

Liechtenstein's path

(Translation of an article written by H.S.H. Prince Michael of Liechtenstein published in "Finanz und Wirtschaft", the leading Swiss financial and economic newspaper, on 7th April 2010.)

Top-priority is given to asset protection. Negotiations shall only exceed art. 26 of the OECD-standard if in return favourable conditions are granted for clients.

A financial system has two functions: to provide facilities (money) for the support of countertrades and to provide a «storage facility» (like a battery) between such countertrades. A financial centre has the function to accumulate funds, to optimise and then feed them to the economy.

Smaller financial centres such as Liechtenstein can only stand out from the crowd by pursuing a niche-strategy. Due to their diminutive size they do not have the capacity for asset management or investment banking in their home markets. In addition, best performance can only be achieved where there is a high concentration of asset managers or a funding requirement.

In the past Liechtenstein mainly acted as a provider for asset protection structures – such as foundations and trusts – for other financial centres, especially the Swiss financial centre. Over the years, however, direct client-relationships have increasingly developed: autonomous industries in banking, life insurance and funds. Most financial businesses require asset protection – be they trustees, asset managers, bankers, insurances or fund managers.

A place for asset protection

Liechtenstein's financial centre has been and remains a place for asset protection, providing foundations, trusts, specialised funds and insurance products. Many European countries are not equipped for asset protection or long-term asset preservation and are subject to political interaction. Liechtenstein, however, has the necessary legal environment to provide legal certainty and planning stability. Liechtenstein's EEA-membership gives access to the European Union. Legal certainty is essential for asset protection.

Wealth has always been in jeopardy for a variety of reasons such as extravagance, family problems (e.g. divorce), unfavourable business decisions or claims from third parties. Particular danger, however, comes from the outside: political risks, economic instability, confiscatory measures by governments or attacks from so-called «creditors», criminals or kidnappers. Discretion manifestly is the best protection for wealth. Unknown wealth cannot be attacked. Why else would our ancestors have buried their valuables? Asset protection can only be provided if a politically and economically stable environment is given with an adequate legal and customer-friendly background. Furthermore, the correct infrastructure is required for implementing and background asset protection systems. Liechtenstein's financial centre in general is well prepared. However, the financial centre aims to further improve its consulting know how, especially in the fields of international taxation and law of obligation. This aspect has been underestimated in the past, on account of the financial centre's former function as a pure «provider».

The current debate on taxation – with populist propagation – aims to dry-out tax havens. To help support this objective, the so-called «tax-honest» citizen is presented as the ultimate victim of tax havens and is used to justify the state's intrinsic urge for control. In this context, Liechtenstein follows its own path to protect the financial centre and its clients. Privacy shall remain effective although, simultaneously, wealth held by Liechtenstein structures shall be given the possibility to become tax compliant – wherever possible without disclosure. No negative legal consequences should apply to the settlor or beneficiaries in his/her/their country of residence on account of such assets.

In this context strong consulting know how is required. Advice must be adapted to each settlor's or beneficiary's country of residence and its realities. The Liechtenstein foundation, in particular, becomes relevant to many jurisdictions, but needs predictable rules of law. Currently, such legal certainty is being increasingly undermined.

Unfortunately, the application of a Withholding Tax is not favoured by most of the countries: Although a Withholding Tax would cover fiscal requirements it would also hinder state control of a citizen's assets. In 2009 Liechtenstein concluded several TIEAs (Tax Information Exchange Agreement) according to the OECD-standard and thereby was placed on the «white list». Liechtenstein is currently negotiating several Double Taxation Agreements to complete these TIEAs. The Double Taxation Agreements would expand the possibilities for the Liechtenstein holding business. It is important to note that negotiations beyond art. 26 of the OECD-standard shall only be contemplated if in return favourable conditions are granted for clients.

A special agreement has been concluded with the United Kingdom. Through this agreement UK-related clients obtain the possibility either to become tax-compliant within five years or to restructure. In return for this «opening» Liechtenstein will call for the recognition of its legal entities throughout the EU. Due to the EEA-membership such recognition should already be standard.

Necessary improvements

Due to its size and the non-observance of international law principles by many Western states, Liechtenstein has already made full use of its external options. But there are domestic options such as an efficient implementation of the new tax law and more liberal regulations regarding immigration rules for specialists and entrepreneurs (and their holdings). In addition, due to the complexity of many tax systems, Liechtenstein needs additional resources in this field. Furthermore, a business-friendly and unbureaucratic approach by public administrations and supervisory bodies are essential, as is a new law on funds linked with the abolishment of the constraint of the home-deposit-bank.

With regard to external relations the EU-mother-daughter-directive should be granted as a minimum return for any agreement that goes beyond the OECD-standard. In addition, all of those EU-countries should be identified that do not comply with valid EEA-law and therefore hinder Liechtenstein. Such cases should be systematically brought forward to the European Court of Justice.