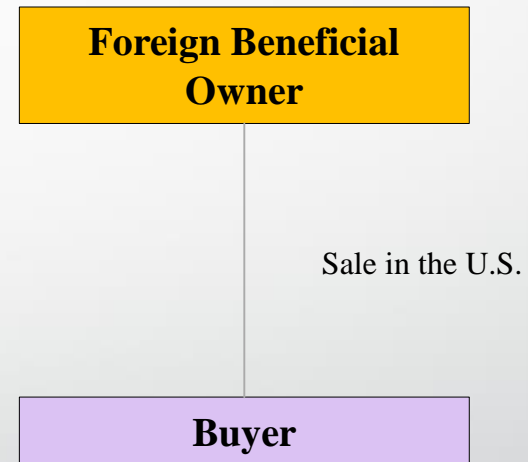
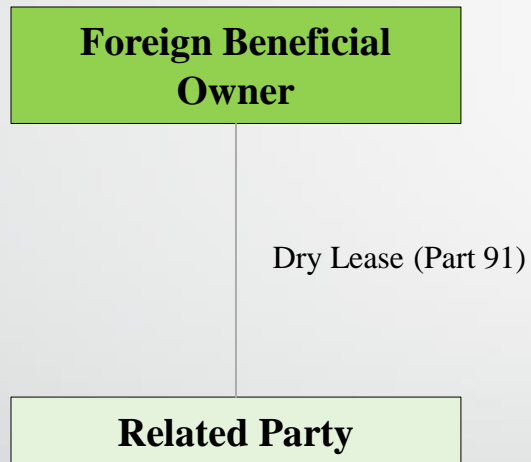
# ECI

- Foreign person earns income sourced in the U.S.
- ECI if non-resident is engaged in a U.S. trade or business
  - Facts and circumstances test
  - Isolated or sporadic

# Example



# Example 2



# Transportation Tax

- 4% tax on gross income that is “transportation income” sourced within U.S.
  - Transportation income: Use of aircraft, or performances of services related to aircraft
- ECI not subject to transportation tax
- Sourcing rule:
  - Begins AND Ends in U.S.: 100% sourced in U.S.
  - Begins OR Ends in U.S.: 50% sourced in U.S.

# Federal Excise Tax (FET)

- “Head tax” for international travel - \$18.60 per passenger per flight on arrival or departure in U.S.
- Uninterrupted International Air Travel: if on the ground for less than 12 hours, no FET.
- Form 720