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## RESIDENCY AND SETTLEMENT IN THE PRINCIPALITY OF LIECHTENSTEIN

### A current summary of methods and other aspects

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#### 1. Introduction

To foreigners the Principality of Liechtenstein frequently appears to be an attractive place to live and work for various reasons, whether it's the high standard of living, high level of wages, comparatively low tax burden or the higher than average protection for personal privacy. As a result, enquiries are regu-

larly received by the relevant government departments or representatives of the legal advice professions about the possibilities of living in Liechtenstein. Consequently, it is often not easy to convey to potential applicants that in many aspects Liechtenstein differs from Switzerland or its various cantons or other popular European residency destinations and although it's not impossible to be granted a resident's or settlement permit, applications are subject to comparatively stringent restrictions.

The aim below is to provide a current overview of the bases relating to admittance, procedures, tax consequences as well as other aspects of taking up residency through a resident's and settlement permit in Liechtenstein, either as with or without gainful employment in the country (i.e. as a pensioner or individual with a private income).

#### 2. Starting Situation

At the end of 2006 the population of

Liechtenstein was approx. 35'000, 66% of which were Liechtenstein nationals, approx. 17% EEA nationals, 10% Swiss nationals and approx. 7% from other countries (so-called nationals of third party states). Of these 7% nationals of third party states, 14% in turn resulted from people taking up employment in Liechtenstein, 15% were granted a resident's permit on the basis of family members joining nationals of Liechtenstein, Switzerland or the EEA. Finally, 63% of the nationals of third party states were dependents from third party joining families in Liechtenstein. Approx. 200 nationals of third party states finally moved to Liechtenstein for other reasons - as refugees or on humanitarian grounds. Approx. 35% of Liechtenstein's population are therefore foreigners.

It is one of the declared aims of Liechtenstein policy to aim for and/or maintain a **balanced ratio between the indigenous and the resident foreign**

**population of Liechtenstein.** For the small state of Liechtenstein this objective represents a challenge. Since it became a member of the European Economic Area (EEA, that's all the EU states plus Iceland, Norway and Liechtenstein), with its freedom of movement of people and freedom to establish settlement guaranteed for EEA nationals, as well as the simultaneous equal treatment of Swiss nationals by Liechtenstein within the framework of the so-called Vaduz Convention (wide-ranging equal treatment of Swiss and EEA nationals within the framework of the reciprocal law for Liechtenstein nationals granted by Switzerland) maintaining a balance has become more difficult.

Today, half of all people employed in Liechtenstein are already **cross-border workers** (commuters from adjacent countries), in total approx. 15'000 people. This is primarily attributable to Liechtenstein's restrictive rules on resident's and settlement permits. However, the ever-increasing demand for qualified foreign employees by Liechtenstein's industrial companies and the desire to increase the quality of service offered to an international clientele by Liechtenstein as a financial centre by providing the best possible know-how, does increase the pressure on raising the proportion of the foreign population residing in the country since these posts can not always be filled using the indigenous population or cross-border workers.

In addition, the **shortage of land resources** and the already higher than average prices for land and property – today, one square metre of land in a good residential area frequently costs

around CHF 2'000 - 4'000 (EUR approx. 1'200 - 2'400) or even more – further increases the problem of a growing proportion of foreigners amongst the population from both the political and economic aspect. The topic of the integration of the non German-speaking foreign population is now also on the day-to-day policy agenda of Liechtenstein. A new Immigration Law, which is to apply to all nationals of third party states, is soon to be passed (see Outlook, Point 11).

In appreciation of this difficult and tricky situation which has existed over a number of years, in December 1999 Liechtenstein was granted various **transitional rules** by its EEA partners in resolution 191/1999 of the EEA Joint Committee. These have since already been extended and enable the country to maintain its target of a balanced composition of the population whilst at the same time allowing it a specific level of immigration and freedom of movement. Liechtenstein has simultaneously succeeded in harmonising the existing special relationships between Liechtenstein and Switzerland with these EEA requirements and continuing to maintain its special close relationship with Switzerland.

Liechtenstein basically operates **no general quota system** with regard to foreign immigration. At least once a year the government periodically decides on the maximum number of resident's permits to be issued. According to unofficial sources, the Immigration and Passport Office, as the competent official department, forwards approx. 5 permit applications per month to the government for verification. According

to the same source approx. 2-3 resident's permits per month are issued by the government. However, no official figures are available.

