Liechtenstein

Alexander Ospelt

Martin Gassner

Ospelt & Partner Attorneys at Law Ltd.

1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in Liechtenstein?

To date, Liechtenstein has concluded 11 Double Taxation Agreements (DTA) in total. The contracting partners are Germany, Guernsey, Hong Kong/China, Luxembourg, Malta, Austria, San Marino, Switzerland, Singapore, the United Kingdom and Uruguay.

With the following six states, the respective DTAs have been initialised: Andorra, Bahrain, Georgia, the Czech Republic, Hungary and the United Arab Emirates. As the legislative process runs smoothly in Liechtenstein, we can expect these treaties to enter into force in the near future.

These Agreements do cover income tax of natural persons. As Liechtenstein is currently undergoing a process of far-reaching change in its financial markets, we can expect it to endeavour to conclude ever more DTAs.

1.2 Do they generally follow the OECD Model Convention or another model?

They do generally follow the OECD Model Convention. Please note that only the Agreements with Switzerland and Austria deviate from the actual OECD Model Convention due to its closing date decades ago.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

After their signature by the respective parties and approval by the parliament, the treaties need to be made public in the official legal gazette in order to take effect.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

Generally, no anti-treaty shopping rules or limitation on benefits clauses are incorporated. Any person is free to choose where to pay its taxes according to applicable national law and the respective treaties.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

There is no domestic law that would override the treaties. They are in force to their full extent within the scope of the constitution and its fundamental principles.

1.6 What is the test in domestic law for determining corporate residence?

The test for determining corporate residence, and hence unlimited tax liability, is the seat or the effective place of administration of the company (Art. 44 para. 1 Tax Act). The effective place of administration is defined as where the central management and control of the business activity is carried out (Art. 2 para. 1 lit. d Tax Act). The seat of a company is so defined with the law, the articles of association or its statutes (Art. 2 para. 1 lit. e Tax Act).

With regard to international company law, it is noteworthy that Liechtenstein applies the incorporation theory with global scope for qualification of the proper founding and hence legal acceptance of a company.

2 Transaction Taxes

2.1 Are there any documentary taxes in Liechtenstein?

As to documentary taxes in the broader sense, duties have to be paid on the following matters.

According to Art. 66 Tax Act, the formation of new companies, moving inland and capital increase might trigger tax duties. These taxes are levied only once upon the formation of the legal entity. As the tax allowance is set very high, these taxes hardly ever take effect. The basis is the statutory capital. The tax allowance is set at up to CHF 1m. The tax rate is 1% for statutory capital from CHF 1m to CHF 5m, 0.5% for statutory capital between CHF 5m and CHF 10m and 0.3% for any capital above CHF 10m. Foundations and trusts bear a tax burden of 2‰ on the statutory capital but always a minimum of CHF 200.00.

Further, according to Art. 67 Tax Act, a charge might be levied on certain insurance premiums. Most common types of insurance are exempt.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Liechtenstein levies value added tax (VAT). A peculiarity with the VAT is that, based on the Customs Union Agreement of 29 March 1923 with Switzerland, the territory of Liechtenstein is part of the Swiss customs territory and thus Liechtenstein is obliged to implement Swiss VAT legislation (*cf.* Treaty between Switzerland and Liechtenstein, 28 October 1994; Agreement between Switzerland and Liechtenstein, 12 July 2012). Therefore, consulting the Swiss chapter on VAT matters may be of additional interest.

The tax rates are 8% as a general rate of taxation, 2.5% as the reduced rate of taxation for certain goods such as medicaments and food, and 3.8% as a special rate of taxation for accommodation services (Art. 25 VAT Tax Act, *Mehrwertsteuergesetz*, MWStG).

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

Generally, VAT is charged on all goods and services supplied inland or upon importation from outside the territory of Liechtenstein and Switzerland.

As relevant exclusions, the following subjects can be named: anybody not exceeding a total amount of CHF 100,000.00 in inland sales; a foreign company exclusively rendering services subject to the service import tax; and any non-profit sporting, cultural or charitable association (*cf.* Art. 10 para. 2 VAT Tax Act). Further, Art. 21 VAT Tax Act gives an exhaustive list of relevant exclusions. Foremost among them are medical, charitable, cultural and educational services plus the sale of own-grown goods from agriculture and forestry. Certain goods and services destined for abroad are exempted as well (Art. 23 VAT Tax Act).

Importation of taxable goods and services is exempt from taxation under the so-called *de minimis* exemption of CHF 300.00.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

VAT is recoverable for all businesses under the stipulations on input tax deduction according to Art. 28 *et seqq.* VAT Tax Act; but note that for any goods and services needed to render goods and services as named under the relevant exclusions, no recovery is possible (Art. 29 VAT Tax Act).

2.5 Are there any other transaction taxes payable by companies?

There are two transaction taxes that might be applicable for companies. These are the dedication tax according to Art. 13 Tax Act (*Widmungsbesteuerung*), and the real estate profit tax according to Art. 35 *et seqq.* Tax Act (*Grundstücksgewinnsteuer*).

