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Allgemeines Treuunternehmen
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Liechtenstein's tax law

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1. Overview

A few years have passed since the revision to Liechtenstein's tax law on 1 January 2011. It is fair to say that this revision fulfilled expectations. Liechtenstein's tax law system is regarded as a modern and attractive policy that provides companies and legal entities based here with a tax-friendly and stable environment while promoting Liechtenstein considerably as an economic centre.

Regular EU reviews of numerous jurisdictions with regard to tax transparency, fair corporate taxation and the implementation of the base erosion and profit shifting (BEPS) minimum standards resulted in a few regulations being singled out in Liechtenstein's tax law; Liechtenstein has vowed to amend these before the end of 2018.

Liechtenstein succeeded in adapting its easily legible and attractive tax law to the EU guidelines within the space of just a few months. Although certain holding structures are experiencing a new complexity, Liechtenstein's tax system, combined with its flexible corporate law, also remains attractive and well-equipped for client expectations in the future. The challenge will be to adopt an upfront approach, together with financial intermediaries and clients, with regard to offering ideas and answers to questions which will ensure that asset structuring continues to meet the expectations of international clients. In this sense, continued success will depend on closer cooperation between the client and fiduciary, in turn forming a basis for effective legally compliant solutions. This bulletin is intended to provide a general overview of the amendments.

2. Liechtenstein income tax

2.1 Tax liability

Legal persons are generally subject to regular taxation if they have a registered office or place of effective management in Liechtenstein (unlimited tax liability) or a permanent establishment (limited tax liability). In reality, providing evidence of the registered office of a company is never an issue in tax administration due to the registration of the company or the presence of permanent establishments. When it comes to the place of effective management, however, it is not hard to see how this issue could become the subject of serious discussion in future. Despite the fact that the definition of the place of effective management has remained unchanged in Liechtenstein since 2011 and has always been based on the location of senior business management (see report and application 83/2010), this issue has been growing in global significance, not least with the implementation of the BEPS Action 6 – 2015 Final Report, and amended Articles 3 and 4 of the OECD Model Tax Convention on Income and on Capital and the 18 double taxation agreements concluded by Liechtenstein. While at one time, local tax authorities were largely left alone and isolated with almost no way of obtaining information about foreign companies managed within their countries, this is no longer the case thanks to the global introduction of the automatic exchange of information (CRS/AEOI). Tax authorities are now informed automatically by participating partner states where domestic persons, whose entity falls under the relevant classification, are a controlling person, for example the director of a registered financial account. If, for example, a director of a foreign company is resident in Liechtenstein for tax purposes, the relevant foreign tax authority may, where the foreign entity falls under the relevant classification, notify Liechtenstein regarding said Liechtenstein-based director. The latter would then be obliged to demonstrate to what extent the company is based in Liechtenstein and thus whether or not it is subject to unlimited tax liability. Please refer to Bulletin No. 30 of April 2016 for further information with regard to the AEOI.

If unlimited tax liability in Liechtenstein applies, legal persons are subject to regular taxation, or alternatively – subject to certain criteria being fulfilled – the private asset structure (PAS) regime.

2.2. Private asset structures (PAS)/trusts

No objection was raised with regard to the PAS concept in the last EU review of Liechtenstein's tax law and so legal persons are still afforded the opportunity to pay a minimum income tax of just CHF 1'800 per year.

PAS status is generally available to all legal persons insofar as they essentially do not engage in any economic activity, are not investors in any commercially active company and, where shareholdings are held, do not exert any influence on the management of holding companies, apart from exercising shareholder rights. Economic activity might for instance include letting property or granting loans. PASs are also precluded from receiving remuneration from shareholders or third parties for their activities.

As well as PASs, structures without a legal personality (e.g. trusts, i.e. dedications of assets without personality) are also subject to the minimum annual income tax, provided they have been established under Liechtenstein law or the place of effective management is in Liechtenstein.

It should be noted, both for structures with PAS status and dedications of assets without personality, that double taxation agreements are only applicable to a very limited extent (these cannot avail themselves of double taxation agreements with Luxembourg, Austria or Switzerland for example).

