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Two Principalities: New convention between Monaco and Liechtenstein

The new Double Tax Convention between Monaco and Liechtenstein entered into force on 21st December 2017 and applies on residents in both countries since 1st January 2018.

We would like to take this opportunity to inform clients with residence in Monaco, but also clients who take into consideration the possibly move to Monaco, and give them some general information about the country and show, in which way Liechtenstein and Monaco have a certain common tradition regarding the structuring of wealth and the use of Foundations or Trusts as typical vehicles in this regard.



Geography

Monaco is one of the smallest countries in Europe and borders to the Mediterranean Sea on the southeast side and to France on the remaining sides with landscape of 2.03 km². Monaco`s center is about 16 km from Italy and only 13 km from Nice, France. The next airport is the Nice Côte d'Azur International Airport, which can be reached in 25 minutes by road or in 6 minutes by helicopter transfer.¹

Population²

Monaco has a population of approx. 37'600³, however, only one quarter of the whole population is Monacan. The main Nationalities of origin of Monaco`s population are French (24.9%), Italian (21.9%), UK (7.5%), Swiss (3.2%), Belgian (2.9%), German (2.4%), Russian (2.0%), Dutch (1.5%), Portuguese (1.4%), and Greek (1.1%).⁴ The official language of Monaco is French, but English and Italian are widely spoken. Some of 90% of the population worship the Catholic faith, 6% the Protestant faith, 4% a different or no religion at all.⁵

Politics

Since 1911 Monaco is a constitutional monarchy, in which the head of the state is since 2005 Prince Albert.⁶

Government⁷

Since 1962 the governmental work is split between the prince and the National Council.

The Executive Power falls under the high authority of the Prince. The Ministers of State assisted by government councilors are responsible for the running of government departments and report to the prince directly.

Legislative and budgetary powers are exercised jointly by the Prince and the National Council, whose members are elected by direct universal suffrage by Monegasque nationals.

Judicial powers are independent from the government and are exercised by the courts and tribunals.

Domestic and foreign policy topics

- Managing public finances – by avoiding any risk of debt whilst maintaining the quality of services provided to people in Monaco
- Social responsibility – by maintaining a high level of employment that has a ripple effect on a wide catchment area extending beyond Monaco's frontiers
- Eco-responsibility – by taking on the challenge of an economy, which complies in all respects with the strictest undertakings for sustainable development

Monaco has signed up to several agreements and treaties committing itself in a number of crucial areas e.g.⁸

- Member of the United Nations
- Respecting the Organization for Economic Co-operation and Development (**OECD**) rules for fiscal transparency and fairness
- Implementation of the Automatic exchange of information system
- Part of the Eurozone and falls within the boundaries of the European Customs Area due to its preferential relationship with France

Monaco is neither a member of the European Union nor a member of the Schengen Area.

Economy⁹

More than 52'000 people work in Monaco, of which 40'000 are daily commuters mainly from France (82%) and Italy (18%).

Main branches of Economy¹⁰

Monaco's economy has a wide diversity and can be split into retail (more than 1'000 shops and boutiques generate 51% of the principality's turnover), services, industry (over one hundred businesses employ almost 3'100 people in variable fields, e.g. chemistry, cosmetics, plastics processing and cardboard packaging) and tourism (private and business tourism offer together about 2'500 hotel rooms). There is no sort of commercial agriculture industry in Monaco and its only natural resource is seafood.

Services - Strong financial sector¹¹

The Monegasque banking and financial sector contains around forty banks (most of them being affiliated to foreign banks) and over fifty fund and portfolio management firms, employing more than 3'000 people. The affiliation of local banks to large global banking groups allows their clients to benefit from their international networks. The total funds managed in the Principality now amount to almost 100 billion Euros. All banks in Monaco as well as fund and portfolio management companies **are Members of the Monegasque Association of Financial Services**, which in turn is a member of the European Banking Federation.

