



International Air Safety Office Inc.
Department of Civil Aviation Aruba
Attn. Mr. Jorge C. Colindres Marinakis
Mr. Gilberto F. (Junior) Croes

March 5, 2014

Reference: ALG/B-19694

Subject: tax opinion proposed aircraft registration structure

Dear Mr. Colindres & Mr. Croes,

Lately several jurisdictions have positioned themselves favourably as to the aircraft registration business with less stringent regulations and compliance formalities. It is for this purpose that we mutually agree that some actions are to be taken to reboost Aruba as the aircraft registration destination.

In our meeting of January 14, 2014 we discussed possible ways to do so. A favourable option was to allow a foreign domiciled entity to register an aircraft in the Aruba aircraft registry. As of the date of this tax opinion, very positive actions have taken place into this direction: currently proposed amendments to the existing legislation have been drafted and awaiting approval and formalization by the competent authorities.

This memorandum illustrates the Aruba tax implications to consider as to this option.

Facts and assumptions

We have based this memorandum on the following facts and assumptions:

- Based on the Ministerial Decree AB 1991 no. GT 36 only aircrafts owned by (i) a resident of Aruba or (ii) an entity domiciled in Aruba can be registered in the Aruba aircraft registry.
- We understand from practice that the aircraft registration procedure in Aruba has become more difficult lately: the stringent regulations and the abundance of compliance formalities are elongating this procedure resulting in other jurisdictions becoming more attractive.
- As discussed in our meeting of January 14, 2014, an option to reboost the aircraft registry business in Aruba would be the allowance of a foreign domiciled entity to register an aircraft in the Aruba aircraft registry.
- An important aspect is however that this foreign domiciled entity would not have a taxable presence in Aruba resulting in Aruba tax consequences.
- Based on proposed amendments to aforementioned Ministerial Decree, it will be possible for an entity, established according to the laws of (i) a member of the European Union, (ii) one of the countries, islands or territories as meant in article 355 paragraph 1, 2 first sentence, 3, 4 and 5, sub c of the Treaty on the functioning of the European Union, (iii) another member state of the Agreement on the European Economic Area, (iv) Switzerland, (v) Canada or (vi) the United States of America or a country mentioned in the enclosure to the Ministerial Decree to register an aircraft

*PricewaterhouseCoopers Aruba, L.G. Smith Boulevard 62, Oranjestad, Aruba
T: +297 522 1647, F: +297 582 4864, www.PwC.com/dutch-caribbean*



- in the Aruba aircraft registry, provided that this entity is represented by a person or entity in Aruba.
- Based on proposed amendments to aforementioned Ministerial Decree, in the case that the person or entity allowed to register an aircraft in the Aruba aircraft registry disposes of an aircraft by means of a (i) lease agreement, (ii) a management agreement or (iii) an operating agreement, or (iv) an agreement of fiduciary transfer of ownership, this person or entity is allowed by the director of the Department of Aviation, upon a request thereto, for the period as agreed upon in the agreement, to register the aircraft in its name. In such a case this person or entity will comply with the obligations as applicable to the owner of the aircraft.
 - In the following we will illustrate the Aruba tax implications of this option.

A foreign entity would become taxable in Aruba if this foreign entity has a taxable presence (permanent establishment) in Aruba. Below we will discuss the permanent establishment, in case a foreign entity registers an airplane on Aruba.

Permanent establishment

If a foreign entity holds a permanent establishment in Aruba, the entity will be taxable on Aruba for the profits that are derived from this permanent establishment.

Generally, a permanent establishment is present in Aruba if the foreign entity conducts its business in Aruba through a physical construction. As such a permanent establishment presupposes the existence of a place of business that the foreign entity either owns or is entitled to use. Furthermore this place of business must be fixed, which means that it must be established at a distinct place with a certain degree of permanence. There is a permanent establishment in Aruba, if there is a fixed place of business in Aruba, through which the business of an enterprise is wholly or partly carried on.

