

Recent developments and tax considerations for private clients

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Recent developments Tax considerations for private clients

This article addresses notable recent developments in the provision of private client services in Liechtenstein, including regulatory changes, case law and tax considerations for private clients.

Recent developments

The new Liechtenstein Tax Act entered into force on 1 January 2011 with the declared aim of modernising taxation in order for Liechtenstein's tax system to remain attractive both nationally and internationally, while also complying with European standards. Notably, the distinction between offshore and onshore companies was abolished by the introduction of a uniform corporate income tax rate of 12.5%, which made Liechtenstein companies more attractive internationally also with a view to making use of the many double tax treaties that Liechtenstein has concluded over the past decade.

Currently, Liechtenstein has concluded double tax treaties with:

- Austria;
- Bahrain;
- the Czech Republic;
- Georgia;
- Guernsey;
- Hong Kong;
- Hungary;
- Iceland;
- Jersey;
- Lithuania;
- Luxemburg;
- Malta;
- Monaco;
- San Marino;
- Singapore;
- Switzerland;
- the United Arab Emirates; and
- Uruguay.

Compared with other states, Liechtenstein's double tax network is fairly small; however, its corporate tax rate is low (12.5%) and neither dividends nor capital gains generally underlie a withholding tax.

On 16 May 2014 Liechtenstein signed a Foreign Account Tax Compliance Act Model 1 Agreement with the United States.

Further, on 1 January 2016 the Automatic Exchange of Information standard entered into force in Liechtenstein (the country was among its early adopters). This meant that the first exchanges took place in 2017 for the 2016 period. As of 1 January 2019, Liechtenstein had exchanged information with 108 partner states.

As of 1 January 2018, the Law on Administrative Assistance in Taxation Matters was amended to provide for the spontaneous exchange of information. Regarding compliance with international standards, Liechtenstein is included in neither the Organisation for Economic Cooperation and Development nor the EU lists.

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Liechtenstein has also implemented Action 13 of the Base Erosion and Profit Shifting initiative by enacting the Country-by-Country Reporting Act and the Implementation Ordinance, as of 1 January 2017.

On 1 October 2017 the Act on the Enforcement of International Sanctions was modified. Among other things, the act provides for the direct and automatic implementation of UN sanctions lists into Liechtenstein law.

On 3 January 2018 the EU Markets in Financial Instruments Directive (2004/39/EC) (MIFID II) entered into force and the EU General Data Protection Regulation was implemented.

Liechtenstein is also implementing legislation in niche areas of interest to attract foreign investors. For example, on 1 January 2015 it enacted the Protected Cell Companies Act. It also intends to implement the forthcoming Trustworthy Technologies Act and the Blockchain Act (a forerunner in the field of blockchain, tokenisation and cryptocurrency).

Tax considerations for private clients

Residence and domicile

Liechtenstein tax law applies the following connecting criteria regarding taxation.

Natural persons incur unlimited tax liability on their worldwide assets and earnings if their residence or habitual abode is in Liechtenstein. Consequently, natural persons who do not have their residence or place of habitual abode in Liechtenstein are liable to limited taxation only on their domestic assets and earnings.

'Residence' is defined as the place where a person resides with the intention of remaining permanently. 'Habitual abode' means the place or area in which a person is staying on more than a temporary basis. A stay lasting for more than six consecutive months is, in all cases and from the outset, deemed to represent a habitual abode; short interruptions are not taken into account. A residence for the purpose of attending an educational establishment or the placement in an educational institution, care home or sanatorium – including periods spent on holiday or in a health resort – of up to 12 months does not constitute a habitual abode or residence.

Legal persons are liable to tax on their total income without restriction if their registered office (seat) or effective place of management is in Liechtenstein. The tax liability of legal persons which do not have their registered office or effective place of management in Liechtenstein, as well as special asset endowments without legal personality (eg, trusts), is limited to their domestic income.

A 'registered office' is the place determined by law, articles of incorporation, statutes or similar. If no place has been determined in this way, the effective place of management is deemed to be the registered office. The effective place of management is the place at which the senior management of the undertaking is concentrated.

Income

The tax rates for natural persons range from 3% to 24%. Wealth tax is integrated into the income tax rate and the overall tax is levied on two levels – the first being the national level, to which a tax on the municipal level is added. The wealth tax rate is fixed every year by the Finance Law Act (usually at 4%). At the end of each year, taxpayers must file a tax declaration on the basis of which the tax is determined for the preceding year.

Wealth tax exemptions apply to (among others):

- household contents and personal effects;
- certain collections of artistic, historical or similar importance; and
- permanent establishments located in a foreign country.

Debts and other liabilities, for which the taxpayer is liable as the principal debtor, may also be deducted from the assets in the calculation to determine the taxable asset.