Services – Global network of law firms¹²

The Monacan chamber of lawyers counts 40 members and is split into Avocats – limited representation permission for criminal, labor and peace council only – and Avocats-défenseurs – unlimited representation permission. Beside this, more than 100 foreign lawyers, affiliated regularly to foreign law firms with strong link to UK and USA are located in Monaco in order to advice local and foreign clients.

Excursus Liechtenstein:

*Liechtenstein has a lot of similitudes with Monaco. As Monaco, Liechtenstein is also a sovereign state and a constitutional monarchy (since 1806). Geography: **The Via Alpina** starting in Slovenia passes by Liechtenstein and finishes in Monaco. Thus both countries are characterized by the Alps. The area of 160 km² also characterizes Liechtenstein as one of the smallest states in Western Europe. Liechtenstein borders to Austria and Switzerland (length 24.8 km width 12.4 km).*

Even being a small country, there is a helicopter airport in Liechtenstein and international Airports in Altenrhein (CH) 15 km/30 minutes, and Zürich (CH) 100 km/1 hour. Population: 25'000 of the 37'800 inhabitants are domestic; the remaining part consists of predominantly Swiss, Austrian and German nationals. The official language is German, whereat students learn French as compulsory foreign language beside English. Liechtenstein's population has with 75.9% the Catholic faith, 8.5% the Protestant faith and the rest 10.2% different or no religion. Domestic and foreign policy: Prince Hans Adam II is the head of the state with strong Executive, Legislative and Judicial Power. Liechtenstein has been member of the European Economic Area (EEA) since 1995, and member of the Schengen area since 2011. Economy: More than 37'000 people work in Liechtenstein, whereof 20'000 are daily commuters predominantly from Switzerland (55%), Austria (42%) and some from Germany (3%). All of the following three sectors of the economy are represented, with only 240 employees in the primary sector, 14'200 in the secondary sector and 23'000 in the tertiary and most important sector of services. Amongst them 3'400 work in the financial sector (fiduciary services, bank and asset management). Banks have about 210 billion assets under management; asset management companies have about 33.33 billion under management. Both work in strong cooperation with fiduciary companies in the field of structuring via trusts, foundations and other type of companies.



(in red colour, the line traces the VIA ALPINA, linking Monaco directly with Liechtenstein)

The main legal forms for corporations in Monaco¹³

| | Société à Responsabilité Limitée (SARL) | Société Anonyme Monégasque (SAM) |
|-------------------|--|--|
| Shareholders | Min. 2, no maximum | Min. 2, no maximum |
| Activity | Commercial | Commercial or non-trading |
| Contributions | In cash and in kind, contributions in skills or services are not permitted | In cash, in kind, in skills or in services |
| Share capital | € 15'000 minimum | € 150'000 minimum |
| Liability | Shareholders only bear losses up to the amount of their contributions | Shareholders only bear losses up to the amount of their contributions |
| Company formed by | Privately-signed or official deed. Publication in the Journal de Monaco | Official deed drawn up by a Monegasque notary and approved by Ministerial Order. Publication in the Journal de Monaco. |
| Cost | Registration tax Publication fees | Registration tax Publication fees Notary's fees |

The flexible activities of the SAM in commercial and non-trading fields makes the SAM an ideal Holding vehicle which can be owned by a natural person as shareholder as well as by an entity like a Liechtenstein foundation or Liechtenstein Trust as foreign shareholder.

Monegasque tax regime¹⁴

Taxation of natural Persons

Income tax

Monaco does not impose an individual income tax on persons, who are tax resident in Monaco. However, apart from this general rule, French nationals with residency in Monaco are as a rule subject to French tax rules regardless of the fact that they have no residence in France, due to specific regulations in the double tax convention between Monaco and France, dated 18th May 1963.¹⁵

Inheritance and Gift tax

As a rule, Inheritance and Gift tax is due on movable and immovable property **situated in Monaco**, irrespective of the nationality or residence of the deceased or the donor. The level of tax varies from 0 to 16% and depends on the degree of family relationship between the deceased and their heir. Therefore spouses and beneficiaries in direct line are subject to 0%.¹⁶

Taxation of juristic Persons - Corporate taxation

Business carrying out an industrial or commercial activity and generating more than 25% of their turnover outside Monaco are subject to Business Profit tax. The tax rate is generally 33.33%. However, several exemptions exist (e.g. Exemption due to reinvesting or developing new activities) and due to the territoriality principle foreign sourced income is exempt.¹⁷

Value Added Tax (VAT)¹⁸

A customs union between France and Monaco was agreed in the customs code dated 18th May 1963. Thus the French VAT regime and since 1st January 1993 EU-VAT regulations are applicable in Monaco. As in France the VAT standard rate is at 20% and reduced rates at 10%, 5.5%, or 2.1%.