As a result of **Liechtenstein joining the EEA in 1995** the restrictive position regarding immigration was increasingly relaxed. Easier freedom of movement for individuals, at least for EEA nationals, became inevitable and was finally unanimously agreed in resolution 191/1999 of the EEA Joint Committee. The right of residency for EEA nationals is accordingly calculated as follows: "The number of annual permits granted for nationals of Iceland, Norway and the EU member states pursuing gainful employment in Liechtenstein must be defined in such a way as to produce a **minimum net increase of 1.75%** of the level on 1 January 1998, compared with the previous year." The agreement contains additional special conditions, amongst others for students or those not in gainful employment (see below).

### 3. Ordinance on the Movement of Persons

Since the conclusion of the "treaty between the Principality of Liechtenstein and Switzerland on the treatment by the Immigration Department for third party countries in the Principality of Liechtenstein and on cooperation between the immigration authorities" in the year 1963, the Swiss Law on the Residence and Settlement of Foreign Nationals (ANAG) has been fundamentally applicable in Liechtenstein. On the basis of this and the inclusion of the provisions of EEA law and the Vaduz Convention, Liechtenstein has amalgamated the relevant provisions in respect of the

movement of persons in the Ordinance on the Movement of Persons (PVO, Landesgesetzblatt 2004/253).

The current version of the Ordinance on the Movement of Persons (PVO, Landesgesetzblatt 2004/253) from the year 2007 governs all the key questions relating to arrival and departure, residency and settlement as well as subsequent joining by family members of foreign nationals. The PVO is not an act that has been passed by Parliament but instead a **legal act passed by the government** based on various constitutional treaties in particular with the EEA partner states and Switzerland. The aim of the provisions of the PVO, in addition to clarifying procedural questions, is to also promote the **integration of the foreign population** e.g. through the provisions relating to subsequent joining by family members. Under the wording of Art. 77 PVO, the aim of the integration is to create "... harmony between the Liechtenstein and foreign

population on the basis of common values and the rule of constitutional law which is characterised by mutual respect and tolerance".

Only tourists can stay in Liechtenstein without any resident's permit, providing they meet the Swiss entry regulations, which also apply in Liechtenstein, and the maximum period of stay does not exceed 3 months. All other forms of residency require a permit.

A distinction is drawn between the following **types of permits for foreigners** in the PVO:

- permit in letter form (BiB)
- short-term resident's permit (L-EU/EFTA)
- resident's permit (B-EU/EFTA)
- settlement permit (C-EU/EFTA)
- cross-border permit (G-EU/EFTA)
- permanent cross-border business activity (GDG)
- cross-border registration confirmation (GMB)

In this context the PVO recognises **3 different categories** of potential applicants:

- a) EEA citizen,
- b) Swiss citizen and
- c) Citizen of third party state.

Various conditions apply to all these categories for being awarded one of the listed permits.

#### 4. General Permit Requirements

As a fundamental rule a residents' permit is only granted to foreign nationals providing they do **not represent a risk to public order, safety and health or to the international relations** of Liechtenstein. An extract from the Criminal Register, not older than three months, can be required as proof.

Permit applications must be completed truthfully and in full and submitted in the correct form, otherwise they will be returned, allowing a one-off, additional 14 day period of grace for the application to be submitted correctly. Permit applications which have been submitted will be examined by the **Immigration and Passport Office** ([www.apa.llv.li](http://www.apa.llv.li)) as the competent administrative authority and forwarded to the **government** for a decision.

**Settlement permits** are definitive in nature, have no specified duration and are normally only issued after the applicant has been a resident for a number of years. Applications for the right to permanent settlement can therefore only be submitted directly in special cases. As a general rule EEA nationals and nationals of third party states need to have been resident for a prior and continuous period of 10 years, Swiss na-

nationals need to have been resident for a prior and continuous period of 5 years, with the corresponding resident's permits.

## 5. Standard Procedure

Under the Ordinance on the Movement of Persons already mentioned above, the **standard procedure** is open to all three categories, with partially differing conditions.

