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Developments in the Liechtenstein financial centre

When reporting on current developments in the Liechtenstein financial centre, the topic probably at the very top of the list is the impact that the war in Ukraine is having on the banking and trust business in Liechtenstein. On this subject, suffice to say: The Liechtenstein government implements EU sanctions consistently. As many questions have arisen within the banking and trust sector in respect of application of the Regulation on measures related to the situation in Ukraine, the Financial Intelligence Unit (FIU) has published a list of FAQs and a factsheet on its website, to which reference is made (www.llv.li). Instead, the present report will be focusing on a more upbeat topic, namely Liechtenstein's performance on the occasion of the fifth audit of Liechtenstein conducted by MONEYVAL. In a further section, new developments in Liechtenstein's international tax law will be discussed.

MONEYVAL

Liechtenstein has played an active part in the fight against money laundering and terrorism financing for decades. Since 1999, Liechtenstein has been a member of MONEYVAL, a specialist committee of the Council of Europe. MONEYVAL has 35 member states and is based at the Council of Europe in Strasbourg. MONEYVAL regularly reviews national regulations pertaining to implementation of the 40 FATF Recommendations and assesses the effectiveness of national systems to combat money laundering and terrorism financing. The aim of its work is in particular to make the FATF standards applicable in countries that are members of the Council of Europe but not FATF members. Liechtenstein has been a member of the Council of Europe since 1978. Unlike Switzerland, though, Liechtenstein is not one of the 39 FATF member states.

On 29 June 2022, MONEYVAL published its fifth country report on Liechtenstein. Compared with other countries previously audited, Liechtenstein performed very well. The panel produced a comprehensive report following in-depth interviews with senior public sector representatives and executives of financial services companies. The MONEYVAL Country Training was conducted in Liechtenstein on 31 August and 1 September 2020. The evaluation and interviews took place in Liechtenstein between 6 and 17 September 2021. ATU was one of the companies that was interviewed. A central aspect of the MONEYVAL audit was the effective implementation of statutory regulations ("effectiveness"). The audit therefore examined whether Liechtenstein

has an effective system in place for combating money laundering and terrorism financing. In respect of statutory regulations concerning the prevention of money laundering and terrorism financing, Liechtenstein is rated as “compliant” or “largely compliant” for 37 out of 40 recommendations. Here, Liechtenstein scored above average in five of the eleven topics addressed, specifically risk understanding, policy and cooperation, international cooperation, financial intelligence, seizure and prosecution in terrorism financing investigations. MONEYVAL highlighted, for example, the broadly sound understanding of money laundering and terrorism financing risks within Liechtenstein as well as the effective cooperation between the various parties involved and the quality of the FIU’s analytical activities. By the same token, the supervisory system of the Financial Market Authority (FMA) was judged to be fit for purpose and the processes applied to be efficient. Similarly, the private sector was found to have a well-developed understanding of risk and an overall robust quality of preventative measures.

The significance of Liechtenstein’s very good result becomes apparent when the consequences of failing (“low level of effectiveness”) are pointed out. If a country does not pass the assessment, it is referred directly to the FATF or its sub-organisation (the International Co-operation Review Group). After one year, the respective country will then be audited once again, when (even) more stringent standards will be applied. If the country again fails the re-audit, it will be put on a “grey list” and will have to implement an action plan. If a country is placed on the “grey list”, this can have negative political and economic consequences. For example, the relationship between banks and their correspondence banks could be strained.

Against this backdrop, Liechtenstein can certainly look with pleasure and pride upon its very good result in the fifth audit by MONEYVAL.

Changes in Liechtenstein in the field of international tax law

DTA policy

DTA with the Republic of Lithuania

The DTA between the Republic of Lithuania and the Principality of Liechtenstein came into force on 1 January 2021. The DTA is based on the OECD Model Tax Convention and incorporates the results of the BEPS project of the OECD¹ and G20 states that was published in October 2015. For example, the preamble of the DTA stipulates that the agreement is to exclude double taxation in the field of taxes on income and assets, but is not designed to provide opportunities for non-taxation or low taxation through tax evasion or tax avoidance. Likewise, *Art. 29 Entitlement to Treaty Benefits* of the DTA reiterates that the benefits of the agreement will not be granted if one of the main purposes of the relevant arrangement or transaction was to obtain the DTA benefit and this is inconsistent with the object and purpose of the DTA.

DTA with the Kingdom of the Netherlands

The DTA between the Kingdom of the Netherlands and the Principality of Liechtenstein became applicable on 1 January 2022. It adheres – in an identical manner to the DTA with the Republic of Lithuania – to the OECD Model Tax Convention, and likewise implements the results of the BEPS project.

¹ BEPS (base erosion and profit shifting) aims to reduce unfair tax competition between states, while minimising aggressive tax planning.

Reimbursement of withholding tax

Switzerland

Reimbursement of withholding tax is proceeding according to plan and is possible without any difficulty – provided that all the relevant criteria are met. The reimbursement is handled by a separate specialist department within ATU.

It is worth mentioning that the Swiss Federal Tax Administration examines the domicile of the Liechtenstein structure closely on the basis of the articles and by-laws. Components such as proper taxation of the structure and, in the case of foundations, their comprehensively discretionary organisation² are essential for successful reimbursement.

Germany

Reimbursement documentation criteria pertaining to German withholding tax have become more stringent. In the case of all outstanding applications (e.g. applications concerning 2014 and 2015, submitted in 2018), extensive documentation is requested for assessment by Germany's Federal Central Tax Office in order to prevent tax avoidance, within the context of the increased obligation to cooperate. When it comes to foundations, in addition to the articles and by-laws, the supplementary documents that are also demanded are organisational charts, a list of all payments made to the foundation during the respective year and the recipients thereof (including details of their place of residence).

If you require any further information, please do not hesitate to contact the authors of this article, Dr. iur. HSG Peter Prast and Dr. iur. HSG Jürg P. Brinkmann.

Yours sincerely,

Allgemeines Treuunternehmen

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² No right of revocation or amendment on the part of the founder, no right to issue instructions to the foundation council by the founder or a person close to him, no legal entitlement to benefits from the foundation for beneficiaries.