New International Co-operations in the financial field

Duty of due diligence obligation and anti-money laundering¹⁹

Monaco has committed itself to an active policy in combatting money laundering, terrorist financing and corruption. With this aim, the Monegasque legal and regulatory framework has been amended regularly and strengthened several times to take into account developments in good international practices. In this respect, the Monetary agreement between the European Union and Monaco of 29th November 2011, article 11 paragraph 6, provides that the Principality of Monaco shall take measures equivalent in effect to the European Union directives mentioned in appendix B relating to the fight against money laundering in compliance with Financial Action Task Force (**FATF**) recommendations. Thus it is fully in line with the international standards and guidelines recommended by the FATF. Recently also a draft legislation has been introduced to match the 4th EU Anti-Money Laundering Directive.

Excursus Liechtenstein:

Liechtenstein, being member of the EEA, has committed itself to all EU-measures regarding the combat of money laundering. Therefore the fourth Anti-Money laundering Directive is applicable and projects regarding the fifth Anti-Money Laundering Directive are in review.

Tax Information Exchange Agreement (TIEA)

Monaco and Liechtenstein have signed a TIEA on 21st September 2009, in force since 14th July 2010 and applicable per 1st January 2010. Corresponding to Art 1, the TIEA gives in the case of a specific request “...assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes with respect to persons subject to such taxes, or the investigation in or prosecution of criminal tax matters in relation to such persons.”

Automatic exchange of information (AEOI)

On 13th October 2014 Monaco signed the Convention on Mutual Administrative Assistance in Tax Matters, which is the basis for the AEOI. The AEOI is an idea of the OECD, the EU and the Global Forum on Transparency and Exchange of Information for Tax Purposes with the target to avoid tax evasion at the end. In its application it simply regulates the exchange of information on financial accounts, which are relevant for tax purposes. The AEOI per se focuses on natural persons; means all relevant reportable financial accounts have firstly been attributed to natural persons – so-called “Controlling persons” - and then secondly been reported to the respective tax domicile of the controlling person by the responsible institution (bank or “Trustee”).

However, domestic natural persons holding a bank account in their own country of residence are not subject to the AEOI. In the same way, financial accounts, which are held through a structure, which classifies as an “active Non-Financial Entity” (e.g. charitable structures, active commercial companies or holding companies) are likewise not obliged to exchange information. Regularly the exchange is based on a bilateral approach between so-called partner states.

Monaco has started to sign respective AEOI agreements with partner states in 2016 resulting that first information will be exchanged in 2018 for figures regarding the financial year 2017. Partner states are for example all EU-member states as well as Liechtenstein.

Excursus Liechtenstein:

Liechtenstein has started its first exchanges of information with respective participating partner states in 2017 for figures regarding the financial year 2016. With respect to Monaco, Liechtenstein will report controlling persons with tax residence in Monaco in 2018 for figures regarding the financial year 2017.

New Double tax treaty Monaco – Liechtenstein – since 2018

New possibilities to set-up a Liechtenstein charitable Foundation or to use Liechtenstein as place of location for a Holding Company for tax residents in Monaco

Monaco and Liechtenstein have signed a Double tax treaty on 28th June 2017, in force since 21st December 2017 and applicable per 1st January 2018. The double tax treaty is in line with the OECD standard and includes the results of the Base Erosion Profit Shifting (**BEPS**) Projects published from the OECD and the G20 in October 2015. Therefore a new Article has been implemented regarding the Entitlement of benefits”. This newly Article 27 ensures that “...*a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, ... that obtaining that benefit was one of the **principal purposes** of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.*”

Another important item of the convention with Monaco is the protocol stating in point 2 lit e.) as follows: *“Liechtenstein foundations, establishments and trust enterprises that are liable to tax in Liechtenstein are considered as companies resident in Liechtenstein”*. Under the convention inheritance, succession and donation planning with Liechtenstein foundations should therefore be acceptable in Monaco.