2.3 Regular taxation – minimum income tax

The income tax rate equates to 12.5 % of taxable net income, with an annual minimum income tax of CHF 1'800.[1] Taxable net income is calculated based on the asset statements or annual financial statements compiled in accordance with the Liechtenstein Persons and Companies Act of 20 January 1926 (Personen- und Gesellschaftsrecht vom 20. Januar 1926 – PGR) which, allowing for tax additions and deductions, determine the taxable net income. The relevant principles were explained in Bulletin No. 27 of November 2014.

2.3.1 Relevant changes in the field of tax set-offs

The arm's length principle

Income and expenses must be based on the arm's length principle as defined under Article 49 of the Liechtenstein Tax Act (Steuergesetz – SteG), i.e. these should be the same as they would for transactions between independent third parties. In this respect, taxable persons must comply with the latest version of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and document this accordingly. If transfer pricing at arm's length cannot be evidenced, the tax authority will apply a profit-increasing offset ex officio. For receivables and loans between affiliated persons, there is a "save haven" which is announced annually in a fact sheet published by the tax administration (e.g. the 2021 interest rate for receivables in CHF with full equity financing is 1.5 %).

Taxable persons may also request that the tax administration provide them with binding information with regard to the tax assessment of circumstances or transactions not yet realised at the time the

1 *Taxable persons whose sole object is to engage in business on a commercial basis and whose average balance-sheet total over the past three financial years has not exceeded CHF 500'000 are charged no minimum tax (see Article 62 of the SteG).*

request is made. Where cross-border situations are concerned, the tax administration is subject on the basis of BEPS Action 5 – 2015 Final Report to a binding spontaneous exchange of information with regard to any tax ruling given. The obligation to apply the arm's length principle has been in existence in Liechtenstein since the introduction of the SteG in 2011. But the issue is now also becoming an increasingly sensitive one in Liechtenstein, not least due to the tightening-up of approaches globally (e.g. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, BEPS Actions), so much so that the issue simply must be afforded increased attention.

Losses from shareholdings

Depreciations, value adjustments as well as realised and unrealised losses from shareholdings in legal persons will no longer be tax-deductible from 1 January 2019 onwards. Impairment postings on the basis of the PGR will therefore be regarded as tax offsetting items. This should counteract the previous asymmetry between tax-free shareholding and capital gains and tax-deductible depreciations (see section 2.3.2 below).

2.3.2 Relevant changes in the field of tax set-offs

Tax-free income and capital gains

Since the SteG was introduced, dividends, capital gains and unrealised gains from shareholdings in legal persons in Liechtenstein and abroad[2] have generally been regarded as tax-free income.

Since 1 January 2019, investment income arising from investments in or distributions from foreign legal persons will no longer be exempt from income tax if all of the following prerequisites are met:

1. Passive income: more than 50% of the total income of the foreign legal person consists of passive income in the long term[3] – this excludes income generated as part of the actual economic activity of said person (e.g. interest earnings in the case of banks).

2. Lower tax rate: the net profit of the foreign legal person is subject (directly or indirectly) to a lower tax rate. The lower tax rate applies as follows:

   a. The foreign income tax rate is less than 6.25 % for shareholdings of less than 25 % (half of Liechtenstein's income tax rate).

   b. For shareholdings of at least 25 %, the effective income tax rate is less than 50 % of the income tax rate in comparable domestic cases. All prior tax charges, such as foreign income taxes or withholding taxes, will be taken into account.

In the analysis, relevance is attributed to the company that originally initiated the distribution. Hence, if a company itself receives a distribution from another company, then the other company should also be the focus of the review. The result is therefore regarded as a consolidated result applicable to the group as a whole.