Resident's permits based on the standard procedure under the PVO are "issued within the framework of granting in accordance with the basic principle of equal treatment for all relevant market participants and competition neutrality" (Art. 16 PVO). In this context the final decision is taken by the government.

EEA nationals are only **entitled** to the issue of a resident's permit within the framework of the conditions of EEA resolution 191/1999 (see above) and for Swiss nationals within the framework of the Vaduz Convention (see above), simultaneously taking into account the quota defined annually by the government. Nationals of third party states (non-EEA nationals and non-Swiss nationals) are only entitled within the framework of national treaties (e.g. for members of the Diplomatic Corps) otherwise the Liechtenstein Government decides on these permits at its own discretion, taking into account the fundamental principle of competition neutrality and within the framework of the quota defined each year.

The following permit requirements apply to **those in gainful employment** in the standard procedure under the PVO:

– **EEA and Swiss nationals** must satisfy not only the above-mentioned, general permit requirements but other specific conditions as well. A resident's permit for no more than 5 years (with option to extend) can only be issued for the first time if:

- a) in the case of employees, they possess a contract of employment for more than one year or which is not under notice and their level of employment is at least 80%; and
- b) in the case of employees and the self-employed, cross-border commuting is neither possible nor reasonable to expect.

– **Nationals of third party states** must not only satisfy the above-mentioned general permit requirements but other specific conditions as well. A resident's permit for **no more than 1 year** (with option to extend) can only be issued for the first time if:

- a) they possess a contract of employment for more than one year or which is not under notice and their level of employment of 100%;
- b) any other type of permit or cross-border commuting is neither possible nor reasonable to expect;
- c) the pursuit of their professional occupation makes a permanent presence imperative; and
- d) the person involved is a specially qualified employee who was proven to have been impossible to recruit elsewhere on the permit-free labour market.

Specific rules apply for **replacement appointments** if a post in a company was occupied by an EEA or a Swiss citizen with a resident's or settlement permit and this post is now available as a result of the relocation of the individual

abroad, his/her retirement or death. The replacement appointment is also subject to the granting of a permit. There are no entitlements for nationals of third party states or their employers to a replacement appointment.

**Persons not in gainful employment** can be issued with a resident's permit for no more than 5 years (with option to extend) within the framework of the standard procedure, subject to the following conditions:

- a) EEA or Swiss citizen;
- b) proof of sufficient financial resources so no recourse to social security benefits is required; and
- c) proof of a statutory approved health insurance policy which covers all risks in Liechtenstein.

The proof of sufficient financial resources can be reviewed by the Immigration and Passport Office after two years.

Special conditions apply for **students**. For **humanitarian as well as special reasons**, the government can also issue a resident's permit for persons not in gainful employment where these are of special importance to Liechtenstein.

## 6. Ballotting

In order to meet the above-mentioned obligations under EEA law, in the year 2000 the Liechtenstein legislative authorities also passed the **Law on the Procedure for the Issuing of Resident's Permits** (ABVG, LGBl. 2000/98) which, in addition to the procedure in accordance with the PVO, provides for **half of the quota of resident's permits for EEA nationals** to be issued by way of a ballot, i.e. on the random principle, similar to the procedure used for

the green card ballot in the United States of America. The aim is to ensure equal treatment for all applicants through the ballot procedure as well as by grouping applicants into those in gainful employment and those not in gainful employment. The government can redefine the quotas for each ballot based on the above-mentioned calculation code in accordance with the EEA Joint Committee resolution 191/1999. Currently, however, annual ballots have been conducted for the last several years for the issue of 36 resident's permits to EEA nationals on each of two dates. The ballot procedure is not available to Swiss nationals or nationals of third party states.

Participation in the final ballot is linked to **conditions**. All participants in the final ballot must prove that they

- a) are nationals of an EEA member state and do not yet have any entitlement to permanent residency in Liechtenstein;
- b) have sufficient income and assets to maintain themselves and their family;
- c) can guarantee to provide an appropriate home.

In addition, applicants who do not wish to be not self-employed (**employees**)

must prove that they have a job in Liechtenstein or are in possession of a valid written guarantee of a job. Participants in the ballot who are gainfully employed on a self-employed basis (**self-employed**) must prove that they are self-employed within the framework of an existing, approved permanent business activity in Liechtenstein as a cross-border commuter or fulfil the professional and legal requirements for their intended self-employed activity associated with taking up residency. Participants in the ballot who do not wish to be gainfully employed in Liechtenstein (so-called **taking up residency without gainful employment**) must finally prove that they have reached retirement age or are financial independent and do not pursue any permanent gainful employment either in Liechtenstein or abroad and have also concluded the necessary insurances to cover all risks.

