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## Transfer of domicile or residence to the Principality of Liechtenstein

Both natural and legal persons may take up residence or domicile in Liechtenstein. In this, one must differentiate between the quite liberal rules governing the transfer of a legal person's domicile to Liechtenstein and the rather restrictive rules concerning the movement of natural persons.

As a general rule, a foreign legal person may choose to be domiciled in Liechtenstein on the basis of the liberal legislation in Liechtenstein. This requires approval from the Office of Justice and registration in the Commercial Register. It is thus possible to transfer a legal person's domicile to Liechtenstein without having to dissolve it in the home country and re-establish in Liechtenstein. The individual aspects to be observed by legal persons have been noted in guidelines<sup>1</sup>. Apart from legal persons, trusts, too, may carry out a "quasi"-redomiciliation to Liechtenstein, by exchanging their trustees and, if required, by amending their provisions on the governing law.

With a surface area of only 160 km<sup>2</sup>, Liechtenstein is the fourth smallest state in Europe and is located between Switzerland and Austria at the centre of the European Alpine arc. Liechtenstein is the sixth smallest state worldwide. What does a country as small as that have to offer? A lot, as you can see from the overview on page 4.

### Tax aspects of a redomiciliation to Liechtenstein

With the introduction of the new Tax Act (*Steuergesetz*) (1.1.2011), Liechtenstein recognised in good time that implementing international standards constitutes a competitive advantage with corresponding customer benefits.

In addition to FATCA and CRS, which are well-known, the OECD presented the BEPS ("Base Erosion and Profit Shifting") package of measures with 15 action points in 2013. As a result of action point 12, the EU issued the DAC6 Directive in 2018, which provides for reporting duties for potentially aggressive tax planning in EU cross-border matters. Since 2017, the EU has also increased its pressure on third countries by way of a blacklist and a grey list. Liechtenstein reacted accordingly, and introduced suitable anti-abuse provisions (concerning the exemption from taxation of profits and income from investment) as at the 2019 tax year.

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<sup>1</sup> <https://www.llv.li/files/onlineschalter/Dokument-90.pdf>

To prevent blacklisting, offshore centres with low or non-existing taxation such as the Bahamas, Bermuda, Cayman Islands, Guernsey, Isle of Man, and Jersey also had to introduce suitable substance requirements. If sufficient substance cannot be proven, these offshore companies face fines, an extended exchange of information, or even deletion.

One option to avoid these restrictions / stricter regulatory requirements under tax law with offshore jurisdictions is to transfer the domicile of the company in question to Liechtenstein.

### *Liechtenstein anti-abuse provisions – offshore substance requirements*

As has already been indicated, Liechtenstein had to adjust the Tax Act as a result of pressure from the EU. This is why Liechtenstein introduced what is called anti-abuse provisions. After a transitional period of three years, these will also be applicable to existing structures from 2022. So far, dividends and capital gains have not been subject to taxation (regardless of the amount and duration of shareholding). Now, however, if for example a Liechtenstein foundation receives a dividend from a foreign legal person, this dividend / these capital gains can be taxed with 12.5% if the relevant requirements of the anti-abuse provisions are met. This is invariably the case if the majority of the total income from the shareholding continuously consists of passive income (interest, licenses etc. in particular) and the net profits are subject to low taxation (generally, less than 6.25%). Such low taxation generally applies to all classic offshore companies.

Since these anti-abuse provisions only apply to foreign companies (or structures), there would be no taxation of dividends or capital gains if the offshore company were to transfer its domicile as per its articles of association or its head office to Liechtenstein this year. Typically, this would mean that the Liechtenstein company would subsequently only be subject to the minimum income tax of 1,800 Swiss francs, since dividends and capital gains remain untaxed, and since other income (such as interest, in particular) is not subject to taxation as a result of the notional interest deduction of up to 4%.

If one cannot or does not want to meet the above-mentioned substance requirements (such as staff, infrastructure, etc.) in the offshore jurisdictions, transferring the company's domicile to Liechtenstein may also present itself as a good alternative. The tax situation described below starts from the assumption that the legal domicile (and not just the head office) has been transferred to Liechtenstein.

### *Profit tax*

Generally, it can be noted that in order to become subject to unlimited taxation in Liechtenstein, it is only required to transfer either the domicile as per the articles of association or the head office (i.e. the place of effective management) to Liechtenstein. Ideally, both domicile and head office are transferred to Liechtenstein in order to prevent a possible double taxation (which is probably not applicable as a result of offshore null-taxation) or the application of other legal or tax provisions in the offshore jurisdiction.

