

Interview with Roger Frick – Magazine Corporate International, June 2012

Allgemeines Treuunternehmen (ATU) is one of Liechtenstein’s first and leading trust companies. For more than 80 years, the firm has provided clients with support related to regional and international trust and corporate services. Today, ATU develops tailored solutions, drawing upon its consultation expertise and wealth of experience.

The firm’s advisory services focus on structuring, protection and investment of assets, as well as on inheritance and succession planning for natural and legal persons. While the firm’s headquarters are based in the Principality of Liechtenstein, it has subsidiaries and offices all around the world, providing a comprehensive network of international experts.

Roger Frick is a Swiss certified public accountant, as well as president of the Liechtenstein Association of Professional Trustees and a member of the Board of Trustees and Executive Committee at ATU. Mr Frick notes that as an international trust company, ATU offers solutions that take into account myriad possibilities in terms of location and jurisdiction.

“Our clients normally live outside of Liechtenstein,” he said. “Therefore, our advisers are obligated to consider diverse legal systems before we offer solutions. An example may be that a client wishes to buy a house in France, and seeks advice regarding his or her inheritance rights.

“This may mean for the client that buying a house in his or her name does not provide the desired outcomes. The differences between a corporation and a French Société Civile Immobilière (SCI), which is a rather specialist type of French company (société) that is constituted for the ownership and management of property, must be discussed. These differences may include tax issues and reporting requirements. Therefore, it is very important to listen to the client’s ideas when assessing expectations and possible solutions.”

Mr Frick added: “Also, we do have to educate clients. Who could expect a note that the bylaws simply by drawing a distinction between fixed defined beneficial rights and an open class of beneficial rights have an immediate effect on double tax treaties in certain countries? And that the forms completed by banks on the basis of by-laws trigger different tax consequences as well? However, this is indeed the case.”

A comprehensive approach

ATU's company formation offering may include: asset structuring, financial planning and asset protection; family office services; estate planning and corporate succession; international tax advice and tax planning; legal advice; trusts, foundations and companies; handling international trade business; bank facility recommendation; investment funds and insurance business; bookkeeping and financial reporting; change of residency/domicile; as well as the Liechtenstein Disclosure Facility (LDF – a bespoke service to support the reviews carried out by the financial intermediaries in Liechtenstein to identify those who may have liability to UK tax).

The firm is currently home to around 100 employees, and maintains its far-reaching network of cooperation in order to ensure it can retain a competitive edge.

Mr Frick said: "People who come to us have high expectations regarding professionalism and accountability, and they want to see those expectations fulfilled. We are reasonable enough to know that sometimes not all expectations can be met, and mitigation between different objects must be undertaken. We accompany the client during a long-lasting process, and are well-versed in problem solving pertaining to trust solutions."

Cross-border cooperation

In recent years, the company formation environment in Liechtenstein has undergone a major shift where cross-border activity is concerned. Cooperation between different authorities has become increasingly regulated and this can exact its effects on the country's attractiveness for foreign investors in different ways.

Mr Frick said: "Cross-border activity means that you have to consider the legal environment of your own domicile more and more, yet this was not the case five years ago. ATU is able to assist throughout this process. An informed decision can then be made regarding the right jurisdiction for the company formation."

Further still, the corporate tax regime in Liechtenstein underwent major changes as of the 1st of January 2011. For example, the country no longer draws a difference between onshore and offshore activity, bringing its tax laws in line with expectations associated with the European Union. Capital gains on shares and dividends are not taxed; meanwhile, interest margin is taxed if the interest is above 4%. Trading and service income is ordinarily taxed with 12.5%, although a branch approach might mitigate local tax effects.

Companies holding foreign real estates are not taxed in Liechtenstein. The country will have two important double tax treaties as from 1.1.2013 onwards one with Germany, and one with the UK.

Meanwhile, trusts always pay a nominal duty of CHF 1'200.00, and are not submitted to a corporate tax. Mr Frick added: "The tax law ensure that foundations become more beneficial for internationally domiciled families, as it becomes clearer how the foundations are treated, for example in Germany, the UK, and with respect of the future EU savings tax directive or a possible special tax treaty between Germany and Switzerland.

"Also, the new AIFM regulations the Alternative Investment Fund Manager Directive of the European Union will need supporting double tax treaties in order to ensure that the services can continue being offered to clients residing / being domiciled i the European Union.

"So the advantages for foreign investors are increasing all th time investors just need to be mindful of the changes that ar happening. International company formation work always implies the consideration of foreign legal and tax environment. Controlled Foreign Company regulations must be considered. So must contrary inheritance laws, restrictions on the pur-chase of real estates, reporting requirements for trusts and foundations, as well as provisions on goods being purchased and sold."

Changes to regulation

Regulations continue to change, faster than ever before. "Every few months, there is some-thing new coming up, and this affects our corporate services work," said Mr Frick. "Examples are: the bearer share regime to be amended, the Financial Action Task Force (FATF) proposals in February 2012 and related changes to the EU money laundering directive, further tax treaties with various jurisdictions, as well the Peer Review Report of the OECD and subsequent accounting adjustments to our corporate and trust law."

In February 2012, Liechtenstein and the UK initiated a Double Taxation Agreement (DTA) in Vaduz, and also extended operation of the sole disclosure programme currently in place, the Liechtenstein Disclosure Facility (LDF), by a further year up to 2016. Mr Frick noted: "The prolongation of the LDF, combined with a comprehensive treaty signed in London in June, will enable us to become a better regulated and respected country within the EU, and a stronger partner with the UK. These measures also intend to lead the way for additional treaties within the European Economic Area (EEA).

"However, these actions alone are, of course, not sufficient to guarantee success. We have to identify niches within this and other regulations, and work out where and why we are different and this must be demonstrated to our prospective new clients. This is something that is very much an ongoing objective." Clients from the EU face further regulation in the form of the implementation of level 2 of the AIFM directive, which must be integrated into the laws of all EEA members including Liechtenstein.

The road ahead

Mr Frick added: "Liechtenstein is working on the implementation of these aforementioned directives and ordinances; yet, this is only one side of the coin. The flipside is to contact asset managers and hedge fund managers, and to market Liechtenstein as a fund jurisdiction to rival Luxembourg and Malta. There is a lot of work ahead of us in the coming months.

"Meanwhile, the volume of ATU's company formation work will likely be less significant in 2012 than was the case in 2011. What is happening in Liechtenstein is a migration away from the concept of mass business, to a tailor-made style of company formation work instead. Inherent in this new style will be an increased emphasis on consultation as well as due diligence when assessing options. Here, ATU is in a very strong position to fulfil its clients' expectations."

Liechtenstein's corporate tax regime contains the following provisions:

- Corporate income tax rate with a flat tax rate of 12.5 %;
- No withholding tax;
- No capital tax on equity;
- A minimum corporate income tax of CHF 1'200. In the case of taxpayers conducting commercial business, but whose average balance sheet total over the last three years did not exceed CHF 500'000, this minimum tax is not levied;
- Exemption of income tax on dividends, capital gains and liquidation proceeds on participations;
- A regime of private asset structure is in place (confirmed by the European Free Trade Association Surveillance Authority), which is available for managing the private assets of individuals through a corporate structure;
- Domiciliary and holding status which exempts entities operating without business ties to the domestic market from payment of corporate income tax is not in place (no ring-fencing);
- Various other features are in place ensuring increased tax neutrality of business actions, such as replacement purchases, corporate restructurings, notional interest deduction, deduction for income from intellectual property rights, unlimited loss carry forward, group taxation, etc.

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