

Vaduz, November 2009

Current information on fiscal developments in Liechtenstein

In the following letter, Allgemeines Treuunternehmen would like to inform you of the current situation involving Liechtenstein's agreements concluded to date for information exchange in tax matters (Tax Information Exchange Agreements or TIEAs) and the prevention of double taxation through Double Taxation Agreements (DTAs). Moreover, we would like to briefly address other current issues and present you our view on them.

Overview

Many already know that, on 12 March 2009, the Government of Liechtenstein delivered the so-called "Liechtenstein Declaration", in which Liechtenstein agreed to adhere to the global standards for transparency and information exchange in tax matters developed by the OECD. In April 2009, the OECD published a list of nations which, in the eyes of the OECD and the G-20, had taken insufficient steps towards implementing international standards in tax matters. Along with most of the other 44 nations on this "grey list", Liechtenstein has made an effort to promptly fulfil the criteria necessary to be removed from the list in order to avoid sanctions.

To accomplish this, the Government of Liechtenstein has negotiated and signed various TIEAs and DTAs. As of 11 November 2009, Liechtenstein has concluded 12 relevant taxation agreements, the majority of which with the right and the obligation to also be able to conclude DTAs. Consequently, Liechtenstein has been removed from OECD's "grey list" as of 11 November 2009. The table in **Appendix 1** provides you an overview of where Liechtenstein stands with regard to concluded agreements.

The fundamentals of Liechtenstein's concluded agreements

Liechtenstein has ensured its necessary reputation to be able to act as an unhindered financial centre in a globalised world with the various agreements. Under the new mutual assistance provisions negotiated pursuant to Article 26 of the OECD Model Tax Convention there is in principle a wide-reaching obligation to assist other countries in the enforcement of their domestic tax laws; the previous limitation of this obligation to cases of tax fraud has been abandoned. The agreements do not lead to an automatic exchange of information, rather to an exchange based on expressly justified requests. In the case of Liechtenstein, the TIEA with Germany can be considered an example for further agreements. In contrast to the agreements of other countries, such as those between Germany and Guernsey or Gibraltar, Liechtenstein's agreements have no

retroactive effect. Liechtenstein is insistent in this matter, since a basis of trust constitutes a top priority for clientele.

Contents of the TIEAs concluded with Liechtenstein

Each request for information from a partner state must be as detailed as possible and contain the following written details:

- a) the identity of the person that the enquiry or investigation involves;
- b) the time frame for which the information is being requested;
- c) the type of information requested and the form in which it should be made available to the requesting agreement party;
- d) the fiscal reasons for which the information is being requested;
- e) the reasons for believing that the requested information is likely to be substantial to implement the tax law of the requesting agreement party in connection with the person under point a);
- f) the reasons for believing that the requested information is available, or can be found in the possession of, or is authorised for distribution by a person within the jurisdiction of the recipient of the request;
- g) the name and address of the persons, as best known, in whose possession the requested information can presumably be found;
- h) a declaration that the request conforms to the law and administrative practices of the requesting agreement party, that the requested information, if it is found in the jurisdiction of the requesting agreement party, can be obtained by the appropriate authorities of the requesting agreement party according to the law of the requesting agreement party or in the framework of the usual administrative practices and that the request was filed in accordance with this agreement; and
- i) a declaration that the requesting agreement party has exhausted all measures available within its own territory to obtain the information, excluding cases in which this would entail disproportionate difficulties.

These agreements do not permit “fishing expeditions” and retroactivity. Furthermore, the affected person will generally already have knowledge of the proceedings before information is requested in Liechtenstein.

Moreover, it must be noted that data exchange in the framework of judicial assistance in criminal cases has always been possible in the corporate area (i.e. international relations in connection with merchandise trade or holding investments), since international trade and investment business affect accounting records, annual statements and deeds, which are generally protected from misuse by criminal law.

What is new, however, is that after the introduction of the mutual administrative assistance act in its own laws, Liechtenstein can also realise administrative assistance instead of just providing judicial assistance. This international administrative assistance is a milestone in international co-operation for Liechtenstein in contrast to Switzerland, which has been active longer in this aspect. Liechtenstein's administrative assistance act, which will regulate the domestic implementation of requests for administrative assistance, will not enter into effect before mid-2010.

Advantages of the concluded TIEAs

At this time, it is still difficult to determine the concrete advantages and disadvantages of the TIEAs concluded to date. Certain advantages can assuredly be expected: since Liechtenstein is a member of the EEA (European Economic Area), numerous discriminating restrictions by EU members towards Liechtenstein in EU internal law can no longer be imposed. Examples of this would be the specific tax penalties invoked by France on investments in French properties or the handling of insurance products, or also Paragraph 15 of the German Foreign Tax Relations Act ("deutsches Aussensteuergesetz"). It must thus be possible with the conclusion of a TIEA with Germany that a person who, prior to moving to Germany, sets up a discretionary foundation that includes a wide circle of beneficiaries residing in Germany, will not be taxed for the contribution or for the revenues presently being generated by the foundation. Respective income taxes may only be levied on the beneficiaries in the course of payouts to them.

