



## INDUSTRIE- UND FINANZKONTOR

# News

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What an eventful year this has been. The global effects of the US-real estate crisis on the one hand, which have provoked a general credit crunch, and the global call for state-aid coupled with looming increased regulation indicate that we are in for a period of change.

Worrying about the future, however, may not be the right approach. I believe that once we be-

### The demands of the new century

come aware of the demands of the new century, it would seem more appropriate to increase our awareness of the demands of the new century and to recognise and take advantage of the resulting opportunities. 2009 should be approached with courage and confidence.

Liechtenstein offers many advantages of which we should be aware: The country's diminutive size enables us to operate flexibly and efficiently. We continue to operate in a stable political and economic environment and our legislation and financial system are progressive and internationally recognised as achieving a high standard. We have long-standing friendly relationships with our neighbouring Switzerland and all the advantages of Liechtenstein's situation in the heart of Europe – these offer us an excellent starting point! Moreover, we dispose of a well-developed infrastructure and are well connected to the international traffic network. We are further able to work to the

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highest professional standards as well as possessing a high-quality education system. Our employees dispose of a reliable attitude to service. A broad and diversified range of services completes the profile of our country.

These are all important advantages through which Liechtenstein can position itself successfully in the future, the valuable basis of which we can place at the disposal of our international clients. We therefore have all the tools to tackle the challenges ahead with commitment and confidence and feel justified in looking to the future with optimism.

Michael of Liechtenstein

# Liechtenstein and the Anti-Fraud-Agreement with the European Union

**In June 2008 Liechtenstein and the EU have substantially negotiated all the contents of the Anti-Fraud-Agreement. However, this agreement has as yet neither been initialed nor signed. The final conclusion will depend on further internal negotiations between the EU-member states.**

Germany in particular supports stricter regulations within the agreement whereas other states, such as Luxemburg and Austria, justifiably consider such an absolute approach to be questionable.

At this point it is worth mentioning that the IMF has certified in its assessment report of the beginning of March 2008 that Liechtenstein possesses good supervision and anti-money-laundering procedures. The Anti-Fraud-Agreement intends to prevent criminal dealings and to enhance damage control mechanisms. There is no objection to this, as long as a state has a justified interest in these matters. On the other hand, the protection of the honest citizen's privacy should continue to be an inviolable principle. In addition it should be taken into account that the suppression of money laundering and financing of terrorist activity have already been curtailed by the Third-Anti-Money-Laundering-Guideline of the EU. The EU Anti-Fraud-Agreement should



not be abused to satisfy individual countries' desire for monetary inflow as a result of their own economic shortcomings.

But what are the additional contents of the Anti-Fraud-Agreement as per June 2008? Increased information exchange regarding direct and indirect taxes are to take place, whereas, regarding direct taxes, such an information exchange will be limited to legal and administrative assistance in cases of tax fraud and similar offences\*. A reasonable case of suspicion must be presented. So

called *fishing expeditions* (seeking unsighted information) without any evidence are specifically excluded!

For the time being, we will have to await the development of internal negotiations among EU-member states. We will keep you informed on further progress.

**\* A definition of the term «similar offences» is missing. It is questionable if tax evasion will be defined under this term.**

# The Tax-Information-Exchange-Agreement with the US

**The Tax-Information-Exchange-Agreement (TIEA) is a bilateral agreement between the US and Liechtenstein. The agreement will extend to all direct and indirect taxes that are raised at a national level in the US. It comprises all natural persons, legal entities and partnerships that have an obligation to pay national taxes in the US.**

The TIEA regulates co-operation in tax matters on tax fraud and tax evasion (non-declaration of certain assets). A possible ex-

change of information can only be effected by way of administrative assistance. In the spirit of the protection of individual privacy, any exchange of information shall only be given if a specified, clearly justified and concrete request has been made by the IRS (US Internal Revenue Services) and as long as the requesting state (the US) has proven that it has itself taken all necessary steps to obtain the requested information. The Liechtenstein authority will then first examine the request on its validity and – if valid – carry through the request. A financial intermediary only must follow requests by the

domestic authority! If an information request is not covered by the provisions of the TIEA such request will be denied by the Liechtenstein authorities. So called *fishing expeditions* (seeking unsighted information) without any evidence are specifically excluded! Additionally, requests must be presented one at a time.