It is important to emphasise that the 12.5 % taxation rate payable in Liechtenstein will only apply if the foreign company disburses its (long-term) passive and low-taxation income to a Liechtenstein legal person that is ordinarily subject to tax in the form of dividends. This also includes direct payments to beneficiaries/shareholders, specifically where the Liechtenstein legal person does not have its own bank account and all payments are transacted via the bank of its foreign subsidiary. Where no disbursements are made, no taxation will be applied. Income from shareholdings is treated the same as capital gains from sales or liquidation. These rules will not apply to any investments in foreign legal persons already in existence on 1 January 2019 until the 2022 tax year. Please refer to the calculation examples provided in Annex 1 for more information.

Income and capital gains from foreign property and permanent establishments abroad remain tax-exempt.

- Exclusive properties (e.g. in the south of France, Monaco or London) are often incorporated into a Liechtenstein legal entity (usually an establishment or a Trust reg.). Some of the advantages of this are that the owner is afforded a certain amount of discretion during the holding period and that sales by means of "share deals" do not require any change in the land register.

- Permanent establishments abroad are tax-exempt regardless of whether or not a double taxation agreement exists. This enables the transfer of funds without triggering withholding taxes in countries which do not have agreements or which have agreements with withholding tax.

Notional interest deduction[4]

Appropriate interest of 4 % on what is referred to as modified equity capital is regarded as a justified business expense. When modifying equity capital, own shares, shareholdings in legal persons, foreign property and permanent establishment net assets, and non-operating assets, plus 6 % of all remaining assets are to be deducted. This is of benefit to companies with lower returns on equity, since returns on operating assets of up to 3.76 % will not be subject to any taxation in this case. If the modified

2 *Independent of the amount and holding period of the investment*

3 *e.g. interest and other income from financial assets, licensing income or other income from intellectual property and income from finance leasing.*

4 *The option of a fictitious notional interest deduction is also available to other countries in the EU, such as Belgium, Italy, Luxembourg, Malta and Cyprus.*

equity capital is negative, there is no interest deduction. Likewise, the interest deduction cannot generate a loss.

Notional interest deductions can be reduced where loans to shareholders[5] are subject to interest under the notional interest deduction system and, new since 2019, in double-dip structures:

Parent companies can borrow capital and use equity capital to fund their subsidiaries, which can then apply for a notional interest deduction. Without any anti-abuse provisions, interest on borrowed capital could be declared for the parent company and a notional interest deduction applied to the subsidiary; in certain situations, this could result in the subsidiary's equity capital eligible for a notional interest deduction being higher than the consolidated equity capital of the parent company and subsidiary together. To avoid this excess interest or notional interest deduction, all shareholdings with a notional interest deduction must be equity-financed at the level of the parent company. Otherwise this will result in tax offsetting in the parent company (for this see calculation example in Annex 2).

Reductions can also be applied for the following transactions:

- Cash or contributions in kind provided by affiliated persons
- Acquisitions of businesses or business units of affiliated companies
- Transfers of shareholdings to or by affiliated persons

If, however, the taxable person can provide evidence that the above-listed transactions have not taken place for tax purposes, but for economic or otherwise justifiable reasons, the notional interest deduction will not be reduced.

3. International

3.1 General information on withholding tax/refunding and crediting of foreign taxes

Since the abolition of the 4 % coupon tax for companies limited by shares (Aktiengesellschaft – AG) and limited liability companies (Gesellschaft mit beschränkter Haftung – GmbH), Liechtenstein no longer imposes withholding tax for dividends, interest and licenses.

Foreign withholding taxes (on dividends, interest and licenses) may be limited based on state treaties concluded by Liechtenstein (e.g. the EEA Agreement) and international taxation agreements (e.g. double taxation agreements, tax information exchange agreements, agreement with the EU on the AEOI). Withholding tax is either restricted in the form of direct tax relief or in the form of a refund. Companies established in Liechtenstein are to be treated the same as those established in the EU. Thus, the Parent-Subsidiary Directive (90/435/EEC) is also applicable to affiliated companies in Liechtenstein provided administrative mutual assistance (e.g. a tax information exchange agreement) is in place. Subsidiaries to which the Parent-Subsidiary Directive applies may, generally speaking, pay their parent company in Liechtenstein a dividend without any domestic withholding tax being deducted. However, some EU countries such as Spain, do not allow equivalent treatment.

