

Changes in Liechtenstein tax practice

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Summary:

- Increase in minimum corporate income tax from CHF 1,200 to CHF 1,800
- 12% withholding tax on all board member fees, regardless of the invoicing method (exception: fees paid by PASs to Swiss board members as of 1 January 2017)
- New DTAs with Czech Republic, Hungary and Switzerland
- Partial extension of Tax Agreement between Liechtenstein and Austria
- Introduction of BEPS minimum standards

Increase in minimum corporate income tax

As of 1 January 2017 the minimum corporate income tax will be **CHF 1,800**. The minimum corporate income tax is payable as part of the tax assessment process. Taxpaying entities which are not subject to assessment must pay it for the year in advance. Legal entities with unlimited or limited tax liability are subject to a minimum corporate income tax which is payable regardless of the duration of that tax liability in the relevant fiscal year. The full minimum amount is allowable against corporate income tax.

Withholding tax on board member fees

a) General

Previously, the 12% withholding tax on board member fees was applicable only to payments made by Liechtenstein legal entities to private individuals. From 2017 the 12% withholding tax will likewise be applicable to payments of board member fees made to legal entities. The withholding tax must be passed on to the Liechtenstein tax administration every six months.

b) With regard to foreign recipients

The blanket 12% withholding tax on board member fees also applies to recipients resident or domiciled abroad. If under the provisions of an agreement on the prevention of double taxation (double taxation agreement, DTA) the right to tax such board member fees rests exclusively with the authorities of the foreign country of residence/domicile, on request, the Liechtenstein tax administration will confirm that the payment creditor is exempt. In this case the legal entity (i.e. the withholding tax agent) is allowed to dispense with the tax deduction.

c) With regard to Switzerland

The DTA between Liechtenstein and Switzerland will enter into force on 1 January 2017. Under the terms of this DTA Liechtenstein retains the right to levy withholding tax on board member fees paid to Swiss taxpayers. In Switzerland board member fees are exempt from tax, subject to the progression clause. There is one exception to this general rule.

If the Liechtenstein entity has PAS status, Switzerland has the exclusive right to tax board member fees. Pursuant to the protocol to the DTA, the PAS is deemed to be non-resident and transparent for the purposes of granting benefits under the DTA. As things stand, in practice the formalities of withholding tax deduction and tax rebate with withholding tax confirmation are dispensed with, since the board member fees are taxed solely in Switzerland.

New DTAs with Czech Republic, Hungary and Switzerland

The new DTAs with the Czech Republic and Hungary entered into force on 1 January 2016. These wide-ranging DTAs are in line with the current OECD standard. All legal entities subject to ordinary taxation in Liechtenstein have access to the DTA benefits. In particular, discretionary entities (such as foundations, establishments and registered trust companies) are also deemed to be resident and may claim benefits under the DTAs. For example, a Liechtenstein holding company or discretionary family foundation which holds and manages qualifying corporate holdings in the Czech Republic and Hungary is fully exempted from withholding tax on dividends in accordance with the standard laid down in the EU parent-subsidiary directive.

The new DTA between Liechtenstein and Switzerland will enter into force on 1 January 2017. Here, too, the DTA benefits are available to discretionary asset structures, entities subject to ordinary taxation and tax-exempt charitable foundations. This means that such asset structures can reclaim some or all of the withholding tax they pay on financial income, such as dividends and interest payments. Liechtenstein legal entities with PAS status and trusts count as non-resident.

Tax Agreement between Liechtenstein and Austria

Only some elements of the tax agreement between Liechtenstein and Austria signed on 29 January 2013 have been replaced by the rules on automatic exchange of information (AEOI) soon to be adopted in Liechtenstein. Whereas banking relationships with private individuals will be subject to AEOI in future, Liechtenstein

foundations, establishments and trust companies with foundation-like structures will continue to enjoy access to the benefits of the Tax Agreement.

Because some of the provisions will remain in force, transparent foundations established prior to 1 January 2017 can continue to avail themselves of the possibility of settling income tax liabilities anonymously, with the at-source deduction normally being made, as before, by the Liechtenstein bank's appointed paying agent. This privilege for transparent foundations will no longer apply to foundations established after 31 December 2016.

By contrast, non-transparent foundations, whether they already exist or are established after 31 December 2016, will continue to be protected by the Tax Agreement. Once the foundation entrance tax has been paid, the foundation's income will remain separate from the founder and beneficiaries and not subject to any reporting duty to the Austrian authorities. Even in the case of recurring or final distributions to beneficiaries, non-transparent foundations will in future remain entitled to settle income tax liabilities anonymously.

Introduction of BEPS minimum standards

The OECD and the G20 countries have adopted a joint action plan against base erosion and profit shifting (BEPS) by multinational companies. The measures involved include both minimum standards and changes to existing international standards by way of recommendations ("best practices"). Liechtenstein plans to adopt the BEPS minimum standard with effect from 1 January 2017, i.e.:

- country-by-country reporting;
- OECD-conform taxation of intellectual property (IP box regime);

- spontaneous exchange of information on tax rulings;
- insertion of anti-abuse clauses into DTAs.

We will be happy to provide in-depth information on the changes to Liechtenstein tax law once the relevant amendments have been published. These changes highlight the fact that tax legislation is undergoing a continuous process of modernisation, not least in order to remain in line with the EU and OECD tax standards. In this context these new DTAs are of vital significance. They show that sustainable, tax-efficient succession planning and wealth management can only be ensured by a network of DTAs to which Liechtenstein asset management structures and commercial structures have access.

If you have questions or require further information, please do not hesitate to contact the authors of this ATU Info, lic.iur. Ralph Thiede and Hansjörg Wehrle, or your client adviser at any time.