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## Amendment of Liechtenstein tax law and specific regulations of Liechtenstein – Switzerland DTA

### Tax at source for foreign members of governing and executive bodies

Payments (e.g. board fees, meeting fees, fixed compensation and similar remuneration) to foreign members of boards of directors, foundation boards or similar governing and executive bodies of legal entities and special endowments of assets (e.g. trusts) that have their registered office or are being managed in Liechtenstein are generally subject to tax at source.

Subject to deviating provisions in double taxation agreements (see Liechtenstein – Switzerland DTA below), tax at source has to be deducted in Liechtenstein if the foreign board member

- is a natural person (incl. a self-employed individual), whereby
  - the fee is paid to the natural person, or
  - the fee is paid to a legal entity (e.g. the employer of the board member) with its registered office in a NON-DTA country;
- is a legal entity.

Since 1 January 2019, gross remuneration of up to CHF 200'000 is subject to 12% tax at source (if the remuneration is higher, the board member is subject to ordinary tax assessment in Liechtenstein and is obliged to file an annual tax return, with the maximum tax rate being 24%). Previously, tax at source was deducted on taxable income of up to CHF 150'000, but this has proved impractical in practice.

## Liechtenstein – Switzerland DTA

Board member fees are subject to final tax at source in Liechtenstein and are not taxed further in Switzerland (subject to exemption with progression). The condition here is that the Liechtenstein asset structure is not exclusively subject to minimum income tax (e.g. private asset structure, in particular endowments of assets without legal personality) or the fee is paid "vicariously" to a legal entity with its registered office in Switzerland (e.g. the employer of the board member). Swiss board members therefore have the option to subject their income from their function as a member of a governing or executive board of a Liechtenstein structure to a flat-rate tax of 12% (subject to exemption with progression).

Similar advantageous exemption regulations apply to board fees paid to board members domiciled in Luxembourg, San Marino and Hungary.

### No deduction of tax at source on payments made to persons with an advisory role only

Payments made to protectors, members of advisory boards, etc., are also subject to tax at source if they have powers similar to those of foundation board members (co-decision-making authority), but not when they have an advisory role only.

### Deduction and forwarding of tax

The asset structure reports and pays the tax at source to the Liechtenstein Tax Authority every six months.

The board member receives a confirmation of the payment of tax at source issued by the Liechtenstein Tax Authority.

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*If you need any further information, you may contact the author of this article, Jürg Brinkmann, at Allgemeines Treuunternehmen. This ATU Info is intended for general information purposes only and does not replace legal advice.*

## Retaining of 12% withholding tax on remuneration of board of directors and members of the foundation council from 2019 <sup>(a)</sup>

Applicable on fees paid ex January 2019.

**Fees <sup>(b)</sup> of board of directors, members of the foundation council, trustees or similar members of structures <sup>(c)</sup> (with or without legal personality), which they receive for their legal organ function.**

Organ member is an individual person						Organ member is legal person		
Payments to individual persons (incl. Self-employed persons), which are domiciled in			Payments to legal persons (e.g. Employer of the organ member) which are domiciled in			Payments to legal persons, which are domiciled in		
FL	Foreign country without DTA	Foreign country with DTA	FL	Foreign country without DTA	Foreign country with DTA	FL	Foreign country without DTA	Foreign country with DTA
yes	yes	yes exemption: DTA FL-CH <sup>(d)</sup>	no	yes	no	no	yes	yes exemption: DTA FL-CH <sup>(d)</sup>
Retaining of withholding tax in FL			No retaining of withholding tax in FL	Retaining of withholding tax in FL	No retaining of withholding tax in FL	No retaining of withholding tax in FL	Retaining of withholding in FL	

1. Retaining of 12% withholding tax on fees at maturity
2. Half-yearly reporting (15th July of the current year for the first half-year, respectively 15th January of the following year for the second half-year ) to the tax authority by settlement list („Formular 8; Abrechnung über die Quellensteuer bei Sitzungsgelder, Organentschädigungen, usw.“)
3. Half-yearly payment (31st July of the current year for the first half-year, respectively 31st January of the following year for the second half-year) of the retained taxes to the tax authority

(a) Gross annual compensation of up to CHF 200,000 is subject to 12% tax at source. Gross annual compensation of more than CHF 200,000 per board member is subject to ordinary tax assessment (usually at the maximum rate of 24% for natural persons).

(b) Taxable are management bonuses, attendance fees, fixed compensations and similar compensations for organ members, which organ members receive for their organ function. Other services are not affected from the withholding tax.

(c) Similar members of structures includes also protectors, board of advisors, etc., as they have similar competences as members of the foundation council (co-decision competence), however consultant functions are excluded from this.

(d) As per the protocol to the DTA Liechtenstein – Switzerland, no retaining of the Liechtenstein withholding tax has to be done, in case the Liechtenstein structure is only subject to the Liechtenstein minimum taxation (e.g. private asset structure or trust).