Due to the very attractive tax regime in Monaco and in Liechtenstein, withholding tax issues or constellations with risk of double taxation are usually not a problem and a specific need to avoid double taxation situations via convention should regularly not arise. Anyway, the need for such a convention can be seen with respect to the above items i.e. Art 27 and the recognition of Liechtenstein structures.

In the same way the protocol states in point 2 lit. f.) and g.)

“...Monaco and Liechtenstein associations are considered as resident... (point 2 lit f)....

*And point 2 lit g.) an entity or organization that is established and is operated **exclusively for charitable, religious, humanitarian, scientific, cultural, or similar purposes** (or for more than one of those purposes) and that is resident of that State according to its laws is considered as resident of that State, **notwithstanding** that all or part of its income or gains may be exempt from tax under the domestic law of that State. This includes in Monaco approved charities.”*

Therefore the new double tax convention allows to set-up a charitable structures in Liechtenstein, which will be covered by the Double tax convention and which therefore can be used within the personal succession or donation planning.

Succession and donation planning vehicles and new philanthropic possibilities

Inheritance law and forced heirship rules

Inheritance law in Monaco is strongly influenced by French rules with forced heirship regulations and additionally by the European succession regulation, which came into force in 2015 and can be of importance if residents in Monaco have the nationality of one of the EU member states. Very often sophisticated questions regarding the applicable law, the place of venue or competence of a specific court can arise. Therefore a strong need for inheritance and succession planning is obvious.

In the same way, forced heirship rules can be an obstacle in order to find suitable solutions according the real will of a donor or a testator.

Therefore, a solution can be the use of a local foundation under law 56 (see below) or a foreign foundation (or anstalt / trust enterprise) or an Anglo Saxon trust to avoid possible conflicts if succession or donation planning is carefully done ahead of time.

Foundations

Law 56 dated 29 January 1922 offers the possibility for succession planning aside the legal succession order or the last will. More precisely, law 56 offers the possibility of succession planning by way of a foundation. Contrary to charitable foundations, private/family foundations are not implemented under Monacan law. Therefore a pre-condition is that the Monacan foundation is serving the public interests.

Examples for well-known local charitable Foundations in Monaco are Prince Albert II of Monaco Foundation and Foundation Princesse Charlène de Monaco.

Setting up a foundation with beneficiaries, which are relatives or friends is not possible under Monacan law, but Monacan law does not prohibit the constitution of a foreign foundation.

Therefore a Liechtenstein private/family foundation could be an option as such a foundation is under the new double tax convention in a position to show its tax residence which means an official way of recognition, provided it is liable to tax in Liechtenstein like any other Liechtenstein Company.

Of course, also the constitution of a Liechtenstein charitable foundation could be an option which allows a Monacan based settlor to profit from the advantageous of the liberal foundation law and the slim bureaucratic rules of the supervisory authority in combination with a statutory auditor.

Another interesting possibility can be the combination of private and charitable purposes within a mixed foundation. A mixed foundation can pursue both private and charitable purposes during the lifetime of the settlor and can continue after the demise of the settlor to support mixed purposes or only charitable purposes according to the will of the settlor.

In this case, distributions within the charitable purpose can be done **worldwide** and of course also could support valuable projects exclusively in Monaco.

Trusts

Another vehicle for succession planning is the trust settlement. Even if Monaco did not implement the settlement of Trusts under Monacan law, and even if it has not signed The Hague Trust Convention of 1985, Monaco anyway recognizes Anglo-Saxon Trusts by means of the law 214 dated 27th February 1936. Law 214 allows foreigners, which are based in Monaco, to set up Anglo-Saxon Trusts, provided the settlor is a passport holder of a country, which is familiar to such structures (typically US and UK nationals). In that way, a settlor is free to choose a classical trust destination like Jersey, Guernsey or also **Liechtenstein**, which implemented and codified in its private law already in 1926 the Anglo-Saxon Trust.

