



## INDUSTRIE- UND FINANZKONTOR

# News

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### Content

A closer look at Liechtenstein tax legislation

In the best interest of one's clients



Entrepreneurs are the quintessence of responsibility: they're willing to opt out of a regimented corporate comfort zone in favour of a free-spirited albeit risk-laden business life, one that calls for the investment of plenty of time, money and innovative spirit. They have the courage to veer away from the beaten path and blaze a new trail, one on which the related corporate responsibility is part and parcel of their own rucksack. Entrepreneurs are the driving force behind economic

### The courage to bear responsibility

growth and prosperity. All major innovations in the past have come from individuals who were able to give free rein to their creative energy.

Thus especially in difficult economic times, entrepreneurship should be given «wings» instead of being restrained by undue regulations. Because overregulation not only undermines creativity (which in turn has a negative impact on innovation), it also curbs corporate flexibility and disenfranchises the entrepreneur by taking away the power to make crucial decisions. The consequence: progress, productivity and economic growth are supplanted by mediocrity, bureaucracy and a focus on problems rather than on solutions.

A tendency in this direction has been observable during recent decades particularly in the financial services industry. Excessive state regulations (e.g. cumbersome and not very purposeful *corporate governance* and *compliance* rules) and even company-internal

provisions increasingly absolved the key players from responsibility vis-à-vis their clients and led to the supremacy of «problem obsession» over «solution orientation». This trend hindered the individual's ability to act and react even as it fostered a supply-side mindset. The financial services industry was too heavily occupied with itself. No longer did clients and their needs take centre stage, but instead the «necessities» of one's own institution.

The clients' interests and needs must once again become the focal point. Service providers in the general economy and financial arena want to act innovatively and far-sightedly and once again uphold their responsibility towards clients.

The future lies in entrepreneurial thinking and in the courage to assume more responsibility. Client service should be rendered in the best interest of one's clients.

Michael von Liechtenstein

# A closer look at Liechtenstein tax legislation

**In I&F News No. 3/December 2010\*, we offered an initial overview of the new Liechtenstein tax law. In this issue, we provide an insight into the relevant aspects of ordinary taxation under this new legislation.**

Right from the outset it should be noted that the originally planned 5-year transition period from the old to the new tax law has been slightly adapted and reduced to three years. In actual practice, this means that all client structures established under the previous tax law (i.e. prior to 01 January 2011) must be aligned with the new law by the end of 2013. Thereupon, taxation under the new law will commence as of the beginning of the 2014 financial year.

With the exception of trusts and tax-exempt legal entities such as charitable foundations, all legal persons will be subject to one of the following tax regimes:

- ordinary taxation; or
- taxation as a private asset structure (PAS).

There is no hard and fast rule as to whether a client structure is to be taxed ordinarily or as a PAS: the situation must be assessed on a case-by-case basis. In general, however, a legal person may qualify as a PAS if it is involved exclusively in asset management and performs no commercial activity as defined in the context of the European State Aid Law.

## The basics of ordinary taxation:

The taxable net corporate income of legal persons is subject to a 12.5% flat-rate tax. The minimum amount in any instance is CHF 1,200 p.a. Compared internationally, this is a very low level of taxation. Taxable net corporate income is derived from the total corporate income, less commercially justifiable expenses and a notional interest deduction on equity capital.

As a means of avoiding double taxation, the Liechtenstein Tax Law provides for a number of tax-exempt revenue flows, for example from:

- Income from foreign permanent establishments.
- Rental and lease income from real estate situated abroad.
- Dividends arising from participations in domestic/foreign legal entities.
- Capital gains from the sale or liquidation of participations in domestic/foreign legal entities.
- Corporate income from managed assets of investment undertakings in accordance with the Investment Undertakings Act.
- Domestic real estate capital gains (to the extent that they are subject to the real estate capital gains tax in Liechtenstein) as well as capital gains from the sale of foreign real estate.

