

APPROVED MEXICAN LEGAL OPINION

At your request, we have reviewed the structure proposed by Yvonne Schuiling and Daisy van Ovost of Buren Van Velzen Guelen on their Memorandum to Gonzalo Pascual dated October 13, 20004 (the "Proposed Structures"), particularly as it refers to the "Alternative 2" proposal which we describe herein below.

I- BACKGROUND

Proposed Structure – Alternative 2

"In this alternative as limited partner will be a specific Dutch Foundation, called "Stichting AK". The Stichting AK will, as limited partner, hold the ownership rights of the participation in the Dutch CV. In exchange for these ownership rights the Stichting AK is obliged to issue depository receipts to the Mexican investor. The depository receipts will entitle the Mexican investor to the economic rights (the benefits) of the participation in the CV. These depository receipts can be registered or may be issued in bearer form.

The legal ownership of the limited partners' interest in the CV will remain with the Stichting AK. Consequently, this Stichting AK exercises the controlling rights with respect to the limited partners' participation in the CV. This includes the effective control over the time in which the income is to be distributed to the holders of depository receipts. Furthermore, under Dutch law upon the issuance of the depository receipts to the investor, in favour of this investor a right of pledge will be vested on the ownership of the CV, held by the Stichting AK.

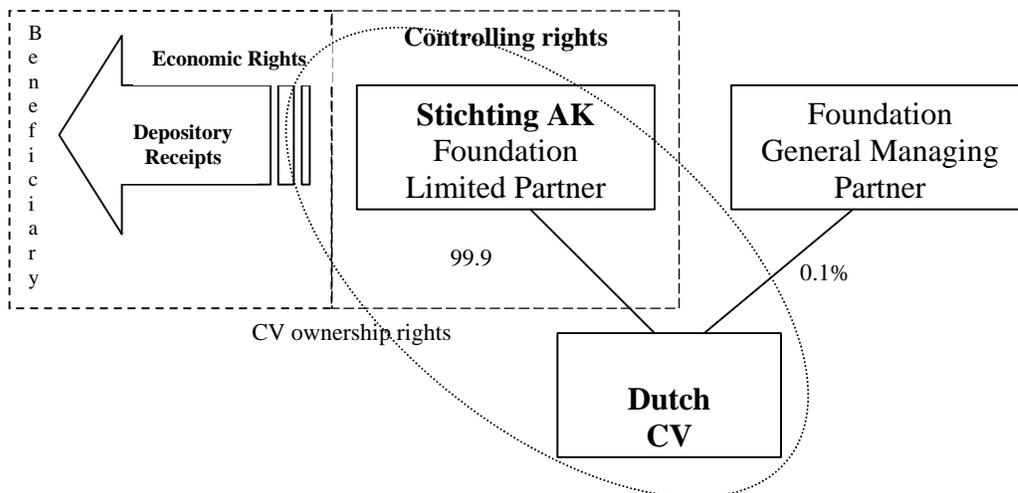
The objectives of the Stichting AK, as laid down in the articles of association of the Stichting AK will be: acquiring and administering the ownership of the CV under the title of administration, issuing depository receipts, distributing all benefits received by the Stichting AK to the holders of the depository receipts, as well as executing the controlling rights with respect to the ownership of the CV.

The relationship between the Stichting AK and the holder of the depository receipts will be laid down in a separate notarial deed (the trust conditions). In principle the benefits remain within the CV. In

the CV deed it may be agreed upon that the resolution to distribute the benefits to the partners must be adopted by unanimous consent. In case by unanimous consent it is agreed that the benefits will be distributed to the partners of the CV, based on the trust conditions the Stichting AK is obliged to directly distribute the benefits to the holders of the depository receipts.

... In case of transfer of depository receipts, just the economic rights will be transferred. If the depository receipts are registered, a private deed of transfer is required. If the depository receipts are issued in bearer form, just a transfer of the bearer depository receipt to the transferee is required. Under Dutch law the holder of a bearer depository receipt is considered to be the owner of this receipt.”

To better illustrate the foregoing alternative, we must keep in mind that the existing CV structure which is being referred to, calls for the existence of a managing partner which is a foundation incorporated under Dutch law, with its main office in Denmark, Spain or in the UK. In light of the Mexican legislation, the proposal calls for the separation of the controlling rights from the economic rights, with two Dutch foundations (a Foundation as managing partner and as limited partner). Hence the structure would look like this:



Moreover, the Proposed Structures Memo clearly indicates that a Dutch foundation is an entity with legal personality whose purpose is to use its monies to realize certain objectives. A Dutch foundation is subject to corporate income tax, if it is engaged in a trade or business. As confirmed by Cees-Frans Greeven, partner of the Dutch law firm Buren Van Velzen Guelen, a Dutch foundation is not a transparent entity under Dutch tax law.

II- ISSUE

Determine if the structure described above does or does not fall within the type of entities defined in the Mexican Income Tax Law of 2005 (the "MITL") as an investment in a "Preferential Tax Regime," which triggers an advanced recognition of income obligation for the beneficiary. Also, determine if the beneficiary is obligated to file informative returns regarding the entity of which it benefits.

