AVIATION

Fishing and international air transport are areas of foreign investment regulation that are subject to exclusive regulation by the national government. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

Although Chuuk may "own" the airport, airport runway, tarmac, and terminal buildings, and these are all services an airline uses, the airline already pays the State for the use of the various airport facilities through landing fees for its aircraft, rental fees for office space, and other service fees (and it also pays a 3% gross revenue tax to the national government, half of which is shared with the states), and its passengers departing Chuuk already pay for Chuuk's airport services through a $20 departure fee collected at the airport. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160-61 & n.1 (Chk. 2010).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

"Courier services" is a much more limited concept than all freight and cargo. Courier

services are generally those services that provide expedited delivery of small, high-value goods or documents. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533-34 (Chk. 2011).

Aircraft have the nationality of the State in which they are registered. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 (Pon. 2020).

The FSM adhered to the Chicago Convention on International Civil Aviation on September 27, 1988. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 n.5 (Pon. 2020).

A helicopter that was registered, at all times, in the United States had U.S. nationality at all times, and as such, would be subject to U.S. regulations wherever in the world it flew. A U.S. certificate of aircraft registration is conclusive evidence of the U.S. nationality of an aircraft for international purposes, and, because it is a civil aircraft of the United States and has U.S. nationality, and the U.S. may exercise extraterritorial jurisdiction over it. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 (Pon. 2020).

An aircraft's FSM certificate of registration is conclusive evidence of FSM nationality for international purposes. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 n.6 (Pon. 2020).

A foreign corporation is permitted to register an aircraft in the FSM so long as such aircraft is based and primarily used in the FSM. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 457 n.7 (Pon. 2020).

As a matter of international law, an aircraft can only be registered in one country at a time. An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another. Implicit in this principle is the concept that civil aircraft must be registered in some country. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 (Pon. 2020).

The registration or transfer of registration of aircraft in any State contracting to the Chicago Convention on International Civil Aviation must be made in accordance with its laws and regulations. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 n.9 (Pon. 2020).

Every aircraft engaged in international air navigation must bear its appropriate nationality and registration marks. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 n.10 (Pon. 2020).

An aircraft is engaged in international air navigation when it is navigating in airspace outside its country of registration. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 n.10 (Pon. 2020).

Foreign aircraft benefit from the privileges that 20 F.S.M.C. 1104 afforded to aircraft registered in other nations. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 (Pon. 2020).

A helicopter owner will be estopped from asserting that the U.S. lacked jurisdiction or authority over the helicopter that it had registered with the U.S., and from asserting that it did not have to comply with the U.S.'s applicable regulations or U.S. aviation law. It should not now be able to assert that the U.S. has no jurisdiction over its helicopter when it registered that helicopter with the U.S. and maintained its U.S. registration thereafter and derived whatever benefits that the U.S. registration afforded. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

While it is true that parties cannot confer or divest a court of jurisdiction by stipulation or by assumption, a helicopter buyer who had to register that helicopter somewhere (some country) and chose to register it in the U.S., will be estopped from denying the U.S.'s regulatory authority over its helicopter. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

An FSM search warrant application established that there was probable cause to believe that a serious offense had been committed against the laws of a foreign state (the U.S.) when it showed that a U.S. registered helicopter was no longer in a flyable condition – no longer airworthy – because the helicopter had had either an "aircraft accident" as there was substantial damage to it, or because there had been a "serious incident" caused by "ground damage," to the helicopter's tail and U.S. law required that U.S. registered aircraft immediately report such events and the helicopter owner did not. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 460 (Pon. 2020).