Excursus Liechtenstein Donation law:

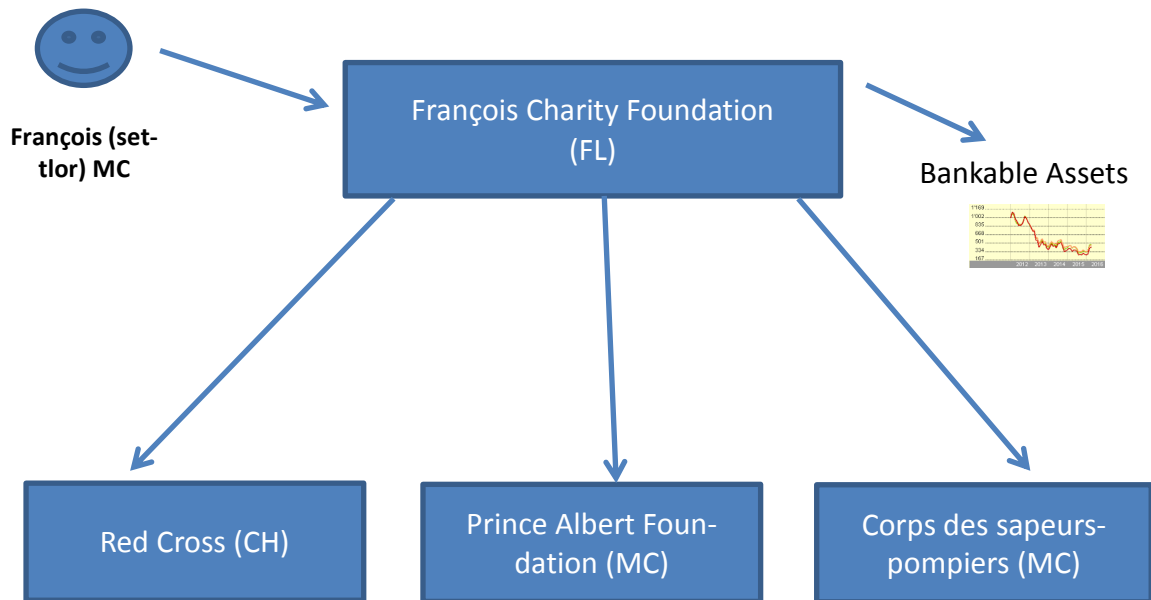
Donations under Liechtenstein law cannot be challenged after a period of two years. This requires that the donor irrevocably gives away his assets and that he has no control about the foundation or trust (or its assets, or its trustees) he settled. In the case of conflicts of local and international law, Liechtenstein law overrides, even if foreign local law does not allow such donations or applies longer statutes of limitation. A possible claim giving right to the claimant in his home country cannot be used in Liechtenstein, as Liechtenstein did not adhere to the Lugano Treaty, which means that there is no corporation within civil execution.

Therefore solutions can be offered with respect to forced heirship rules by using Liechtenstein Foundations or Liechtenstein Trusts.

Of course this form of asset protection requires some flexibility from the settlor regarding the situs of the assets. To be on the safe side, assets located in Liechtenstein profit from the strongest form of asset protection in this regard.

