ATU Info 05 I December 2020

Allgemeines Treuunternehmen
seit 1929

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DTA Liechtenstein – the Netherlands: New opportunities within the context of Liechtenstein asset structuring

On 3 June 2020, Liechtenstein (FL) and the Netherlands (NL) signed a double taxation agreement (DTA). This was drafted on the basis of the 2014 OECD-MTC (model tax convention) and encompasses the current minimum BEPS standards of the 2017 OECD-MTC. The agreement is set to come into force on 1 January 2022.

The DTA covers all structures that are treated as legal entities for tax purposes. Companies limited by shares ("AG"), limited liability companies ("GmbH") as well as foundations ("Stiftung"), establishments ("Anstalt") and trust enterprises ("Trust Reg.") are considered domiciled and consequently entitled to exercise the agreement within the meaning of the DTA, subject to ordinary taxation and rules on abuse.

This broad acceptance of Liechtenstein structures in the DTA is essential for successful asset protection and once again underscores the benefits presented by Liechtenstein as a financial and holding location. Long-term legal certainty in matters of asset structuring and cross-border tax planning for companies is therefore guaranteed. In addition to the classic Liechtenstein company limited by shares or the Liechtenstein company with limited liability, this consequently means the Liechtenstein foundation also constitutes an outstanding holding structure. Its discretionary form – due to its long-standing history[1] and the concomitant numerous Liechtenstein case law rulings[2] – make it an ideal vehicle for effective succession planning.

A further benefit of the FL – NL DTA is the fact that dividend payments can be distributed by Dutch companies[3] to Liechtenstein structures at a zero rate of tax. In Liechtenstein, such dividends are essentially tax-exempt, and can be transferred to the respective beneficial owners without incurring Liechtenstein withholding tax. Interest payments and licence payments are also fundamentally exempted from withholding tax.

[1] Liechtenstein foundation law has been in place since 1926.
[2] In the event of legal disputes with Liechtenstein structures, it is fundamentally the case that the place of jurisdiction is Liechtenstein. Non-domestic judgements are neither recognised nor executed, as Liechtenstein is not a party to the Lugano Convention.
[3] Minimum 10% shareholding over a period of at least 365 days and no abusive structuring.

Holding vehicles of this nature, in their usual form under the CRS, are considered active "non-financial entities", as they are linked to the economic performance of active companies. This also offers framework advantages within the context of succession planning for families who operate internationally.

In view of the expected abuse rules that the Netherlands are set to introduce, effective planning is important to avoid unwelcome surprises. A good partnership in international equity financing explores such issues and works with families to identify what is and what is not feasible. Furthermore, Liechtenstein's proximity to and integration in the Swiss economic area offers good conditions for families to relocate and thus generate capital assets. The following are set to be important parameters that will be key to the long-term effectiveness of the FL-NL DTA:

i) It is essentially the case that dividend payments from the Netherlands to Liechtenstein are not subject to withholding taxes. Nevertheless, it is possible that they may be levied if abuse provisions are applied. This may be the case if the parent company in Liechtenstein or in the Netherlands (if this is an intermediate holding company) has no other assets or active management functions. It is therefore advisable to rent a "family office" with premises, to hire staff and make other investments over time. A salary volume in the region of EUR 100,000.00 per annum will certainly be seen as a great security.

ii) It is essentially the case that interest payments from the Netherlands to Liechtenstein are exempted from withholding tax and are deductible for the Dutch company. However, as in the case of previous structures through Curaçao, the Dutch company may not be able to deduct interest payments as a tax expense, unless the loan was granted for business reasons.

iii) It is essentially the case that no capital gains tax is payable in the Netherlands on the sale of Dutch shares at the expense of the parent company in Liechtenstein. This situation may change, however, if a shareholding structure is considered abusive, e.g. if the potential beneficiaries of a Liechtenstein foundation do not live in a country that has concluded a DTA with the Netherlands and the Liechtenstein parent effectively serves as a throughput structure for the owners. The correct discretionary structure of a foundation therefore also plays a key role.

The main purpose of asset structuring from Liechtenstein is not to optimise taxes, but instead serves the reasonable long-term preservation of the original entrepreneurship, the preservation of the economic performance of the target investment. Holding structures need to be managed and developed separately from specific family interests. Liechtenstein, with its political and economic stability, offers an ideal environment for this, enabling a holding structure to be set up for objective reasons.

For further information please contact the authors of this article or your client advisor.

Yours sincerely,

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