As a result of numerous existing double taxation agreements (DTA), structures domiciled in Liechtenstein have the option of getting a full or partial refund of the retained withholding tax on dividends and interest from the DTA partner state. What is certainly of importance here is the DTA with Switzerland, which makes it possible to reduce the Swiss withholding tax from 35% to 15% or even 0%. It is in particular in succession planning but also in charitable activities that a substantial part of the assets is in many cases invested in Swiss titles for the purpose of asset allocation. If this is done using trusts or foundations in jurisdictions without a DTA with Switzerland, the Swiss withholding tax often constitutes a final financial burden. However, if a Liechtenstein foundation (or other legal entity) is used for structuring, the withholding tax on portfolio investments can generally be reduced to 15%.

Incoming interest payments are subject to taxation in Liechtenstein, while withholding taxes, which are non-recoverable, may be credited in Liechtenstein on request provided a corresponding double taxation agreement is in place or the other country holds reciprocal rights («reciprocity principle»). The credit amount will be no more than the Liechtenstein income tax on the affected income. Please refer to the website of the Liechtenstein Tax Administration[6] for current double taxation agreements and tax information exchange agreements.

3.2 Withholding tax on governing body compensation

Remunerations paid for the roles of members of the board of directors, foundation council or other similar governing bodies of legal persons and special dedications of assets based in Liechtenstein or whose place of effective management is in Liechtenstein are generally subject to a tax deduction of 12 % of the gross compensation paid (e.g. bonuses, attendance fees and set remunerations), provided the member of the respective governing body is a natural person or a foreign legal person and unless any double taxation agreement stipulates otherwise. If the gross compensation exceeds CHF 200'000 a year, the member of the governing body is subject to ordinary tax assessment in Liechtenstein and under obligation to submit an annual tax return as a person with limited tax liability (maximum tax rate of 24 %).

5 *As well as founders and beneficiaries and persons related to them*

6 *www.llv.li/#/11469/internationale-steuerabkommen. Last updated: 6.11.2020*

Liechtenstein–Switzerland DTA[7]
Governing body compensation payments with regard to Switzerland are subject to a final withholding tax in Liechtenstein and therefore no additional taxation in Switzerland (exemption subject to progression). The precondition for this is that the Liechtenstein asset structure is not subject exclusively to the minimum income tax (e.g. PAS status, dedications of assets without personality) or the remuneration is paid to a legal person abroad «vicariously» (e.g. the governing body member's employer). Swiss members of governing bodies therefore have the option of simply paying a flat-rate tax of 12 % on their income from their role as the governing body of a Liechtenstein structure, without having to undergo further taxation in Switzerland (exemption subject to progression, see calculation example in Annex 3).

3.3 Spontaneous exchange of information – tax rulings

Following accession to the Convention on Mutual Administrative Assistance in Tax Matters (MAC) and its ratification on 22 August 2016, Liechtenstein committed itself to the spontaneous exchange of information from 2017 onwards. Participating states are obliged to provide one another with binding spontaneous reporting where there is reason to believe that

- another signatory state might suffer tax losses;
- a taxable person is being granted a tax reduction which results in a tax increase or taxation in another signatory state; or
- artificial transfers of profits are taking place between two signatory states.

A national basis has been established following the amendment of the Liechtenstein Act on International Administrative Assistance in Tax Matters (Steueramtshilfegesetz) and the issuing of a corresponding ordinance.

In the course of implementing the BEPS minimum standards, Liechtenstein also adopted a framework for the spontaneous exchange of information on tax rulings starting from 1 January 2018.

Tax rulings in Liechtenstein generally receive a quick response (between one and two weeks) and are subject to a fee of up to CHF 2'000. In the case of international relevance still applicable from 1 January 2017, this information will be exchanged with the relevant partner jurisdictions (e.g. MAC or double taxation agreement partners).