When the domicile is transferred, the assets are generally considered to have been acquired at market prices at arm's length. Therefore, a corresponding step-up is possible in the sense of tax law. Accordingly, only appreciations obtained in Liechtenstein will be subject to taxation afterwards and/or there are suitable options for depreciation. In order to be able to suitably meet the relevant requirements, it is recommended to obtain

a tax ruling from the Liechtenstein Fiscal Authority when transferring the domicile from an offshore jurisdiction.

#### *Other taxes*

Generally, the transfer of domicile to Liechtenstein is neither subject to stamp duty nor to the Liechtenstein-specific formation duty. Of course, the tax evasion rule applies as it always does. It should be mentioned here only in passing that there is currently a discussion on the abolition of stamp duties on equity.

The transfer of domicile itself does not lead to any securities turnover tax implications. However, the Liechtenstein company may itself become a securities trader if its assets consist of taxable documents in an amount exceeding 10 million Swiss francs.

Also, the transfer of domicile generally does not lead to direct value added tax implications; however, upon becoming domiciled in Liechtenstein, the company will become subject to the corresponding value added tax provisions (such as service import tax on the receipt of certain services from abroad).

#### *Private asset structure (PVS) and Liechtenstein trust*

If one wants to keep the foreign domicile in the offshore jurisdiction and avoid the risk of becoming subject to the anti-abuse provisions, structuring as a PVS or the use of a Trust offer appropriate alternatives in Liechtenstein. Both the PVS and the trust are always subject to the minimum income tax of 1,800 Swiss francs p.a. only. Note however that the PVS is subject to strict rules: for example, it must not carry out any business activities. Among other things, a PVS must not grant loans (for or without interest) to affiliate or sister companies. These would therefore have to be eliminated beforehand. As a matter of principle, the foundation / its beneficiaries must not exert any influence on the management of affiliates, except where the affiliate qualifies as a PVS itself. For the PVS status to be effective from 2022, it would have to be applied for within this year.

Liechtenstein will meet the international requirements described above also in the future and offers an excellent alternative due to strong advantages in location. The country is in regular and close connection with the EU and the OECD and implements their requirements with suitable focus.

By moving the domicile of a legal person to Liechtenstein in the context of onshoring, the challenges described above can be met efficiently; making this change ensures an attractive business location, which meets the specific Liechtenstein requirements.

#### **Aspects of moving personal residence to Liechtenstein**

In addition to being an attractive business location, Liechtenstein is also a popular place to live and work. The reasons for this are the high quality of life, comparatively low taxation, and good job opportunities for skilled employees. Despite the country's membership to the EEA, taking residence in Liechtenstein is handled in a restrictive manner and is possible only if quite specific requirements are met. When granting residence permits, Liechtenstein distinguishes between residence for gainful employment and residence without gainful employ-

ment. Residence permits are granted by the Migration and Passport Office or the Government. Whether the requirements are met by the person wanting to take residence in Liechtenstein must be checked on an individual basis.

Just like Switzerland, Liechtenstein also uses lump-sum taxation / taxation based on living expenses. Structured in a similarly attractive way as in Switzerland, this system offers an option that optimally meets the requirements of persons without gainful employment (in Liechtenstein) who want to take residence there.

### What does Liechtenstein have to offer, being one of the six smallest countries in the world?

#### Liechtenstein is a highly diversified business location with a stable industrial and financial sector

- Customs union with Switzerland, Swiss franc as currency (since 1923)
- Open market access to all EU and EEA countries (EEA member since 1995)
- Stable social, legal, and economic system

#### The Liechtenstein financial centre is professional, innovative, and internationally recognised

- Almost 100 years of experience in foundation and trust law, high level of competence in services
- Strict compliance with all common international regulatory provisions
- Innovative solutions: fund legislation (AIFM), Blockchain Act (since 1.1.2020)

#### Liechtenstein focuses on stability and legal certainty

- Political continuity and stability (not least due to the Princely House)
- No national debt (not even during the Corona pandemic) and regular AAA country rating by Moody's and Standard & Poor's
- Liberal and flexible company law and modern EU/OECD-compliant tax law
- Implementation of the 5<sup>th</sup> Anti Money Laundering Directive, Register of Beneficial Owners
- "Early adopter" of the automatic exchange of information (AEOI) as well as FATCA participation
- More than 20 double taxation agreements

#### Wealth preservation with Liechtenstein foundations and trusts

- Favourable civil law system and short time-limits for contestation and limitation
- As a matter of principle, foreign judgments are not enforced in Liechtenstein (not a member state of the Lugano Convention)
- Protection and preservation of confidentiality

We hope this information has provided you with a general overview about a transfer of domicile or residence to the Principality of Liechtenstein. For further information, please contact the authors of this article, Kirsten Foser or Dr. Jürg Brinkmann, or your client advisor.

Yours sincerely,

**Allgemeines Treuunternehmen**

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