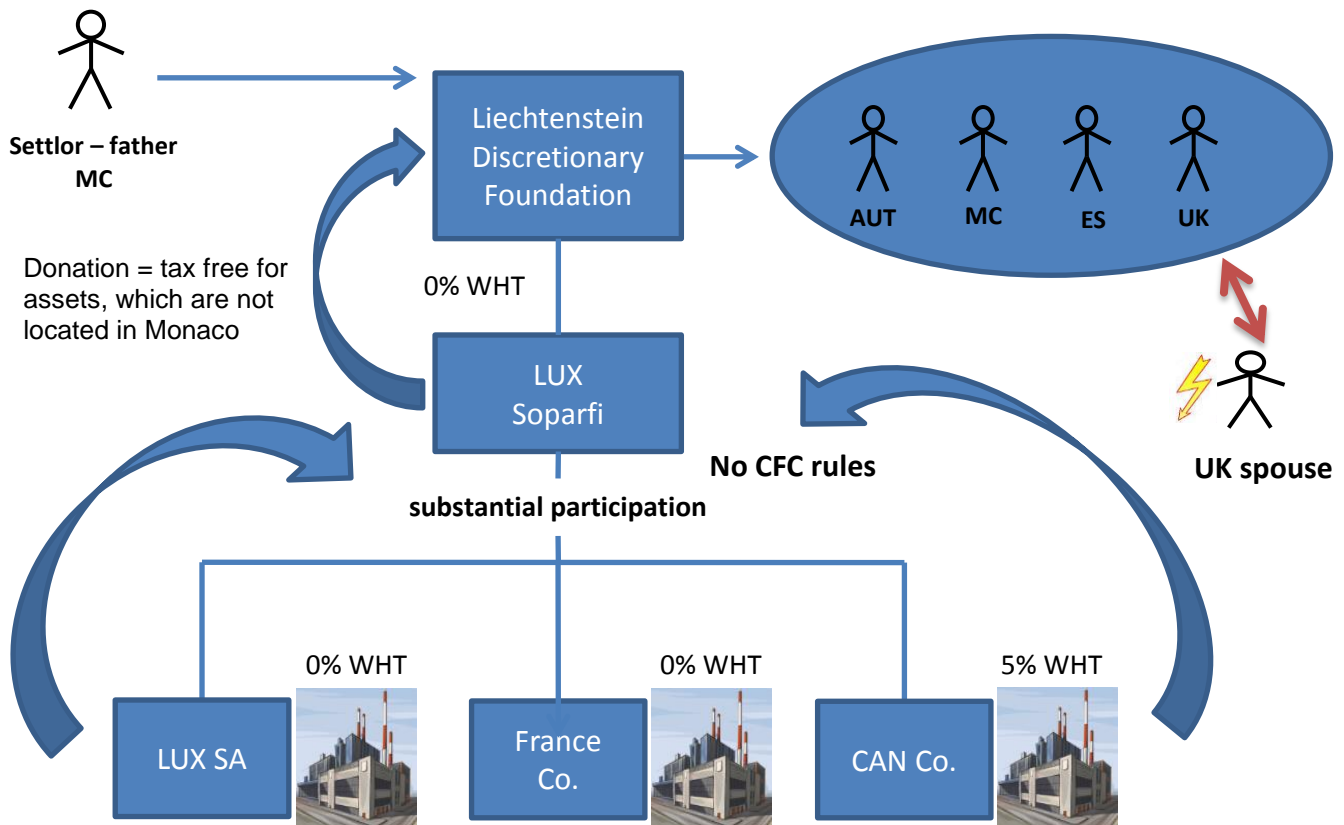
Concrete cases combining need for privacy asset protection and tax security

Example 1: Charity Foundation



- Recognition of a Liechtenstein charitable foundation according to the convention protocol point 2 lit. g.)
- Act of donation should profit from the same preferential treatment like local charities according to law 56 dated 29th January 1922
- Distributions from a Liechtenstein charity can be done worldwide and also exclusively to Monacan beneficiaries and are not restricted to charitable beneficiaries in Liechtenstein
- Liechtenstein charitable foundation = active NFE with no reporting obligations under the AEOI or under US-FATCA
- No AEOI regarding “Controlling Persons” of active NFE