3.4 The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)

Liechtenstein signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017. It entered into force on 1 April 2020. Thanks to the MLI, the BEPS minimum standards to counter treaty abuse and improve dispute resolution were automatically integrated within the existing double taxation agreements of the participating countries on the basis of international law, without any need for repeated bilateral negotiations and adjustments between the individual DTA partner states.

The double taxation agreements that are subjected to the MLI are those which do not yet meet the BEPS minimum standards. The DTA with Switzerland and Germany are not adjusted by the MLI but by way of bilateral revision protocols. The corresponding changes are expected to enter into force from 2022/2023.

The following substantive provisions are significant for the MLI-relevant double taxation agreements:

- DTA preamble: It is laid down in clear terms that it is the intention of the agreement to avoid double taxation, but without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the agreement).
- Method to prevent double taxation: if there are differences in the interpretation of the agreement, the credit method is to be used.
- DTA abuse provision: residence in a state for the purpose of receiving benefits under a double taxation agreement is to be negated if one of the principal purposes was to obtain a benefit under the agreement (principal purpose test).
- Mutual Agreement Procedure (MAP): where it is assumed that fiscal discrimination occurs in one state, the tax subject may choose which contracting state it will submit the case to – the tax subject is therefore free to choose between the state of residence and the other state.
- Arbitration: to be used where the DTA contracting states are unable to settle a taxation dispute through MAP within a period of two years.

The applicability of the MLI will be communicated individually for each Signatory by the respective fiscal authority, the earliest time for application being 1 January 2021.

4. Value added tax

4.1 Changes from 2018 onwards

Based on state treaties from 1923, Switzerland and Liechtenstein came together to form a customs union whereby Swiss value added tax (VAT) legislation is generally also applicable in Liechtenstein, and Liechtenstein and Switzerland are both regarded as one domestic entity with regard to VAT.

7 *There are similar provisions in relation to governing body compensation fees paid to members of governing bodies based in Luxembourg, San Marino and Hungary.*

Following a partial revision of the Swiss VAT Act (Mehrwertsteuergesetz) in 2017, the following key changes, among others, came into effect from 1 January 2018 onwards:

- a reduction of standard rate from 8 % to 7.7 %; and
- a reconsideration of what defines turnovers subject to VAT.

National and foreign companies are subject to VAT in Liechtenstein if they record a cumulative turnover in excess of CHF 100'000 both domestically and abroad. Foreign sales will be taken into account starting from 2018. If no sales are transacted domestically, the company will have the option of registering for VAT. Companies with a global turnover of more than CHF 100´000 will therefore have the option of recovering input taxes paid in Liechtenstein and Switzerland without having had to transact any domestic sales to do so (see Annex 4 for further information).