Compulsory reasons for **exclusion from the final ballot** are giving false information in accordance with Art. 10 AVBG, as well as the likelihood of dependency upon welfare provision, previous breaches of the rules under the applicable immigration law in Liechtenstein, existing and valid barriers to entry (expulsion from the Principality of

Liechtenstein, ban on entry), significant health grounds as understood by EEA law (directive 64/221 dated 25 February 1964), a criminal record or the risk to internal security or order. Applicants are however permitted to submit multiple applications to participate in the ballot procedure. The total quota of 36 resident's permits per annum available for EEA nationals will be balloted in **two final ballots in the Spring and Autumn** of each year, with 18 of the resident's permits being issued at each of the two final ballots. The registration periods for participation are from 1 to 28 February and 1 to 31 August of each year respectively. In the lead-up to the two final draws 36 persons will be drawn from the entire field of applicants in the respective **two preliminary ballots**. In the two final ballots these persons will then have a 50% chance of being issued with one of the 18 resident's permits. The participation fees are currently 80 Swiss francs for the preliminary ballot and an additional 200 Swiss francs for participation in the final ballot.

A further distinction is drawn within the above-mentioned quotas of 18 permits each: 14 permits are granted for those in gainful employment, 4 for pensioners or other persons not in gainful employment. In theory therefore a **total of 28**

Year	Number of participants in 2 draws for "persons in gainful employment" (draw 1/2)	Number of participants in 2 draws for "persons not in gainful employment" (draw 1/2)	Number of resident's permits issued to "persons in gainful employment" (draw 1/2)	Number of resident's permits issued to "persons not in gainful employment" (draw 1/2)	<b>Total</b> number of resident's permits issued through the ballot method
2003	268/199	17/14	17/15	5/6	<b>43</b>
2004	239/262	8/16	16/16	3/6	<b>41</b>
2005	211/225	12/4	15/16	5/2	<b>38</b>
2006	269/286	12/14	15/16	7/1	<b>39</b>
2007	302/313	17/16	18/14	7/5	<b>44</b>



persons in gainful employment and 8 persons not in gainful employment, as EEA nationals per annum can gain a resident's permit through the ballot method. Any person who has obtained a residency permit via the ballot method must then, at the final ballot, notify the Immigration and Passport Office of their definitive entry date within 5 months, otherwise it will be assumed they do not wish to take up residency.

In years in which the **quotas are not taken up** because persons being awarded permits in the ballots have decided not to take up actual residency (this apparently happens on a relatively frequent basis) the number of permits issued may be actually lower, these can be made up in the following year by the number of permits issued exceeding the quota (see table).

The statistic on Page 5, compiled on the basis of press releases from the Immigration and Passport Office, is revealing with regard to the assessment of the **chances of success in the ballot**:

This table illustrates that e.g. in the year 2007, out of 33, 12 of the applicants or participants in the ballot process for **persons not in gainful employment** were awarded a resident's permit, this represents a **36% chance of success!** Amongst **persons in gainful employment** 32 of the total of 615 applicants or participants in the ballot process were awarded a resident's permit, representing a **5% chance of success**.

It must be remembered at this point that in addition to the resident's permits issued via the ballot method for EEA na-

tionals, the government also issues a similar number of permits to EEA nationals using the standard procedure.

### 7. Joining by family members

As a result of being joined by family members, there can be a further significant increase in the number of resident's permits issued in Liechtenstein in each case since Liechtenstein law is comparatively generous in allowing family members to join successful applicants. For EEA and Swiss nationals the following are counted as **family dependants**:

- a) the spouse, plus relatives in descending order where these have not yet reached the age of 21 or who are proven to be maintained by the successful applicant;
- b) the individual's own relatives and the relatives of the spouse in ascending line who are proven to be maintained by the EEA or Swiss citizen.

Under the PVO, purely the spouse and joint single children under the age of 18 are counted as family dependants for nationals of third party states.

