

# Executive Compensation and Benefits Alert

February 26, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the next page or call your regular Skadden contact.

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## IRS Announces Plans To Increase Audits of Personal Use of Business Aircraft

On February 21, 2024, the Internal Revenue Service (IRS) announced<sup>1</sup> plans to commence a focused audit effort targeting private aircraft usage by dozens of large corporations, large partnerships and high-income individual taxpayers to investigate whether, for tax purposes, the use of the aircraft is properly allocated between business and personal use.

The planned audits are part of broader IRS efforts, using new funding allocated to the agency in the Inflation Reduction Act, to improve tax compliance among large corporations and high-income taxpayers. The IRS anticipates that the number of audits related to use of company-provided aircraft could increase following the results of the initial audits, and that increased audit activity at the individual level to address imputed income inclusion of any personal use of company aircraft is likely to follow.

### Business Deduction and Personal Use Income Inclusion

The Internal Revenue Code (Code) generally permits a company to deduct certain business expenses related to maintaining a company asset, such as a corporate-owned aircraft, as long as the asset is used for business purposes. A company's ability to deduct expenses related to "entertainment" or personal use of a company asset such as an aircraft is limited. For individuals subject to Section 16(a) of the Securities Act of 1934 with respect to the company (or who would be subject to Section 16(a) if the company were publicly listed), a company may deduct the costs of private aircraft use only to the extent that the costs were included as compensation to the individual. The tax regulations provide a special valuation rule (often referred to as the "SIFL" rules) for personal use of private aircraft that typically yields a value that is taxpayer-favorable (*i.e.*, smaller than comparable fair market or charter value). The value of personal travel must be imputed in taxable income, unless reimbursed by the individual. Of note, the regulations also contain a strict rule providing that if the IRS successfully challenges a company's treatment of travel as business-related, the favorable SIFL valuation rules may not be used to compute the resulting income imputation to the individual for the (recharacterized) personal use. Because contemporaneous substantiation is critical to establishing business versus personal use, and given the incentives to properly impute income (or arrange reimbursement) for personal use up front, companies should maintain internal processes to ensure robust record-keeping for all usage of company aircraft.

<sup>1</sup> See IR-2024-46 News Release "[IRS Begins Audits of Corporate Jet Usage; Part of Larger Effort to Ensure High-Income Groups Don't Fly Under the Radar on Tax Responsibilities](#)" (Feb. 21, 2024).

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