As is already the case in other jurisdictions, significant issues such as write-downs that are commercially not justified, hidden distributions and pre-emption of profits and the at arm's length principle will play a role in ordinary taxation in the coming years.

## Notional interest deduction:

The deduction of interest on equity capital

represents a commercially justifiable interest expense and lowers the basis of assessment for income tax. With this approach, equity capital is «put on a par» with debt capital: a potential cost differential is reduced or, assuming equal interest rates on equity and debt capital, even neutralised.

The specific interest rate is established annually by the Liechtenstein Tax Authority. For 2011, it amounts to 4%. The deductible interest expense is calculated on the basis of the modified equity capital.

The latter is arrived at as following:

- paid-in nominal capital, capital stock or share capital
- + capital reserves
- + weighted financial result for the current year (50% of the annual profit)
- +/- capital increases or decreases (weighted pro rata temporis)
- own shares
- participations in legal entities
- foreign real estate assets
- net assets of foreign permanent establishments
- non-operating assets
- = modified equity capital

**Table 1:**

	Amounts in CHF:			
Equity capital:	1,500,000	1'500,000	1,500,000	1,500,000
Net income:	80,000	120,000	180,000	260,000
<b>Return on equity:</b>	<b>5.33 %</b>	<b>8.00 %</b>	<b>12.00 %</b>	<b>17.33 %</b>
Notional interest deduction (2011): 4 %	60,000	60,000	60,000	60,000
Taxable net corporate income:	20,000	60,000	120,000	200,000
Corporate income tax rate: 12.5 %	2,500	7,500	15,000	25,000
<b>Effective corporate income tax rate:</b>	<b>3.13 %</b>	<b>6.25 %</b>	<b>8.33 %</b>	<b>9.62 %</b>

Table 1 illustrates to what extent (depending on the return on equity) the notional interest deduction can reduce the effective income tax rate.

#### *Liechtenstein IP-Box:*

The IP-Box-regulation grants a favourable tax rate on income from intellectual property rights generated by legal entities that develop and commercialise intangible economic assets or perform research and development activities: 80% of total income can be declared as commercially justifiable expenses; the remaining 20% is taxed at the normal 12.5% rate. Ultimately, this preferential treatment results in an effective tax rate of 2.5%.

All related expenses (including depreciation and financing costs) can be deducted from the income attributable to intellectual property rights. Table 2 illustrates this process.

The IP-Box-regulations apply with regard to intellectual property rights that were created or acquired after 01.01.2011 and are protected through entry in a register.

#### *Conclusions:*

Ordinary taxation under the new Liechtenstein tax law is without doubt attractive. The notional interest deduction leads to the equal treatment of equity and debt capital, avoiding as a result that tax considerations have an edge over corporate decisions. The IP-Box-regulation is in line with European provisions and therefore affords legal certainty.

Other advantages of Liechtenstein in terms of taxation (especially as far as holding structures are concerned) are:

- The tax exemption of dividends and capital gains, in combination with the notional interest deduction, leads in many cases to the result that only the minimum tax of CHF 1,200 is payable.

**Table 2:**

	Amounts in CHF:
Income from intellectual property rights:	100,000
Depreciation:	50,000
Financing costs:	5,000
Administrative costs:	15,000
Total expense:	70,000
<b>Positive income (= net corporate income):</b>	<b>30,000</b>
Less 80% special deduction:	24,000
Taxable net corporate income:	6,000
Corporate income tax rate: 12.5%	750
<b>Effective tax rate on net corporate income:</b>	<b>2.5%</b>

- The group taxation system allows to compensate losses arising in a given year with profits generated during the same year.

- The loss-offset possibility enables losses to be carried forward indefinitely and to be set off against future profits; also, losses from foreign permanent establishments can be used to reduce the taxable domestic net corporate income.

In addition, the new tax law simplifies the conclusion of treaties aimed at avoiding double taxation and thereby promotes the recognition and legal standing of Liechtenstein legal entities abroad.