The dedication tax will be levied on a company dedicating any asset to another legal entity. The tax rate is set at 3.5% on the value of the assets dedicated.

The real estate profit tax is levied upon the profit of the sale of real estate. The seller is obliged to submit the tax (*cf.* question 8.1 for further details).

2.6 Are there any other indirect taxes of which we should be aware?

There are no other indirect taxes to note.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

No withholding tax is imposed on dividends paid by a locally resident company to a non-resident.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Liechtenstein does not levy any withholding tax on royalties.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

No withholding tax on interest paid by a local company to a non-resident is levied.

Savings tax at 35% is levied on income from interest accrued for the benefit for EU residents, in accordance with the implementation of EU Directive 2003/48/EU (*Zinsertragsbesteuerungsabkommen*).

The only withholding tax to be mentioned is the tax on limited liable persons, i.e. non-residents, levied for remuneration as members of councils and boards or for being trustees of diverse companies, legal entities or trusts (Art. 24 para. 2 lit. b Tax Act). Remuneration is taxed at the rate of 12% (Art. 25 para. 3 Tax Act).

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Liechtenstein has not implemented any "thin capitalisation rules".

In order to motivate companies to hold equity, Art. 54 Tax Act provides for an equity interest deduction of 4%. These interests on equity qualify by legal definition as justified business expenditure. The basis of assessment is lowered accordingly.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

As the jurisdiction of Liechtenstein has not implemented "thin capitalisation" rules, this does not apply in Liechtenstein.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

As the jurisdiction has not implemented "thin capitalisation" rules, this does not apply in Liechtenstein (*cf.* question 4.4 for details on group relief taxation).

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

No, there are no other restrictions on tax relief for interest payments by a local company to a non-resident.

3.8 Is there any withholding tax on property rental payments made to non-residents?

No withholding tax is levied on property rental payments made to non-residents.

3.9 Does Liechtenstein have transfer pricing rules?

Liechtenstein does not have any explicit transfer pricing rules. Still, with Art. 49 Tax Act the "arm's length" principle is implemented in the Tax Act. Therefore prices cannot be fixed at will but must bear up in comparison with any objective third party.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

Any corporate profits are taxed with a fixed annual flat rate of 12.5%. The minimum tax on corporate profit is set at CHF 1,200.00 *p.a.* This amount is fully deducted from the tax duty (Art. 61 *et seq.* Tax Act).

4.2 Is the tax base accounting profit subject to adjustments, or something else?

Indeed, the tax base accounting profit is subject to adjustments. These include in the first place outright exemptions and then, sequentially, equity capital interest deduction, offset of losses with gains, no taxation of dormant reserves while realising certain processes of restructuring, depreciations, certain accruals, deduction of income from intellectual property rights, and qualification as a private investment structure.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

Art. 48 Tax Act provides for the exemptions that are not included for the calculation of the tax base. Most prominently with regard to unlimited tax liable legal entities, among them are: any income stemming from business activity abroad; gains from participations of domestic and foreign legal entities; distributions from foundations and certain establishments as well as trusts; capital gains stemming from selling or liquidation as well as non-realised appreciations of participations from domestic and foreign legal entities; income from investment funds; and income from the net equity from legal entities governed by the Act on Pension Funds if and only if these assets are deemed to provide for the company pension scheme (para. 1 *leg. cit.*). For limited tax liable legal entities the exemptions encompass: real estate profit from the sale of inland property; gains from participations of domestic and foreign legal entities; distributions from foundations and certain establishments as well as trusts; and capital gains stemming from selling or liquidation as well as non-realised appreciations of participations from domestic and foreign legal entities (para. 2 *leg. cit.*).

Hidden or undisclosed reserves are not taxed while restructuring processes are realised. They are not taxed if domestic tax law persists and the overtaking company pursues its activity with the assets hitherto subject to income tax (Art. 52 Tax Act).

Depreciations as well as value reductions of participations of domestic and foreign legal entities can be written down tax-effectively (Art. 53 Tax Act).

According to Art. 57 Tax Act, losses can be offset against gains. Taxable income of the respective year can be lowered by up to 70% by loss carried forward. Losses of foreign branches or business premises are allowed to be offset if they have not been dealt with in the respective other jurisdiction.

Intending to take up a leading role in terms of attracting companies, Liechtenstein grants the following two advantages to corporate entities: with a view to fostering an innovative and future-oriented entrepreneurial sector, Liechtenstein motivates research and development. An Intellectual Property Box (IP-Box) may be installed in order to deduct income from intellectual property. 80% of all of the income stemming from intellectual property is tax deductible. The effective result is a meagre 2.5% tax rate on the mentioned income. (Art. 55 Tax Act.) On approved request Private Investment Structures (PIS) can follow a tax regime of paying only a flat tax of CHF 1,200.00 annually. Any corporate vehicle not engaged in economic activity can qualify as a PIS (*Privatvermögensstruktur*, PVS, Art. 64 Tax Act).

For the equity interest deduction please refer to question 3.4. With regard to group relief taxation read on to the following question, 4.4.