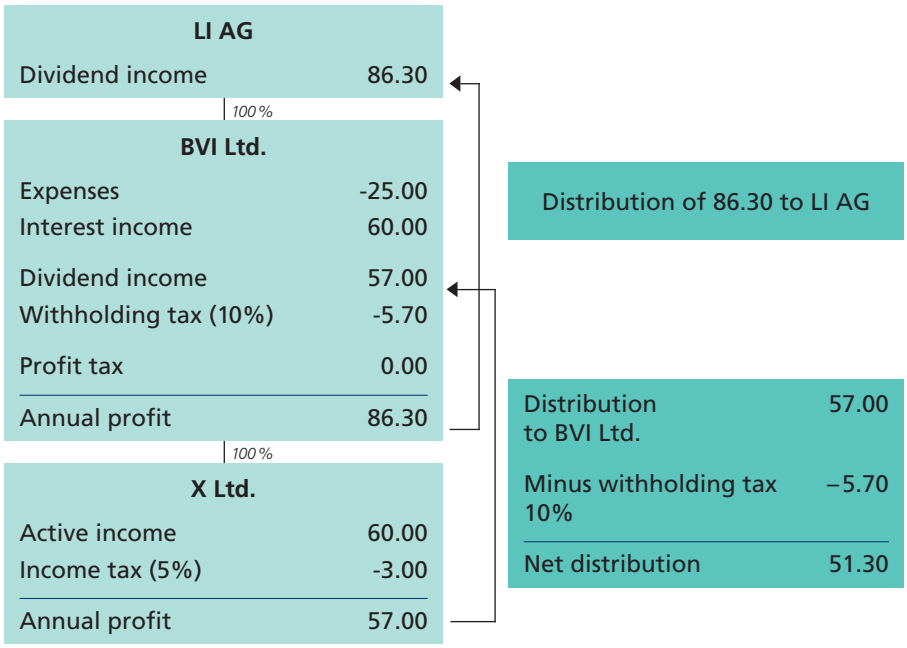
4.2 Reminder – acquisition tax

In addition to the general VAT obligation associated with sales of goods for example, services received will also continue to involve VAT, namely acquisition tax. This is the case where a foreign company (e.g. a foreign asset management company or legal firm) provides a catalogue service (e.g. consultancy, asset management or management service) to business owners based in Liechtenstein with their own VAT number or to another legal entity.[8] If these requirements are met, the recipient is obliged to declare the Liechtenstein VAT due on the services received in the form of acquisition tax on an annual basis and pay this to the Liechtenstein tax authority.

8 *Catalogue services provided to legal entities without VAT numbers are only subject to acquisition tax if the total value of all domestic catalogue services received exceeds CHF 10'000 p.a.*

Annex 1

a) Example of dividend exemption analysis with shareholdings of at least 25 % in BVI Ltd.
Note: the following calculation serves solely to illustrate the principle; slight variations may occur in practice.



1. Check classification active/passive income received by X Ltd. in accordance with the active income stated as 100 %

2. Check classification active/passive income received by BVI Ltd.

Total income	120
Of which passive (interest)	60
Passive income percentage	50.00 %

⇨ Majority of income not passive, conditions of Article 48(3)(b)(1) of the SteG not met.

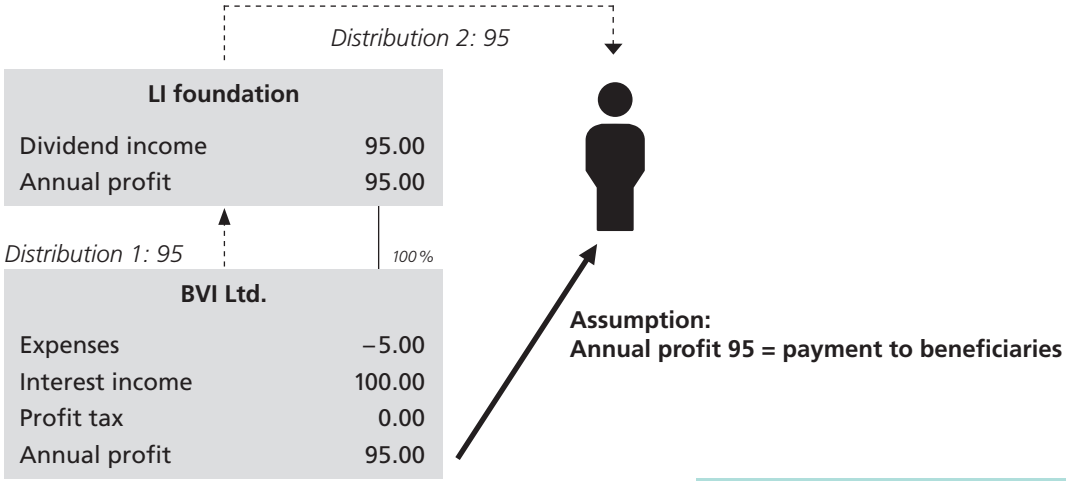
3. Check total effective income tax charge

X Ltd. active income	60.00	
BVI Ltd. interest income	60.00	
BVI Ltd. expenses	-25.00	
Fictitious net profit LI AG	95.00	
of which 12.5% × 50%	5.94	6.25% tax rate
X Ltd. income tax	3.00	
X Ltd. withholding tax	5.70	
Effective income tax charge	8.70	9.16% tax rate

⇨ 9.16% effective income tax charge is > than 6.25% of income tax in comparable domestic case, conditions of Article 48(3)(b)(2)(bb) of the SteG not met.
⇨ Dividends received by LI AG not taxable as defined under Article 48(3) of the SteG.