The Liechtenstein government is therefore continually striving to broaden the Principality's network of Double Taxation Agreements (DTAs). With the signing of a DTA with Germany (as one of Liechtenstein's largest trading partners) an important milestone has been reached in this regard. The opportunities offered by these DTAs will enable us in future to develop further solutions in response to client needs.

\*Some further information at this point: Earlier issues of I&F News can be accessed at [www.iuf.li](http://www.iuf.li) > Publications. An up-to-date overview of developments on the international tax treaty front can be found at [www.regierung.li](http://www.regierung.li) > Ministries > Finance.

# In the best interest of one's clients



Count Francis von Seilern-Aspang  
Chief Executive Officer

Dear Reader

Wherever there are assets, the risk of losses and other threats are not far away.

In earlier times, those risks and threats came from wars or internecine strife. Thus it comes as no wonder that, for example in medieval England, the concept of «trust» was developed with the intention of protecting one's property and wealth.

Today, wealth is threatened more than ever before. Economic and financial crises are leading to fiscal uncertainties, even as they fuel the threat of inflation and hence a loss of wealth. Highly indebted nations are introducing unhealthy political and regulatory constraints as well as adopting confiscatory measures in the area of taxation. Moreover, intrafamilial conflicts arising from extravagance, divorce or succession could have incalculable consequences on a family fortune. Thus the threat to one's wealth is indeed real.

Accumulating wealth calls for continuous work and attention; spending or losing wealth is easy and occurs rapidly. The latter can be countered through timely wealth planning and protective measures. For instance, the «autonomisation» of certain assets can afford wealth protection, while a deliberate and propitious approach to «mentally

dealing» with assets takes into account the long-term preservation of wealth.

## **Why should private wealth be protected and preserved?**

During the course of one's life, at some point the awareness should occur that a private fortune also entails responsibility – responsibility vis-à-vis earlier and future generations, as well as with respect to family members, the economy and society as a whole. On one hand, private wealth can play a very decisive role in fostering the independence and personal development of one's next of kin because it expands the range of opportunities for basic and continuing education or is applied towards financing entrepreneurial ventures. On the other hand, of course, private wealth can also be used in a targeted manner to support philanthropic and charitable causes. In addition, that fortune is most often invested with a long-term focus and flows either directly or indirectly into the economy and society. And the list of examples goes on and on. Private wealth has a positive impact and for that reason, it is important and absolutely correct to safeguard and preserve private wealth.

Global events in recent years have engendered an atmosphere of turmoil and uncertainty. In response, people are once again increasingly in search of stability and security. For decades, Liechtenstein has stood out for its political, economic and social stability. Even though certain events in the past several years have led to short-term trepidations, the Liechtenstein financial centre has proved its steadfastness. Policymakers have incrementally and successfully introduced measures that pave the way for a promising future. A hallmark of the Principality is its age-old tradition of protecting and preserving private wealth. Its financial centre possesses the necessary experience and know-how to create and comprehensively administer structures that serve those purposes. Liechtenstein remains an ideal home for private wealth and is also an increasingly attractive domicile for corporations. The notion that Liechtenstein

legal structures «merely serve to evade taxes» is simplistic and does not reflect the facts, regardless of what certain media gladly and repeatedly maintain.

## **A «general contractor» in the best interest of one's clients:**

Owing to our decades of professional experience, we at Industrie- und Finanzkontor have acquired a keen understanding for the problems and challenges faced by wealthy families. With that understanding, we analyse the ever-different family and wealth circumstances, work up tailored solutions and offer advice on the pros and cons of the various possibilities.

We develop, establish and administer legal structures that correspond to the needs of the client and enable his or her long-term family and wealth goals to be achieved. We constantly monitor the extraneous conditions of relevance to the client structure because over time a need for adaptation may arise. This structural adaptability is a central element of wealth protection and wealth preservation.

For us as a «general contractor», having the courage to bear responsibility means acting in the best interest of our clients.

Francis von Seilern-Aspang