'Safe harbour' policy

Based on 'safe harbour' policy of the Aruba Tax Authorities dated August 3, 2005, in our opinion a foreign domiciled entity would *not* be deemed to have a permanent establishment in Aruba if, among others, the following circumstances are present:

- i) *the foreign domiciled entity does not dispose of a fixed place of business in Aruba, through which place the business of this foreign domiciled entity is practiced.*
- ii) *The foreign domiciled entity does not have employees employed in Aruba.*
- iii) *the foreign domiciled entity is established at the address of a local representative's office provided that no separate identifiable space is present from which the activities of the foreign domiciled entity are practiced.*
- iv) *a local person or entity acts as representative of the entity against a standard management fee which would indicate that this local representative (person or entity) would be limitedly involved in the decision-making process of the foreign domiciled entity and would be limitedly involved in the business activities of the foreign domiciled entity;*



The receipt of an additional (variable) fee by the local representative (person or entity) besides a standard management fee would in our opinion already interfere with this 'safe harbour' requirement.

Furthermore, in the management agreement with the local representative it should explicitly be concluded that the duties by this local representative are restricted to only managing the administrative and legal affairs of the foreign domiciled entity. The management agreement should explicitly prohibit the local representative to be involved in the decision-making process of the foreign domiciled entity and explicitly prohibit the local representative to be engaged in any activity related to the actual business of the foreign domiciled entity.

- v) *the foreign domiciled entity owns tangible assets which are not physically in Aruba and which are registered in Aruba.*

As in these specific cases, the foreign domiciled entity is only to register its owned aircraft in the Aruba aircraft registry. It should be unlikely that the aircraft will ever come to Aruba.

In light of this requirement, it can arguably be concluded that no permanent establishment would be constituted in Aruba as a result of the foreign domiciled entity owning an aircraft, and having it registered in Aruba, provided that the aircraft is not physically in Aruba.

Permanent representative

Even if there is no fixed place of business in Aruba, profits derived from Aruba activities may nevertheless be taxable in Aruba if a permanent representative performs the activities. For Aruba tax purposes, a permanent representative is treated the same as a permanent establishment. A permanent representative is a person or a group of persons who act on behalf of the foreign domiciled entity who have and habitually exercise the authority to negotiate and conclude binding contracts in the name of the foreign domiciled entity with some degree of permanence. From an Aruba point of view, the contracts concluded by the representative do not necessarily have to be signed by this person. If the representative is authorized to negotiate all terms and conditions of a contract, it is assumed that he exercises the authority to conclude contracts on behalf of and in the name of the foreign domiciled entity.

In order to prevent that a local representative (person) qualifies as a permanent representative of the foreign domiciled entity in Aruba, the involvement of the local representative in the decision-making process and the business activities of the foreign entity should be limited.

Other tax implications

Considering that the foreign domiciled entity will not have a local entity for its local registration purposes and assuming that based on the criteria of the abovementioned 'safe harbour' rules, there is no permanent representative on Aruba, in our opinion the foreign domiciled entity will not be subject to the dividend withholding tax, turnover tax (BBO), the foreign exchange commission and other applicable taxes in Aruba.



Conclusion

Based on abovementioned 'safe harbour' policy of the Aruba Tax Authorities and the understanding of the facts, we can conclude that the registry of an aircraft in the Aruba aircraft registry by a foreign domiciled entity would not constitute a permanent establishment in Aruba provided that all the necessary requirements of the 'safe harbour' policy to avoid a permanent establishment are met.

In the case a local person acts as local representative of the foreign domiciled entity, this representative should not be authorized (as defined above) to conclude contracts on behalf of the foreign domiciled entity (nor its shareholders), in order not to constitute a permanent establishment in Aruba.

Limitation

Please note that this overview on the tax implications represent our views on Aruba taxes based on our analysis at the date of this memorandum. This summary is not binding on the local tax authorities or tax appeal court.

Lastly, according to the amendments to the Ministerial Decree as proposed, there might be a distinct treatment as to the permanent establishment matter as regards countries resorting under the 'Belastingregeling voor het Koninkrijk' (BRK) and non-BRK countries. Since we foresee that the outcome of this opinion would not differ as to both these situations, we have not elaborated in detail as to this aspect.

Should you have any further questions on this tax opinion or any other, please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Hans Ruiters', is written over the typed name and title.

Hans Ruiters
Partner