The TIEAs further establish the basis that Liechtenstein will be taken seriously as a business location and can therefore conclude Double Taxation Agreements.

Agreement with the United Kingdom (UK)

The agreement with the UK is divided into a standard TIEA and a Memorandum of Understanding (MOU). The distinctiveness of this TIEA lies in the fact that the clauses regarding the exchange of tax information will not take full effect until 1 April 2015, and until then are limited to cases of punishable tax issues.

The MOU stipulates that individuals, required to pay taxes in the UK, are fully transparent and compliant with their taxes in the UK or they must relinquish their connection to Liechtenstein by 31 March 2015.

The UK has a special tax system, which entails a colonial approach. For example, there are numerous structuring possibilities to optimally shape the situation for the respective individuals, such as for the so-called "residents", but non-UK domiciled individuals, or for such individuals who live in the UK in a rent-free house, owned by a Liechtenstein

foundation, without an incurring tax requirement (“interest in possession trust”). The UK tax law is highly complex; support by a tax specialist is essential.

Individuals who establish UK tax liability can benefit from the advantageous amnesty regulations of the UK agreement by arranging for a Liechtenstein-based organ to manage, for example, a foundation in Panama, Anguilla, the Netherlands or a trust in the Cayman Islands, the British Virgin Islands, etc., for example with a Swiss bank account, beginning 1 December 2009. Such structures can then profit from the disclosure rules outlined by the MOU.

It should be noted in all cases that it is not the Liechtenstein professional trustee or the Liechtenstein bank, but rather the client who is exclusively responsible as the “relevant person” to establish contact with the UK tax authority, HM Revenue & Customs. The relevant person will perform this in co-operation with a Liechtenstein financial intermediary and a tax specialist.

Developments involving the EU savings tax directive

The European Union (EU) is presently working on a new draft of the Savings Tax Directive. It is still unclear whether and to what degree an automatic information exchange will be implemented in two to four years. Should Switzerland, Liechtenstein and other countries conclude an agreement with the EU, in order to transfer the Directive into their own laws, it would mean that Swiss and Liechtenstein banks would have to switch over to automatic information exchange in connection with their EU-domiciled clients.

At this time, the EU plans that the system, in addition to private accounts, will be expanded to include funds, life insurance providers, companies, foundations or trusts; this ultimately means all associations where information about the ultimate beneficiaries is available.

The current draft includes individual exceptions; for example, measures will not be taken against “non-transparent” structures. Non-transparent structures are all those that are taxed in a regular manner according to the national law (and pay a tax) and do not enjoy any privileges. In the case of Liechtenstein, this would mean that a foundation which pays ordinary taxes of 12.5% on interest income – dividends and capital gains are not taxed – according to the new Liechtenstein tax law (expected to begin 1 January 2011) is considered non-transparent, and thus the beneficiaries are not named.

As mentioned, the Directive is still at the draft stage, and developments should therefore be followed. It can be assumed that in the event of the implementation of such

a directive, which no longer allows a withholding tax, considerably more countries shall become additional agreement partners with the EU.

Outlook

At the moment, one can assume that the presently negotiated fraud agreement between Liechtenstein and the EU, which would also contain provisions similar to those of the TIEAs and thus would automatically bring this standard to implementation between all 26 EU states and Liechtenstein, remains blocked until further notice since certain EU states have no interest in bringing this agreement into effect.

Our clientele continues to trust the professionalism, coherence of decisions, planning and legal certainty, continuity, reliability and the realisation of the expectations placed on the financial intermediary. Asset protection plays a central role here and applies to the optimisation of wealth transfer (inheritance, endowment), company continuation, familial residency change and wealth protection from foreign seizure (creditors, confiscating states). In addition to the emphasis on asset protection, approaching the subject of taxation with know-how is becoming increasingly important.

Our advisors are gladly available to answer all of your questions related to these matters and their possible resulting consequences.

Yours sincerely,

Allgemeines Treuunternehmen

Appendix 1: Current situational overview of known negotiations with Liechtenstein involving TIEAs and DTAs (as of 11 November 2009)

Partner state	Agreement	Signing
United States (USA)	TIEA	8.12.2008
United Kingdom (UK)	TIEA (with disclosure option and amnesty offer); DTA in preparation	11.8.2009
Luxembourg	DTA	26.8.2009
Germany	TIEA; DTA in preparation	2.9.2009
Andorra	TIEA; DTA in preparation	18.9.2009
Monaco	TIEA; DTA in preparation	21.9.2009
France	TIEA; DTA in preparation	22.9.2009
San Marino	DTA	23.9.2009
St. Vincent and the Grenadines	TIEA	2.10.2009
Ireland	TIEA; DTA in preparation	13.10.2009
Netherlands	TIEA; DTA in preparation	10.11.2009
Belgium	TIEA; DTA in preparation	10.11.2009
Antigua and Barbuda	TIEA; DTA in preparation	in the near future
Italy	negotiations progressing	
Scandinavia	negotiations progressing	
Australia	negotiations progressing	
Faroe Islands	negotiations progressing	

It should be noted that none of these TIEAs takes legal effect in Liechtenstein until the Law on Administrative Assistance in Tax Matters comes into effect (expected to begin 1 September 2010).