

CURAÇAO PRIVATE FOUNDATION GENERAL MEMORANDUM



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The Curaçao financial services industry originates in the beginning of World War II, when Dutch companies sought refuge in the former Netherlands Antilles by transferring their seat, on the run from the occupying forces. Although these companies were repatriated after the War, an idea was born. From the early 1950's Curaçao has developed into an international financial services jurisdiction, often used for international structuring. By introducing favorable tax legislation, as well as a very generous ruling regime, the former Netherlands Antilles were able to attract some of the biggest international companies. Known examples of the possibilities of that time are the "Dutch Sandwich", and some may remember the Eurodollar market that lasted through the 1980's. The Netherlands Antilles prided itself to be one of the birthstones of the international offshore industry.

During the 1980 and 1990's, the Anglo-Saxon trust has proven its use in international structuring, both for its historical purpose (the safeguarding of assets) as well as its tax treatment. The former Netherlands Antilles' recognized the need for such a legal vehicle and has introduced, within its own legal system, a comparable entity, being the Private Foundation.

The Private Foundation is a legal entity that is not subject to Curaçao taxation on its income. It offers a vehicle to local and international investors to safeguard their

investments and provides for an efficient tax-planning tool. The following briefly discusses the Curaçao legal and tax characteristics of the Private Foundation.

1 – General

The legal basis for Private Foundations is the Curaçao Corporate Code, which is Book 2 of the Curaçao Civil Code. Book 2 of the Curaçao Civil Code entered into force on March 1, 2004 and has recently been revised on January 1, 2012. The Curaçao Corporate Code is a very modern and flexible legislation.

The Curaçao Private Foundation is a legal entity without members or shareholders and with assets and liabilities in its own name.

The Private Foundation is incorporated by notarial deed executed before a Curaçao civil law notary. The articles of association must include the name of the Private Foundation, including the words 'Private Foundation' as part of the name, the objectives of the Private Foundation, the manner in which the board members are appointed and dismissed, the place in Curaçao where the Private Foundation has its seat and the allocation of any liquidation surplus in the case of a dissolution of the Private Foundation or the manner in which its allocation will be determined.

1 – As of October 10, 2010, the country the Netherlands Antilles has ceased to exist. As of that date the Kingdom of the Netherlands exists out of four countries: Aruba, Curaçao, St. Maarten and the Netherlands (including Bonaire, St. Eustatius and Saba). This memorandum sees specifically to the possibilities with respect to Curaçao. However, the content might also be applicable to for instance St. Maarten.

The deed of incorporation may be executed before the civil law notary in the language chosen by the incorporators, provided that the civil law notary understands that language. Where such language is a language other than English, Spanish, Dutch or Papiamentu, a Dutch translation signed by a sworn translator shall be attached to the deed of incorporation.

Natural persons as well as legal entities may act as the Founder. Upon incorporation, the Private Foundation may issue founder rights. A nominee Founder is permitted. Trust service providers could act as founder of the Private Foundation and the founder rights can be transferred to you after incorporation of the Private Foundation.

The board of directors are initially appointed by the Founder and can later be appointed by the board itself or by another corporate body of the Private Foundation, for example, by the Board of Supervisory Directors (Protectors). Both individuals and corporate members can be appointed. The Private Foundation should at least have one Curaçao (natural person or legal entity) managing director. In most cases, a trust service provider is used for this purpose. The members of the board of directors must be registered with the Chamber of Commerce and may therefore not be anonymous.

2 – Taxation

Profit tax

According to the law a Private Foundation is subject to profit tax. The current profit tax rate is 27,5%. However, a Private Foundation is exempt from profit tax as long as such profit is not the result of running or carrying out a business.