**EEA and Swiss nationals**, providing they have one of the various permits which entitles them to take up residency, are entitled to be joined by their families in Liechtenstein at any time. The applicant or the family dependants of EEA or Swiss nationals joining him/her must submit the following proof before a permit will be issued to the family members:

- a) copy of the valid identity document used for the entry into Liechtenstein (passport or identity card);
- b) a certificate issued by the competent authority of his/her country of origin

- or last country of domicile in which the family relationship is confirmed;
- c) proof of an appropriate home;
- d) proof of the right of custody for children from previous marriages or partnerships;
- e) proof of maintenance provision. Where taking up residency without gainful employment the proof of maintenance must also be provided for relatives in descending line below the age of 21;
- f) original of the certificate of origin for Swiss nationals.

EEA and Swiss nationals (by contrast to nationals from third party states) are also able to be joined in Liechtenstein by their **life partner** if it is proven that:

- a) a bona fide and intact relationship has existed for a minimum of 5 years;
- b) both life partners are single, divorced or widowed and are over the age of 30;
- c) the life partner already living in Liechtenstein has been domiciled for a total of at least 15 years in Liechtenstein;
- d) neither life partner has an entry in the criminal register or register of attachments;
- e) sufficient financial resources are available to maintain both life partners so that no recourse to any social security benefits is required (guarantee from a bank with registered offices in Liechtenstein); and
- f) an appropriate home is available.

**Nationals of third party states** with a resident's or settlement permit are entitled to be joined by their families providing they are in possession of a resident's permit with gainful employment

or if they have possessed a resident's permit for at least 4 years. In addition, the national of the third party state must prove that he/she

a) is in a sound, permanent employment relationship (contract of employment) providing maintenance for him/herself and his/her family or possesses sufficient financial resources for his/her personal and family dependants' needs so that no recourse to any social security benefits is required (guarantee from a bank with registered offices in Liechtenstein); and

b) has an appropriate home.

**Students** may only be joined by their spouses and children who are proven to be in receipt of maintenance provision.

## 8. Wealth and Income Tax for Persons domiciled in Liechtenstein

Any person who wishes to acquire or has acquired a resident's permit through one of the above-mentioned procedures will sooner or later look at the tax implications of his planned or existing relocation of place of domicile to Liechtenstein. Liechtenstein operates a system of **wealth tax** and **income tax** for natural persons and a **pensioner's tax** in special cases (see below). In this context, a distinction must be drawn between regular, liable persons in gainful employment and persons not in gainful employment, as well as persons liable under the so-called pensioner's tax. **Inheritance tax, gift taxes** and **capital gains tax** are also levied in Liechtenstein. The level of **Value Added Tax** is identical to that in Switzerland.

Direct taxation for natural persons in Liechtenstein is levied using the system of so-called taxation with payment in arrears with current assessment, in which the principle of family taxation applies and therefore both assets as well as income of spouses are added together for tax purposes. On the other side, relief is granted through the married person's allowance.

One special aspect of the Liechtenstein tax system worth mentioning is that for all persons engaged in non self-employed activities and based in Liechtenstein, the employer is obligated to withhold a percentage of the salary (between 4 and 14%) and to forward this to the tax authorities. Interest is paid on this **tax deduction from salary** (currently at 0.5%) and is calculated on the respective due tax amount.

The statutory tax units in Liechtenstein are 1 ‰ of the total movable and immovable assets for wealth tax and 2% of the liable income for income tax. The Liechtenstein Parliament (Landtag) decides each year on the tax rate as a percentage share of the statutory tax unit. For the year 2008 it was decided to apply the **tax rate** of 0.54% of the statutory unit, i.e. **0.54 ‰ for the wealth tax** and **1.08% for the income tax**.

On the basis of the so-called amount of the tax calculated in this way the **progression** is then calculated, ranging **between 0 and 425%** and the authorised deductions made (e.g. married person's allowance). The respective municipalities then calculate a supplement, based on the total **federal tax** calculated, ranging between 150 and a max. 250%. The standard rates current-

ly charged are **between 150 and 200% as a municipal tax surcharge**. This figure gives the total tax charge.

At a tax rate of 54% of the statutory unit and a municipal surcharge of 200% the **actual tax burden** varies, according to income and assets, **between a minimum 3.24% and a maximum 17.01% of the taxable income** and between a minimum 1.62 ‰ and a maximum 8.51 ‰ of the liable assets.