III- RULE

The amended advanced recognition of income provisions of the MITL published in the Federal Official Gazette on December 1, 2004 and which will take effect on January 1, 2005, establishes that

Mexican residents (individuals or entities), will be obligated to recognize income as taxable income in Mexico even if not distributed, if they hold a direct or indirect interest in a foreign entity or vehicle, that is not subject to tax outside of Mexico or it is subject to an income tax which is less than 75% of the income tax which would be due and payable in Mexico, pursuant to the provisions of the MITL applicable to individuals or legal entities, respectively.¹ The same advanced recognition of income obligation exists if income is generated through one or more entities which are treated as pass-through vehicles². Pass through vehicles are defined as those which are disregarded as income taxpayers in their country of incorporation or residence, and whose income flows directly to their shareholders for purposes of taxation at the shareholders level³.

The MITL also establishes that income will not be considered to arise in a preferential tax regime and be subject to advanced recognition of income, if the income arises from an indirect average daily interest which does not allow the taxpayer to have an effective control over the income or its administration, in a manner such, that it can decide the time of allocation or distribution of the appreciation, profits or dividends, whether directly or through an interposed third party.⁴ The MITL establishes a rebuttable presumption of control over the administration and control over the income.

For purposes of the aforementioned effective control, the law considers the taxpayers daily interest participation and that of its related parties. For this purpose, related parties are defined as those in which the taxpayer participates directly or indirectly in the administration, control or capital of the other, or if they participate in a directive or management role thereon or if they are legally acknowledged as business partners, or if they are the taxpayers husband, wife or concubine or a family member up to the fourth degree pursuant to Mexico's Civil Code.

Taxpayers who have income which qualifies as preferential tax regime income subject to advanced recognition of income must file an informative tax return in February of each year about the income which was generated in the immediately preceding tax year. The same reporting obligation arises for taxpayers who generate income on any kind originating in a black-listed jurisdiction⁵. Finally, taxpayers who perform transactions through pass-through vehicles, as defined above, must file an informative return about the income generated by such vehicles, even though such income need not be income which is generating preferential tax regime income which is subject to advanced recognition of income for Mexican tax purposes⁶.

IV- CONCLUSION

Considering the background information provided and the analysis of Dutch law set forth above, based on the wording of the statutory provisions subject matter of this memorandum, a Mexican resident who is a beneficiary of the economic benefits of a foundation is not obligated to recognize income in Mexico prior to distribution of benefits, and hence can defer its recognition of income in Mexico until such time as the CV distributes dividends to the foundation and its beneficiaries. Also, because the foundation is not a pass-through entity for Dutch tax purposes and no control over the dividends distribution exists, the Mexican resident beneficiary of the foundation does not have an informative return filing obligation, nor will it have an advanced recognition of income filing obligation.

¹ Art. 212 MITL

² Id.

³ Id.

⁴ Id.

⁵ Art. 214 MITL

⁶ Art. 214 MITL

The foregoing due to the fact that the Mexican resident is merely a beneficiary of a foreign foundation which, as indicated above, is not a pass-through vehicle for Dutch tax purposes. Hence, the beneficiary's participation in the CV is an indirect participation. As such, due to the fact that the Mexican resident beneficiary of the economic rights of the foundation, it cannot determine the time of distributions of profits or dividends. Thus, as a result of its limited attribution as a mere economic interest holder, it lacks the control element established in the statute, a qualification required for the existence of an investment which is considered to be made in a preferential tax regime which is subject to advanced recognition of income pursuant to Mexico's newly enacted provisions of the MITL.

Regardless of the foregoing conclusion, it is imperative that a true absence of control exists between the CV and the Mexican resident beneficiary or its related parties, as a presumption of control is set forth in the MITL, as indicated above. In a practical sense, the foregoing means that the Mexican resident beneficiary or beneficiaries of the economic interest in the foundation cannot have powers of attorney to determine the course of action which the Dutch CV follows. This limitation is further restricted by the definition of Mexican resident legal entities set forth in the Federal Fiscal Code ("FFC"). Said provision establishes that if the place of effective management of a legal entity is located in Mexico, said entity will be deemed to be a resident of Mexico⁷ for tax purposes and subject to taxation as such (i.e. on a world wide income basis)⁸.

Administrative guidelines establish that the place of effective management is in Mexico if: (i) the board meeting take place in Mexico; (ii) the individual(s) who exercise day to day control decisions of an entity's administration or management, are Mexican residents for tax purposes or if their offices are located in Mexico; (iii) an office through which administration or control of the foreign entity is located in Mexico; or, (iv) if accounting records of the foreign entity are kept in Mexico⁹. Although the basis for a claim of residency by the tax authorities which is supported on these administrative guidelines, would exceed the statutory mind and management provisions of the FFC discussed above and, hence, a defense against such claim could be made on its absence of legality merits (administrative regulation's cannot exceed statutory provisions).

However, considering the sensitivity of the issue, the risk of challenge of said construed residency and thus, Mexican tax basis and compliance obligations, mandates us to suggest that taxpayers that are resident in Mexico, refrain having powers of attorney to represent the Dutch CV to avoid exposing themselves to such challenge. The potential of loss of the benefit of deferral of income in Mexico either through the creation of a situation in which deemed residency in Mexico and in consequence taxation in Mexico on a world wide basis or an advanced income recognition obligation as a result of deemed controlled foreign corporation in a preferential tax regime circumstance, lead us to advice that in order to benefit of deferral of income until such time as economic benefits are distributed to the beneficiary, at which time the beneficiary will have to pay income tax in Mexico, be obtained, the beneficiary should refrain from having said powers of attorney.

⁷ Art. 9 FFC

⁸ Art. 1-I MITL

⁹ Rule 2.1.5. Resolución Miscelánea Fiscal para el 2004