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Amendment of the Automatic Exchange of Information in Tax Matters Act (AEOIA Act)

Starting situation

In conjunction with the ongoing peer review procedure of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), checks are being conducted to ascertain whether the legal implementation of the AEOIA Act in Liechtenstein complies with CRS requirements and whether CRS requirements have been effectively implemented in practice. Once this "Comprehensive Review" has been completed, a corresponding country rating is set to be compiled in 2022.

Voluntary classification as a financial institution (opt-in)

Provision was made for the opt-in in order to enable passive NFE (non-financial entities) to assume responsibility themselves for correct AEOIA reports. By using the opt-in, a Liechtenstein passive NFE qualifies as a reporting Liechtenstein financial institution.

In 2017, however, the Global Forum already recommended amending the provision of the opt-in to meet the requirements of the CRS, as this provision is not provided for in the CRS.

In order to strengthen the compliance framework, Liechtenstein has for this reason decided to abolish the opt-in with effect from 1 January 2021 and for a transitional period until 31 December 2021.

Retention of status as financial institution

A financial institution or investment company is deemed to be a legal entity

- that is managed by another legal entity that qualifies as a financial institution (e.g. an investment company) (so-called managed-by-test), and
- whose gross income is at least 50% attributable to the investment or reinvestment of financial assets or trade in such assets (gross income test).

The managed by test is deemed to be met if a financial institution actually manages the assets of a legal entity (or parts thereof) at its discretion. The managing financial institution may, on the one hand, be a member of the managing body of the legal entity. On the other hand, the assets of a legal entity may alternatively be managed by a bank or by an external asset manager (that qualifies as a financial institution) at its discretion, meaning that here too the managed-by test would be fulfilled.

Example: The foundation board of a Liechtenstein foundation consists of two natural persons. In this case, management of the assets of the foundation by a financial institution is not established (no financial institution as management body). The managed-by test is not fulfilled in respect of the management of the assets by the members of the Executive Body. By appointing a financial institution to the foundation board, the managed-by test and thus the qualification of the foundation as an investment company can be ensured. Alternatively, the managed-by test can also be fulfilled on the basis of an asset management mandate with a bank or an external asset manager.

Despite the abolition of the opt-in, most Liechtenstein legal entities can consequently continue to qualify as financial institutions by implementing the above conditions and thereby fulfilling the AIA reporting obligations themselves.

We hope this general information has provided you with an initial overview of the new provisions. For further information, please contact the author of this article, Dr Jürg Brinkmann, or your client advisor.

Yours sincerely,

Allgemeines Treuunternehmen