Note: Calculation method not final, variations possible in practice. Notional interest deduction not taken into account.

b) Example for direct payments to foundation beneficiaries



1. Check classification active/passive income received by BVI Ltd. in accordance with the passive income stated as 100% (interest income)

   Majority of income passive, conditions of Article 48(3)(b)(1) of the SteG are met

BVI Ltd. interest income	100.00	
BVI Ltd. expenses	-5.00	
Fictitious net profit LI foundation	95.00	
of which 12.5% × 50%	5.94	6.25% tax rate
BVI Ltd. profit tax	0.00	
Effective income tax charge	0.00	0.00% tax rate

2. Check total effective income tax charge

⇨ 0.00% effective income tax charge is < than 6.25% of income tax in comparable domestic case, conditions of Article 48(3)(b)(2)(bb) of the SteG are met
⇨ Dividends received by LI Foundation taxable at 12.5% as defined under Article 48(3)(b) of the SteG

Annex 2

Example for debt financing of subsidiary

HoldCo LI / parent company			
FinCo LI	150	Equity capital	100
		Borrowed capital	50
Total	150	Total	150

FinCo LI / subsidiary			
Assets	150	Equity capital	150
Total	150	Total	150

Calculation formula as defined under Article 54(4) of the SteG

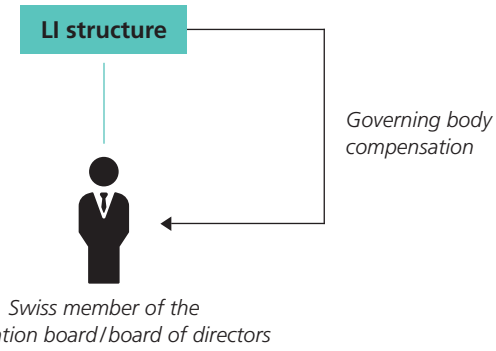
HoldCo LI

Taxable equity capital	100
Minus shareholdings	-150
Negative balance	-50
× 4% target income	-2
Tax addition of 2 for parent company	

Annex 3

Governing body compensation Switzerland – exemption mechanism

There are similar provisions in relation to governing body compensation paid to members of bodies based in Luxembourg, San Marino and Hungary.



Until 31 December 2016

Governing body compensation	100′000
46% pers. tax rate CH (e.g. Geneva)	–46′000
Net income	54′000

From 1 January 2017

Governing body compensation	100′000
12% Liechtenstein withholding tax	–12′000
46% pers. tax rate CH (e.g. Geneva)	Exemption in CH*
Net income	88′000

* Subject to progression

Saving 34′000

Annex 4

Version 1:
NOT VAT registered

LI AG
Has not exercised option ⇨ Not VAT registered
⇨ Input tax and acquisition tax are final charges/expenses

Expenses		**Income (from foreign sales)**	
Domestic consultancy	10'000	Brokerage services	100'000
Plus VAT	770		
Advice from foreign lawyer	10'000	Collection commissions	100'000
Plus acquisition tax	770		
Management services from a foreign company	10'000	Other commission	100'000
Plus acquisition tax	770		
Additional tax expense	**2'310**	**No domestic sales**	

Version 2:
VAT registered

LI AG
Option exercised ⇨ VAT registered
⇨ Input tax and acquisition tax are transitory items

Expenses		**Income (from foreign sales)**	
Domestic consultancy	10'000	Brokerage services	100'000
Plus VAT	770		
Advice from foreign lawyer	10'000	Collection commissions	100'000
Plus acquisition tax	770		
Management services from a foreign company	10'000	Other commission	100'000
Plus acquisition tax	770		
Reduced tax expense because recoverable	**2'310**	**No domestic sales**	

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