Example 2: Active Holding



- No inheritance and gift taxes if movable assets (e.g. bank account) are outside of Monaco. Therefore set-up of discretionary Liechtenstein foundation with worldwide investments via the Luxemburg Soparfi. Bank accounts of the Liechtenstein Foundation can be held in Liechtenstein, Monaco or any other jurisdiction.
- FL family foundation protects assets against creditors accessing family foundation based on sequestration, compulsory enforcement or bankruptcy
- No cooperation upon civil execution (**“Lugano Treaty” not applicable**)
- No possibility to attack the donation under FL-law **after 2 years**
- Discretionary Liechtenstein foundation produces tax and WHT free dividend income via Lux Soparfi holding company from operating investments in attractive DTT partner countries as well as in Luxembourg itself to show some local substance
- Dividend distribution from Lux Soparfi to the Liechtenstein foundation is withholding tax free in Luxembourg and tax exempt in Liechtenstein (under the FL-LUX DTT)

- Liechtenstein holding foundation = active NFE with no reporting obligations under the AEol or under US-FATCA
- No AEol regarding “Controlling Persons” of active NFE

CRS Background:

OECD CRS: 129. *Subparagraph D(9)(d) describes the criterion to qualify for the Active NFE status for “holding NFEs that are members of a nonfinancial group” as follows: substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.*

OECD CRS: 130. *With respect to the activities mentioned in subparagraph D(9)(d), “**substantially all**” means **80% or more**. If, however, the NFE’s holding or group finance activities constitute less than 80% of its activities but the NFE receives also active income (i.e. income that is not passive income) otherwise, it qualifies for the Active NFE status, provided that the total sum of activities meets the “substantially all test”. ...*

The content of this “ATU Info” serves only to provide general information and is no substitute for legal advice. The author of this “ATU Info”, Hansjörg Wehrle, of Allgemeines Treuunternehmen, will be pleased to provide you with further information.

Vaduz, February 2018

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- ¹ Principauté de Monaco, Ministère D'ÉTAT, 2012: Settling in the principality of Monaco: p. 18
- ² <http://www.imsee.mc/Actualites/Population-officielle-2015>, (31st January 2018)
- ³ Institut Monégasque de la Statistique et des Etudes Economiques, January 2018: Principality of Monaco 2016 Population Census, p. 1
- ⁴ Institut Monégasque de la Statistique et des Etudes Economiques, January 2018: Principality of Monaco 2016 Population Census, p. 1
- ⁵ Principauté de Monaco, Ministère D'ÉTAT, 2012: Settling in the principality of Monaco: p. 18
- ⁶ <https://en.wikipedia.org/wiki/Monaco> (31st January 2018)
- ⁷ <http://www.nationsencyclopedia.com/economies/Europe/Monaco.html> (31st January 2018)
- ⁸ Principauté de Monaco, Ministère D'ÉTAT, 2012: Settling in the principality of Monaco: p. 11
- ⁹ <https://en.wikipedia.org/wiki/Monaco> (31st January 2018)
- ¹⁰ Direction du Tourisme et des Congrès de la Principauté de Monaco, 2015 : Monaco Sensations, p. 6
- ¹¹ Principauté de Monaco, Ministère D'ÉTAT, 2012: Settling in the principality of Monaco: p. 32
- ¹² <https://www.rechtsanwalt.com/verzeichnis/monaco/>
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- ¹⁴ IBFD, 2017: European Tax Handbook 2017, p. 747 ff.; <http://en.service-public-entreprises.gouv.mc/Tax/General-information/Monaco-s-tax-system/Taxation-in-Monaco>: 31st January 2018
- ¹⁵ European Tax Handbook 2017; section Monaco
- ¹⁶ European Tax Handbook 2017; section Monaco
- ¹⁷ European Tax Handbook 2017; section Monaco
- ¹⁸ http://www.monaco-consulate.com/?page_id=887; <http://en.service-public-entreprises.gouv.mc/Tax/VAT/Statements/VAT>; <https://www.vatlive.com/vat-rates/european-vat-rates/>: 31st January 2018
- ¹⁹ Principauté de Monaco, Ministère D'ÉTAT, 2012: Settling in the principality of Monaco: p. 33; <https://gettingthedealthrough.com/area/91/jurisdiction/187/private-banking-wealth-management-monaco/>; https://paymentscompliance.com/premium-content/insights_analysis/monaco-align-european-aml-regime: