INDUSTRIE- UND FINANZKONTOR

News

No. 2/April 2009

Content

A question of trust

Having trust in a person or in a system is a basic need of mankind, and a feeling of security ensues as a result. In exactly the same way, a free society requires a large measure of privacy – i.e. a protected sphere within the system in which one can move freely. Such basic needs are increasingly gaining importance, particularly in a time in which everything is increasingly moving in the direction of a "transparent society". The governmental "voyeurism" sugar-coated as "transparency" is nothing more than a "power-wielding" compulsion to control. Wherever man feels observed and controlled, trust diminishes. Nothing can develop where there is no trust. Therefore a large measure of trust is necessary so that things can grow and flourish at all.

The preservation of privacy also attests to a state's trust in its citizens. Such a state does not see itself in the role of an inspector, but more as a trailblazer which provides the underlying conditions which it needs in order to be able to remain globally successful in competition: a well-developed infrastructure, investments in research and development, the granting of legal security, stability, attractive legislation, economic scope for action and the protection of private ownership as a constitutional basis. The citizens of such a state express their thanks for its tolerance and reliability with fairness and trust.

Liechtenstein, like other states, relies on the self-responsibility and the judgement of its stakeholders as well as the efficiency of the market economy, and supports this with reasonable reforms. The deliberate attacks (which have been additionally built up by the media) on Liechtenstein and Switzerland in the past reveal on closer inspection that these are absolutely unjustified, implausible and politically motivated.

Liechtenstein sees itself as a constitutional state in terms of coexistence. Liechtenstein is quite willing to cooperate with other states, but not at any price, and only as an equal partner under fair conditions – in terms of good future prospects! Because we believe in the principle: "law prevails over power".

Michael of Liechtenstein

Tax reform in Liechtenstein

The government's consultation of proposed amendments is now available to the public. The reform proposal regarding the total revision of the tax law builds on the existing tax law. The aim of the reform is to modernise the prevailing law by taking into account international developments so that Liechtenstein can also position itself in the international environment as a successful economic location in the future.

The prevailing Liechtenstein tax law essentially dates back to 1961. At present, the following types of taxes apply to legal entities: The capital & income tax is to be yielded by corporations or legal entities with the same status as corporations, by institutions/foundations/trust companies and legal entities authorised according to foreign law (always with a commercial business managed within the country), by foreign corporations with a permanent establishment within the country as well as by investment companies (fund management and investment companies which correspond to this legal form).

The capital tax amounts to 2‰ of the equity capital (paid-in capital plus one's own assets representing open or hidden reserves). A capital gain (e.g. through capital increases or realised profits) during a fiscal year is to be deducted. The income tax is levied on the net income and amounts to at min. 7.5% or max 15%. A surcharge of a maximum 5% is levied with distribution of dividends. A dividend deduction is granted in order to avoid a double burden of investments and distributed profits of a subsidiary. The coupon tax (dividend withholding tax) amounts to 4% and is levied on distributions of dividends of securities paid out by residents and certificates comparable to these. Up to now, losses carried forward have been limited to five years.

Certain legal entities are subject to "Special Company Taxes". For instance, foreign insurance companies (with local premium income) active within the country pay a 1% or 2% tax on their premium income. Holding or domicile companies pay a capital tax of 1‰ (min. CHF 1'000). In foundations with large-scale assets (> CHF 2 or 10 million), this rate of taxation is reduced to ¾‰ or ½‰ of taxable capital. However, the prevailing practice limited this to CHF 1'000.

The reform proposal now provides for the following changes in the sphere of business taxes: The capital tax and the distribution surcharge shall be completely omitted. Instead, only a low minimum income tax with a proportional tax rate of 12.5% shall be applied. In order to stimulate investments, a new equity capital interest deduction in the amount of 3% shall be additionally introduced. The previous dividend deduction shall be replaced by a tax exemption on profits and proceeds from shareholdings (dividends, capital gains and liquidation profits).

In the future, losses carried forward shall be possible on an unlimited time basis. The coupon tax shall likewise be omitted, with an interim solution regarding the old reserves. The principle of group taxation shall be introduced for affiliated group companies. Furthermore, appropriations of up to 10% of taxable net income to legally recognised charitable institutions shall be recognised and be able to be deducted in the future.

The "Special Company Taxes" would be eliminated upon adoption of the reform proposal. That is to say, for reasons of the prohibition of aid or abetment, the commercially active domicile companies would be treated fiscally like other legal entities in the future, and would be subject to general taxation on income (a lower income tax rate, equity capital interest deduction, tax-free investment income and profits would then be applied).

Companies exclusively managing private assets (e.g. foundations, trusts, institutions

but also public limited companies/stock corporations) shall be able to re-qualify as private investment companies (PVG) and be taxed accordingly. They would be uniformly taxed with a minimum income tax rate of 4% on the legally required share capital or nominal capital (min. CHF 30'000), which would amount to a minimal annual tax of CHF 1'200. PVGs would have to verify their status as a PVG to the tax administration on an annual basis.

Investment companies would be fiscally taxed either transparently on the shareholder level (e.g. with funds or private equity companies in the form of a personal union) or as a legal entity, or, with appropriate qualification, as a PVG. Upon adoption of the reform proposal, personal unions shall no longer be subject to profit and income tax as present, but shall be treated transparently. Taxation would then occur exclusively on the shareholder level (natural persons or legal entities) in their home country or country of domicile.

The possibility of favoured taxation shall also be given with earnings from research and development in the future.

The new tax law would take into account European Law guidelines, which would lead to a certain legal security. For instance, decisional neutrality in view of financing and profit appropriation decisions would furthermore be ensured with this tax reform. A reduction of foreign withholding taxes on dividends, interest and licences would still be realisable via the means of e.g. double taxation agreements to be concluded.

Now the consultation period has to be awaited. We will gladly inform you further at the given time.

The financial centre Liechtenstein

The Liechtenstein government has declared its willingness to apply the OECD standards for transparency and exchange of information in fiscal matters. And so Liechtenstein vouches for a proactive attitude which allows a forward-looking and positive course of action.

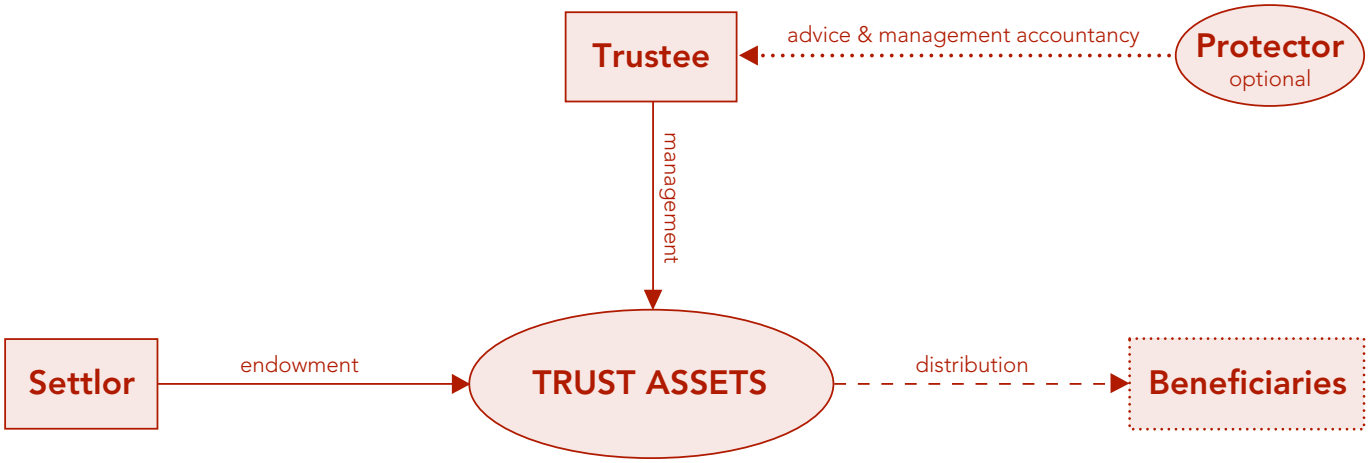
In agreements that are yet to be concluded, Liechtenstein intends to offer interested states cooperation within justified fiscal circumstances and, as a countermove, reduce or avoid double taxations (e.g. withholding tax reduction with regard to dividend, interest and licence incomes) as well as develop acceptable solutions for existing customer relationships. It is necessary to consider mutual interests. Such agreements are now to be negotiated, which will take time.

The bank client confidentiality shall still remain in existence, and strengthened fiscal cooperation shall not be at the cost of the protection of privacy and thus a protection against unjustified access through third parties. According to our understanding, an exchange of information shall be offered through official channels with justified (= specified, clearly established and substantiated) requests by other states in fiscal matters. Analogous to the US Tax Information Exchange Agreement, *fishing expeditions* (an unspecific search for information) shall be excluded from this.

With regard to the EU Anti-Fraud Agreement, Liechtenstein has declared willingness for conclusive negotiations on the basis of a balancing of interests. It is now up to the new government to bring the agreement text already at hand to a mutually acceptable conclusion.

We will keep you informed on further developments.

The Liechtenstein Trust



Liechtenstein is the first and only country to have a codified Trust ever since 1926. Moreover, the *Hague convention on the Law Applicable to Trusts and on their Recognition* came into force in 2006.

The Liechtenstein Trust stems from the Anglo-Saxon legal sphere and is a legal instrument sui generis and not a legal entity.

The Trust originates with its establishment and the transfer of assets through the settlor to the trustee, who administers the trust estate in his/her name, but for the benefit of a specific or determinable third party (beneficiary) or for the benefit of a specific purpose. The settlor may not on his/her part bind the trustee to continuous instructions, since otherwise an ordinary mandate or another legal relationship would be at hand.

Only with a term of more than 12 months the Liechtenstein Trust is to be either registered or deposited with the Land and Public Register Office. The trust estate constitutes an alien estate, and is to be strictly separated from the trustee's assets. Any creditors of a trustee do not have any access to the trust estate!

In Liechtenstein, a justification of trust is possible in accordance to foreign law. Foreign law is applied to the internal relationship (settlor – trustee – beneficiary), whereas Liechtenstein law is applied to the external relationship (trustee – third party).

The Liechtenstein Trust Law does not recognise any *rule against perpetuities* (→ no limited term) and no prohibition for the accumulation of incomes. There is also no minimum capital requirement and no restriction of purpose (→ except if immoral or unlawful). The configuration of the beneficiary rights is up to the settlor.

As with the foundation, the trustee can be provided with an advisor (protector) appointed by the settlor.

The Liechtenstein Trust can be employed in various ways:

– **Support** of family members
– **Successor planning** as defined by the settlor
– **Retention of assets** over generations
– **Protection of assets** against unauthorised access

The Liechtenstein Trust Law stemming from 1926 shall now be reformed and adapted to international developments. The Liechtenstein Trust shall continue to represent an attractive alternative.

Industrie- und Finanzkontor • P. O. Box 339 • Herrengasse 21 • FL-9490 Vaduz • Liechtenstein
Phone +423 237 58 58 • Fax +423 237 58 59 • www.iuf.li • info@iuf.li