



Liechtenstein: Ensuring a Robust & Competitive IFC

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LAST YEAR PROVED TO BE AN INTERESTING YEAR FOR LIECHTENSTEIN AS an IFC and 2015 is shaping up to continue this trend. Never before have international recommendations, assessments and regulations led to such extensive pressure for an adjustment of the jurisdiction's internal laws and regulations. However, where there is adversity there is also opportunity and many of the more pragmatic IFCs, such as Liechtenstein, have risen in the face of the regulatory onslaught and reacted positively to calls for change and have actively contributed to the process of globalization and cooperation.

Tax Treaties

Over the course of 2014 Liechtenstein continued its policy of entering into individual agreements and tax related treaties with a number of countries.

TIEAs (Tax Information Exchange Agreements) were enacted with India on 18 January 2014, Canada on 26 January 2014, Belgium on 12 June 2014 and Mexico on 24 July 2014.

DTAs (Double Tax Agreements) came into force with Malta on 1 July 2014 and Singapore on 25 July 2014. DTAs were also agreed upon with the Czech Republic on 26 September 2014 and Guernsey on 19 Jan 2015, however, these agreements will enter

into force at a later date. All these treaties will strengthen Liechtenstein's economic relationship with the countries involved and offer additional opportunities for wealth planning.

Liechtenstein and the Automatic Exchange of Information

Liechtenstein, together with other countries from the European Union, Bermuda, BVI, Cayman, Guernsey and the Seychelles, among others are so-called 'early adopters' and will undertake their first exchanges of information in 2017, with data being collected from 1 January 2016.

During 2015, Liechtenstein like many other countries will have to enact legislation to implement the framework for the Automatic Exchange of Information (AEOI). There will also be modifications to existing laws to satisfy the OECD's 'hunger' for data as not all of the data requested is available in the quality needed for the AEOI. Furthermore, the fourth EU Money Laundering Directive due in 2015 should be considered and consistent with the implementations regarding the AEOI. One of the central issues is the definition of who is the so-called 'Financial Intermediary' that is subject to these provisions, who is not, and what effect this may have regarding the cooperation between the different

market players. The parent legislation of the AEOI, the US FATCA can surely be referred to for further clarification.

Foreign Account Tax Compliance Act

With the Foreign Account Tax Compliance Act (FATCA), enacted 18 March 2010, the USA aims to obtain data on any account held by US citizens abroad. This refers to persons with US tax obligations who are effectively taxed in the USA. Liechtenstein signed the IGA 1 agreement on 16 May 2014. The IGA 1 agreement is based on the AEOI forcing the Financial Institutions of partner jurisdictions to report US persons and the US accounts to their own tax authorities. Their own tax authorities then exchange the data with the US tax authority.

The IGA 1 agreement and the Liechtenstein implementation law on FATCA make sure that Liechtenstein Financial Institutions fulfil their obligations according to the FATCA agreement. The US FATCA regime entered into force on 1 July 2014. Liechtenstein will exchange data from 2014 for the first time in autumn 2015.

Financial Institutions include banks, collective investment vehicles (funds), asset managers etc, as established in the IGA. Trustees may not always qualify for Financial

Institutions status and therefore careful examination and planning is needed. The qualification will surely have an immediate effect on the operative business with Financial Institutions.

When considering the criteria mentioned in the respective IGAs and the US final regulations, a so-called trustee may not always qualify as a Financial Institution as the services it offers may not qualify. Examples of services include:

- setting up and management of corporate entities;
- management of corporate entities as a consultant or director;
- auditing and accounting;
- family office services;
- consultancy in the field of taxes, family and inheritance planning;
- assistance in general on legal and economic matters.

The Liechtenstein government submitted its implementation law on FATCA to parliament during the December 2014 session and it was subsequently enacted on 22 January 2015.

Residency in Liechtenstein

On 25 November 2014 the Liechtenstein government published that it will allow for a 15 per cent increase in the number of residency permits available in accordance to international agreements with Switzerland and the EEA.

Liechtenstein is currently obliged to grant access to at least 28 EEA citizens every year and 12 Swiss nationals. With the increase of 15 per cent, the amount will be 32 and 14 respectively.