The TIEA will come into force as per 1st January 2010 and will be retroactively applied for the US tax year 2009.

## Tax reform in Liechtenstein

**The effective Liechtenstein tax law dates from 1961. The global economic conditions and the legal framework have undergone profound changes of principle and modernising the existing legislation has become necessary.**

The aim of the tax reform is to enact an international compatible body of laws towards a Flat-Tax-System and to include state of the art know-how in the fields of international tax science and practice.

Special attention shall therefore be given to corporate taxes. Multiple taxation of income is to be avoided by eliminating capi-

tal and coupon taxes, so that the taxation of earnings in combination with an equity discount (following the investment approach) shall be introduced. In addition, asset-managing structures (such as Foundations, Trusts or Establishments) shall no longer be subject to the so called Liechtenstein special corporate tax but tied both to a nationally and internationally consistent tax concept. It is intended to apply a uniform and competitive minimum income tax rate (this rate is as yet unknown / no capital gains shall however be taxed) but only in as far as such *qualified private asset management companies* are managing assets for individuals and do not execute any commercial activity.

Contrary to certain other European states, the aim must be towards increasingly comprehensible and transparent tax systems. Such tax systems lead to higher efficiency, more fairness and better acceptance by the tax payer.

The new tax law shall be sent to parliament for consultation shortly. We will keep you informed on this issue as well.

# The Liechtenstein Family Foundation

**With a Liechtenstein Family Foundation similar goals as with a trust can often be pursued. A Liechtenstein Family Foundation can be applied for the following:**

- **Succession planning:** Allowing for a settlor to plan his own succession.
- **Asset protection:** To protect assets from unjustified attachment.
- **Asset preservation:** For securing wealth over generations.
- **Implementation of specific intentions:** E.g. education and support of descendants.

In addition, charitable and mixed foundations can be set up.

The new Foundation Law shall come into force on 1st April 2009. The main characteristics of the new Foundation Law are the following:

- 1. Compact piece of legislation:** The new Foundation Law will be embedded in the Liechtenstein Company Law (PGR) and all provisions concerning foundations shall now be covered only in the new Foundation Law.
- 2. Consolidated position of the settlor:** The settlor's position is strengthened. The so called essentialia negotii – declaration of intent, purpose of the foundation and the beneficiaries – must be defined by the settlor himself. Settlor rights can neither be bequeathed nor assigned.
- 3. Procedural amendments for deposited foundations:** Certain procedural amendments are introduced to deposited foundations. In future, a foundation's statutes will no longer need to be deposited by the Trust Company and only a so-called Notice of Foundation containing the principal specifications of the foundation (excluding information on beneficiaries!) shall need to be submitted.
- 4. Beneficiaries and their rights:** The



breadth of the beneficiaries' right of information and disclosure will depend on the type of benefit. Discretionary and ultimate default beneficiaries do not have any information and disclosure rights whereas defined beneficiaries with a clear legal claim to the foundation's assets obtain certain information and disclosure rights.

**5. New supervision rules:** As before, the legislator distinguishes between the welfare foundation and the private foundation. However, in the new legislation this differentiation is defined more clearly. Private or mixed family foundations (with a predominantly private purpose) will not be supervised by the state. Welfare foundations will be subject to a degree of supervision by the state.

**6. Transitional provisions for foundations settled under outdated legislation:** As per 1st April 2009 the new Foundation Law will be applicable to all new foundations. With regards to existing foundations, the old Foundation Law continues to apply in principle, with a few exceptions in particular

concerning the registration of specific foundations, the amendment of the Notice of Foundation and the information and disclosure rights for certain types of beneficiary.

What are the practical consequences and what future changes will we need to apply? We believe that a large majority of foundations administered by our company is already compatible with the new legislation. However, we still await the relevant comments to the new Foundation Law. As soon as these have been published (January 2009), we shall be in a position to provide you with additional information. Should there be any further need for action we shall be in touch.