## 9. Pensioner's tax

Natural persons living in Liechtenstein and not in gainful employment who live on the income from assets located abroad or from earnings abroad have the option of being taxed on a flat rate basis under the so-called pensioner's tax. However, the law does not permit the pensioner's tax to apply to persons already living in Liechtenstein who wish to avoid the standard taxation.

The amount of the tax is determined in accordance with the **living expenses** of the taxed person. The minimum for the tax basis is **five times the rent for the home or of the rental value of the property occupied**. The assumed tax basis must be individually negotiated with the Liechtenstein tax authorities. Tax at the **tax rate of 15%** is levied on these expenses.

As a rule of thumb, based on the standard maximum rate for wealth tax, it is easy to work out that payment of a pensioner's tax only becomes attractive by comparison with regular taxation providing the individual has assets worth a minimum of approx. 30 million Swiss francs. However, by international comparison both options can be seen as very attractive.

## 10. Purchase of Land by Foreign Nationals

As a result of the above-mentioned shortage of land resources and in order to prevent an explosion in prices on the land and property market, statutory limits were placed on the purchase of land by foreigners. There are also tight restrictions on Liechtenstein nationals with regard to the purchase of property. The aim of the Real Estate Transactions Act (Grundverkehrsgesetz) in meeting this concern is "... to guarantee the widest possible distribution of land ownership in such a way that is socially acceptable and reflects the size of the country". The Real Estate Transactions Act is relatively efficient in preventing the speculative accumulation of land ownership.

Land (and property) may only be purchased with **the consent of the Real Estate Transaction authorities** (Real Estate Transactions Commission of the municipalities). This requires proof of a so-called "**justified interest**" (e.g. an actual need for a home), with one of the requirements being the holding of Liechtenstein citizenship. As a result of Liechtenstein's entry into the EEA a relaxation of the conditions in this respect also became necessary. **EEA nationals** are now treated equally with Liechtenstein nationals and after being resident for at least one year can also purchase land providing they demonstrate a justified interest. **Swiss citizens** can already purchase property in Liechtenstein if they are in possession of the promise of a resident's permit and have an entitled interest. This is, however, conditional upon proof of issue of the resident's permit being supplied on receipt. Where a resident's permit has al-



ready been issued and proof of an entitled interest has been successfully provided, Swiss citizens can purchase property in Liechtenstein without any further requirements. Finally, **nationals of third party states** must demonstrate residency of at least 10 years in order to be allowed to purchase land providing they can successfully prove a justified interest.

## 11. Outlook: New Immigration Law

A new Immigration Law came into force in Switzerland on 1 January 2008, opening up the opportunity for Liechtenstein to also plan for the introduction of a **new Liechtenstein Immigration Law** which will replace the Law on Residency and Settlement of Foreign Nationals (ANAG) which also previously applied in Liechtenstein on the basis of the immigration agreement with Switzerland dated 1963. The draft for a Liechtenstein Immigration Law was approved by the Liechtenstein Government by mid February 2008 and is expected to be debated in 2008 in the Liechtenstein Par-

liament, the Landtag. The new Act is intended to replace the above-mentioned rules for nationals of third party countries, previously regulated in the PVO and the ANAG and to regulate these in a separate Act. Accordingly, the Immigration Law will apply **only to nationals of third party countries** whilst the provisions of the PVO, in implementation of the EEA Treaty, will continue to apply to EEA nationals and the provisions of the PVO based on the Vaduz Convention will continue to apply for Swiss nationals.

The cornerstones of the proposed new Immigration Law, which will closely follow the lines of the Swiss model, are formed by the motto "challenge and encourage". Challenge means that basic knowledge of the German language and integration into Liechtenstein's society will be required. Encourage means that the state will offer assistance so that foreigners can fulfil these conditions. With the introduction of the new Immigration Law Liechtenstein is keeping to



the basic principle of restricted immigration and the stringent requirements for immigration as a result of its small size. For foreigners emigrating from countries with different languages acquiring a knowledge of the German language is seen as the key to integration. In future, all immigrants with the exception of Swiss and EEA nationals, are to be required to enter into an integration agreement. By entering into this agreement nationals of third party countries are giving a commitment to engage in Liechtenstein society and in particular to learn spoken and written German. The level of language knowledge required, which can already be acquired with financial support from the state, is geared towards the European language portfolio. In addition, the new Immigration Law is intended to focus on combating abuse. The Law will help to combat immigration law being circumvent-

ed and abused, in particular there are plans to apply tough measures to prevent bogus and forced marriages.