Since the purpose clause of a Private Foundation may not include the carrying out of a business, the Private Foundation is, in as far as it adheres to its purpose clause, exempt from profit tax in Curaçao. The following will not be deemed a 'business' in that respect:

- Any activity relating to the investment of its capital, regardless the nature of such investments
- The holding of an interest in another legal person
- The participation as limited partner in a limited partnership

Since Private Foundations are exempt from profit tax, they are in principle not subject to (profit) tax filing requirements. Note that as per the Curaçao Civil Code, Private Foundations have an obligation to keep proper accounts. Furthermore, the tax legislation includes regulations for legal entities (including the Private Foundation) to maintain books, as these may be necessary to ascertain the tax obligations of the legal entity itself as well as third parties (for example persons providing services or supplying goods). Upon the request of the Tax Inspector a Private Foundation must provide

the information necessary to allow the aforementioned verification, and the Private Foundation may even be invited to file a profit tax return².

A Private Foundation can apply for taxation at a profit tax rate of 10%. Such Private Foundation can in that case make use of the regular facilities of the profit tax laws, like participation exemption, investment allowance, depreciation and loss compensation.

Estate and Gift tax

The Inheritance Tax Ordinance stipulates that acquisition by a Private Foundation of assets from a resident of Curaçao by way of inheritance, specific legacy or gift, is subject to estate or gift tax at a rate of 25%. Acquisition from a non-resident of Curaçao by way of inheritance, specific legacy or gift is not subject to Curaçao tax. Contributions of assets to the Private Foundation made by non-residents of Curaçao are thus not subject to Curaçao gift tax. With respect to distributions to foreign beneficiaries by the Private Foundation, no gift tax is due in Curaçao. The individual tax consequences of the receipt of a gift by a Private Foundation for the foreign beneficiary of such gift will depend on his or her personal tax situation and country of residence. In principle, no Curaçao tax applies. Distributions made by the Private Foundation to foreign beneficiaries are therewith fully exempt from Curaçao tax.

Dividend withholding tax

Curaçao does not levy dividend withholding tax on dividend distributions made by a Curaçao Private Foundation.

Transfer tax

Curaçao transfer tax might be due on the transfer to or by the Private Foundation of for instance real estate situated in Curaçao or ships registered in Curaçao.

Turnover tax

Curaçao turnover tax is levied from entrepreneurs that provide services in Curaçao. An entrepreneur is anyone who carries out a business as well as anyone who exploits an asset with the intention to obtain a durable income. As a result, Private Foundations might be subject to turnover tax, depending on the situation.

² – Although a Private Foundation, which operates within its purpose clause and does not carry on a business, does not have to file a tax return, there is an obligation to complete, sign and file a tax return form, if one was issued by the tax authorities. In this case, the form does not have to be fully completed, but must be signed and must bear at least a mention that no business activities are being carried out and that therefore the Private Foundation's profit is exempt from tax. The tax return should be accompanied by an overview of its assets and an income and cost overview.

3 – Possible uses

Since its introduction, the Private Foundation has become widely used. It has been used as the top-holding entity of international structures, allowing international business a maximum of flexibility. Previously privately owned assets, such as art collections and real estate, have been transferred to Private Foundations, providing for an efficient protection of assets. And many entrepreneurs have found a Private Foundation useful to structure “greenfield” operations and reduce liabilities as well as future taxes.

The objectives of the Private Foundation may include a number of activities, and are therefore not limited to a charitable purpose, such as:

- Top holding vehicle for international structures.
- Asset protection for previously privately owned assets.
- Vehicle to separate private and family wealth without the obligation to spend the separated funds on charity.
- Financing- and securitization.

The Private Foundation has become an easy to incorporate and cost-efficient (relatively low maintenance costs) alternative for a number of practical uses.

4 – Curaçao

Curaçao offers a solid and experienced infrastructure of financial services companies, such as internationally renowned bank, audit and tax advisory firms and some of the largest Trust companies, which can guide you through the various steps that must be taken in order to set up a (tax) efficient structure. None of the least, through its strong ties with the Netherlands, Curaçao offers you a perfect gateway into (and out of) Europe.

Spigt Dutch Caribbean Team – Tax



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