Income tax exemptions may apply to:

- income from assets on which the taxpayer pays wealth tax;
- one-off accruals of assets in the form of inheritances, bequests or gifts or from the division of marital property;
- accrual of assets from private capital endowment policies with a surrender value, excluding accruals from vested benefits policies and blocked accounts;
- domestic capital gains on business real estate, provided that they are subject to capital gains tax, as well as capital gains from the sale of real estate abroad;
- capital gains from the sale of moveable and immovable personal assets;

- dividends arising from holdings in Liechtenstein or in foreign legal persons; and
- capital gains from the sale or liquidation and unrealised increases in the value of holdings in domestic or foreign legal persons;

A variety of expenditures are also tax deductible.

Legal persons that undertake an economic activity and are liable to pay tax in Liechtenstein are subject to corporate income tax plus tax on capital gains on property. The minimum annual tax is Sfr1,800. No capital tax is levied. The rate of corporate income tax is fixed at a uniform 12.5% of net income/profit, regardless of the level of income and distribution. Income and capital gains from participating interests are generally exempt from tax, irrespective of the time of holding and voting rights or shares in the capital. Income in the form of interest is also reduced by a so-called 'equity capital interest deduction'. Reasonable interest paid on modified equity capital is also treated as a justified business expense, to the level of the target income. This reduces taxable interest income in case of a high level of self-financing.

In particular, the following positions do not count towards taxable net income:

- income from permanent establishments abroad;
- rental and leasing income from real estate located abroad;
- domestic capital gains on real estate, insofar as such gains are subject to real estate capital gains tax in Liechtenstein, as well as capital gains from the sale of foreign real estate;
- dividends arising from holdings in Liechtenstein or foreign legal persons and distributions from foundations, establishments with a similar structure to foundations and special asset endowments with legal personality;
- capital gains from the sale or liquidation of holdings in domestic and foreign legal persons and unrealised increases in the value of such holdings; and
- income from the managed assets of undertakings for collective investment in transferable securities or of investment undertakings, alternative investment funds or similar undertakings for collective investment established under the law of another state.

However, the 2019 amendment to the Tax Act introduced specific anti-avoidance provisions in connection with the tax exemption of dividends and capital gains from participations, the notional interest deduction and the elimination of the asymmetric treatment of capital gains and losses from participations.

Corporate tax returns must be filed by 30 June of the year following the tax year, whereby the granting of an extension is possible on request. A provisional tax bill is issued in August, which must be paid by September 30 of that year.

Trusts and private asset structures pay only the minimum annual tax (Sfr1,800) in advance. Private asset structures cannot engage in 'business activity', a term which is construed broadly.

Capital gains

Income and capital gains from participating interests are tax exempt, irrespective of the time of holding and voting rights or shares in the capital. However, in this respect, the aforementioned newly introduced anti-abuse (switch-over provisions) must be taken into account.

Inheritance and lifetime gifts

Liechtenstein has abolished both inheritance and gift tax.

Real estate

Gains or profits realised from the sale of Liechtenstein property are subject to real estate profit tax. Taxable gains or profits are computed by deducting the acquisition costs and improvement costs from the sales proceeds.

Gains or profits are taxed at progressive rates – from 0% on taxable income up to Sfr15,000 to 0.08% multiplied by the amount of taxable income minus Sfr6,100 for taxable income over Sfr200,000. Community surcharge is charged at 200%, so that the overall tax for property gains or profits over Sfr500,000 amounts to an overall tax rate of 20.34%.

Non-real estate assets

Movable and immovable assets are subject to wealth tax, which is levied based on the fair market value. Wealth tax is multiplied by a standard interest of 4% to calculate a notional income.

Other applicable tax regimes

Liechtenstein levies value added tax (VAT) based on the Customs Union Agreement of 1923, which it signed with Switzerland. The VAT rate is currently at 8.8%.

Insofar as assets cease to be subject to wealth tax following their transfer to a legal person or special

endowment, where the assets are not tax exempt and the beneficial interests do not become liable to wealth tax, the transferor will incur a 3.5 % deduction tax calculated on the value of the contribution for wealth tax purposes.

Planning considerations

Despite the abolition of the IP Box Regime, Liechtenstein's tax law has remained highly attractive to foreign investors, particularly in regard to holding companies and asset protection. Dividends and capital gains are exempted from tax without any controlled foreign corporation regulations, but subject to the correspondence principle and switch-over clauses. Further, group taxation is an attractive part of Liechtenstein's tax system. Double tax treaties have been concluded since 2010 with countries both within and outside the European Union and provide tax relief in the form of tax deductions, tax exemptions, credits or expense allocations.

Taxation according to expenses is also attractive for foreign clients. In order to be eligible for this lump-sum tax, applicants must:

- take up residence in Liechtenstein (former Liechtenstein residents must have been absent from the country for at least 10 years before moving back);
- not hold Liechtenstein citizenship;
- not be gainfully employed within Liechtenstein; and
- generate a living from the revenue of their assets or other income generated outside Liechtenstein.

Lump-sum taxation is granted only following an application to the tax authorities. The actual lump-sum tax is then fixed based on the total annual living expenses of the taxpayer and their family members (inside and outside Liechtenstein). The minimum annual lump-sum tax is currently Sfr300,000 and the actual tax rate is 25% of the expenditure.

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