## **12. Further Literature**

- Frick, Roger / Zwiefelhofer, Thomas; Company management in commerce and the services industry in the Principality of Liechtenstein, Chapter 31: Free movement of capital, services and people, Vaduz 2008 (ATU's own publishing company) – in German
- Wanger, Ralph; Liechtenstein Citizenship, Diss. Zurich, Vaduz 1997 (author's own publishing company) – in German
- Simon, Silvia; Determinants of the shortage of personnel resources, developments in the Principality of Liechtenstein, Liechtenstein Institute, articles 38.2007, BERN 2007 – in German

## **Links**

- [www.liechtenstein.li](http://www.liechtenstein.li)  
(official homepage of the Principality of Liechtenstein)
- [www.llv.li/llv-apa-home.htm](http://www.llv.li/llv-apa-home.htm)  
(homepage of the Liechtenstein Immigration and Passport Department)
- [www.avw.llv.li](http://www.avw.llv.li)  
(homepage of the Department for the Economy)
- [www.gesetze.li](http://www.gesetze.li)  
(official online list of all Liechtenstein legal decrees)

For further information, please do not hesitate to contact your client advisor at Allgemeines Treuunternehmen. You may also contact us by email: [info@atu.li](mailto:info@atu.li).

## **FRANCE AND THE 3% “PENALTY TAX” ON FRENCH PROPERTIES, HELD BY FOREIGN COMPANIES**

For years, Liechtenstein companies in France have had the disadvantage of having to pay a 3% tax under Art. 990D to G of the “Code Général des Impôts” if they hold property in France either directly or indirectly.

This 3% tax does not have to be paid if

a) the “registered office” of the company is located in a country which has a legal assistance clause in its DTA with France (for example the Irish Republic, Spain, Holland). In these cases the company must submit an annual declaration no. 2746 to the French authorities by no later than 15 May of each year, stating the name of the shareholder, details of his/her address and a list of the real estate owned by the company in France;

b) the “registered office” of the company is located in a country which

has a “non-discrimination” clause in its DTA with France (e.g. Thailand, Spain, Holland). In these cases the company must promise to provide the French authorities with declaration no. 2746 within two months of purchasing the property, stating all information on the property and the latest beneficial owner;

c) there are two other cases which are not listed here.

Since Liechtenstein does not fulfil these conditions the 3% tax has to be calculated annually and automatically on the market value of the real estate using Form 2746 and the tax then paid.

The European Court of Justice (ECJ) now has the opportunity, on the basis of a 1929 Luxembourg holding company, to rule whether this flat rate impact of the legal provision is in breach of the law on the freedom of movement of

capital. As a member of the EEA (European Economic Area) Liechtenstein is entitled to invoke this freedom.

In its ruling dated 11.10.2007 the ECJ decided (see - 451/05 - 4th Chamber) that this general provision is in breach of the freedom of the movement of capital. It established that France could have achieved the same objective of combating tax avoidance and tax fraud with less stringent impositions, by those companies being able to demonstrate that their objective was not to perpetrate tax fraud. The company should be given the opportunity to put its case to the French tax authorities insofar as there is no direct cooperation between the tax administrations.

This ruling is undoubtedly of interest to Liechtenstein. For example, the collaboration could be structured in such a way that the details of the natural per-

son who is the ultimate economic beneficiary of the structure and/or makes the majority use of the property, is specified on Form 2746. This more or less complies with a request for comprehensive information, which should mean the requirements being met.

The hope is that the ECJ will also shortly be able to issue a ruling for Spain because the new statutory requirements which have been in force in

Spain since 1 January 2007 are indiscriminate in providing a financial barrier to Liechtenstein companies owning Spanish real estate and puts them at significant disadvantage compared with other taxpayers.

Should you require any further information, please do not hesitate to contact the author of this article, Mr. Roger Frick, at Allgemeines Treuunternehmen.

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