Furthermore, Liechtenstein has to grant access to eight retired EEA citizens annually.

These figures do not include family members of such license holders, so the effective annual number can be higher.

In addition, Liechtenstein is obliged to offer by lottery another 28+8 citizens the right to apply for residency. The first 2015 lottery to applications from 28 February 2015 to 3 March 2015 with the final draw on 13 May 2015. A second lottery is expected to take place in the second half of 2015.

Alternative Investment Fund Manager Directive (EU AIFM)

On 14 October 2014, during a meeting with EU commissioner Michel Barnier at the Ecofin Council, the Liechtenstein government finally succeeded in reaching a compromise with the European Union and EEA/

EFTA-states (Iceland, Liechtenstein, Norway) regarding the takeover of the legal framework of the three supervisory authorities EBA, ESMA and EIOPA into the EEA-agreement.

This compromise is of enormous importance to Liechtenstein as it allows for the integration of relevant EU Directives/Regulations into the financial industry (eg, the AIFM directive). This safeguards the accession to the EU internal market for all Liechtenstein financial market players (notably banks, asset managers, fund managers). The respective technical steps are being undertaken.

The EU supervisory authorities EBA, ESMA and EIOPA (established in 2011) were endowed with direct decision making competences over EU financial supervisory authorities and market players.

This means that these authorities may withdraw the license of an EU bank or cancel the right of distribution of an EU fund. As the EEA/EFTA states non-EU state members do not have a voting right at EBA, ESMA and EIOPA, a solution had to be found for the assignment of these decision taking competences in the EFTA pillar. Finally the partners found a way to consider the EEA arrangement and the homogeneity of the EU/EEA internal market.

On 16 December 2014, the government proposed modifications to the law on UCITS. The industry and regulator realised that certain regulations were overshooting compared to competitors in the EU, therefore it was necessary to adjust the legal framework. Liechtenstein aims to position itself more attractively for fund promoters, fund administrators and investors.

Case Study: A PCC (Protected Cell Company) in Practice

As previously discussed in the *IFC Review 2014*, new legislation regarding Protected Cell Companies (PCCs) came into force as of 1 January 2015.

The following can be established as PCCs (hence the foundation [Stiftung] is included):

- Charitable or public utility purposes within the meaning of Art. 107 para. 4a CPCL (Liechtenstein Code of Personal and Company Law, PGR).
- The acquisition, administration and realisation of holdings in other companies (subsidiaries).
- The commercial realisation of

copyrights, patents, trademarks, models or patterns.

- Deposit guarantee and investor protection systems that implement the applicable EEA regulations.

Here is a practical illustration of a PCC:

- Person A sets up an establishment (Anstalt) with five holding cells.
- The share capital of the core is CHF 30,000.
- Person A makes a capital contribution to cell 1 and four business partners make their capital contributions to cells 2 – 5. Four capital reserves of CHF 30,000 each are deposited.
- Because the equity participations are held via cells, the partners are not exposed to the risk that any insolvency, default, etc., of one cell might affect the other cells.
- Combining the equity participations into one legal entity gives the establishment a certain critical mass. A number of different participations are held, management meetings are necessary, and it may be worth renting business premises and recruiting an employee. In this way the entity acquires corporate substance essential in the application of double tax treaties.
- Thanks to this formation of corporate substance the establishment can take advantage of the network of double taxation agreements.
- The establishment pays ordinary income (corporation) tax at the rate of 12.5 per cent, with dividends and capital gains on shares always being tax exempt. The establishment files only one tax return because the PCC is a company and the basic concept of unity is consistently applied.
- The equity of the establishment is owned by person A. The investors in cells 2 – 5 are known as asset contributors and are at most the beneficial owners of those assets. Such beneficial ownership is stipulated in the cell's by-laws. A bank account is set up for each cell and in the process the identities of the asset contributors and, where applicable, beneficial owners are disclosed to the banks concerned. It remains to be seen whether the disclosure of any or all of this information would be necessary outside Liechtenstein. Person A may remain the sole owner and shareholder of the legal entity (on purpose). ■