4.4 Are there any tax grouping rules? Do these allow for relief in Liechtenstein for losses of overseas subsidiaries?

Art. 58 Tax Act offers the group relief system for group taxation. On request, affiliated companies can opt for the group relief system of taxation. For the ongoing taxation year, losses can be offset against gains. The respective transfer within the group flows between the inland unlimited tax liable parent and any other subsidiary.

Liechtenstein offers tax grouping rules and these do allow relief in Liechtenstein for losses of overseas subsidiaries.

4.5 Do tax losses survive a change of ownership?

Whenever the legal entity is subject to taxation in Liechtenstein, tax losses survive a change of ownership.

Different stipulations might apply in the context of restructuring a company. Usually, the acquiring company takes on the legal status regarding tax obligations of the acquired company. Still, fusions and spin-offs, as with any merger and acquisition, could open room for creative solutions in terms of determining which entity has to carry tax losses (Art. 52 Tax Act).

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, tax is not imposed at a different rate upon distributed as opposed to retained profits. Liechtenstein does not have a penalty-accumulated earnings tax imposed on corporations that accumulate earnings with the purpose of avoiding taxes on shareholders.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

In principle, existing companies are not subject to any other significant taxes. The occupation of property by a company is not taxed in Liechtenstein. Capital tax for legal entities has been abolished.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Liechtenstein has abolished capital gains taxes in general. In order to avoid confusion, certain transactions that generate capital gains are explicitly exempt from taxation (*cf.* questions 5.2 and 5.4).

5.2 Is there a participation exemption for capital gains?

Domestic and foreign participations are explicitly exempt from taxation (Art. 48 para. 1 lit. e Tax Act).

5.3 Is there any special relief for reinvestment?

There is no special relief for reinvestment.

5.4 Does Liechtenstein impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

Capital gains stemming from selling or liquidation plus non-realised appreciations of domestic and foreign participations, are exempt from taxation (Art. 48 para. 1 lit. f Tax Act).

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

Subsidiaries are taxed according to the rules applicable for any legal entity doing business inland (*cf.* section 4). Branches of foreign corporations are, as per the legal definition, explicitly business premises (Art. 2 para. 1 lit. a Tax Act). Qualification as such does trigger tax liability if the subsidiary is then incorporated in the Liechtenstein Public Register or actual business activity is carried out inland. In any case, results of foreign branches are not tax-liable in Liechtenstein (Art. 48 para. 1 lit. b Tax Act).

Legal vehicles not being incorporated or effectively managed in Liechtenstein have limited liability to the Liechtenstein tax authorities on their inland income. Inland income according to this section is, by explicit nomination, the net income from inland branches (Art. 44 para. 2 in connection with para. 3 lit. c Tax Act). Net income of an inland branch is legally defined as Liechtenstein taxable inland income (Art. 44 para. 3 lit. c Tax Act). Therefore any institution that can be subsumed to these definitions undergoes a tax regime limited to its inland net income.

6.2 What is the difference, if any, between the taxation of a locally formed subsidiary and the branch of a non-resident company?

There is no difference in the taxation between a locally formed subsidiary and the branch of a non-resident company (*cf.* question 6.1).

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

In Liechtenstein any taxable profits of a local branch would be treated like profits from any other domestic company and hence submitted to tax duty as such.

In its home jurisdiction it might be treated otherwise. There could therefore be grounds to give a national group relief taxation or to apply a DTA concluded between Liechtenstein and the respective jurisdiction. At best, profits generated and taxed in Liechtenstein might be exempt from taxation in the company's jurisdiction.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

Liechtenstein does not have an explicit branch profit tax or other provisions to limit the tax duty of branches of non-resident companies.

6.5 Would a branch benefit from double tax relief in its jurisdiction?

It is highly possible that a branch would benefit from double tax relief in its jurisdiction. This question would need to be scrutinised according to the individual implications of the case and in respect of a DTA.

6.6 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

No, Liechtenstein would not impose any withholding tax or other similar tax as the result of remittance of profits by the branch.

7 Overseas Profits

7.1 Does Liechtenstein tax profits earned in overseas branches?

Profits earned in overseas branches are exempt from tax for unlimited tax liable companies in Liechtenstein (Art. 48 para. 1 lit. b Tax Act).

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Receipt of dividends by a local company with unlimited and limited tax liability from a non-resident company, is exempt from taxation in Liechtenstein (Art. 48 para. 1 lit. e Tax Act and art. 48 para. 2 lit. b Tax Act respectively).

7.3 Does Liechtenstein have "controlled foreign company" rules and, if so, when do these apply?

No, Liechtenstein does not have "controlled foreign company" rules.

8 Taxation of Real Estate

8.1 Are non-residents taxed on the disposal of real estate in Liechtenstein?

According to Art. 35 *et seqq.* Tax Act, the real estate profit tax is levied (*Grundstücksgewinnsteuer*). Anybody gaining profit from the sale of inland real estate is bound to pay the real estate profit tax. The seller is obliged to pay the tax, no matter whether it is resident or non-resident in Liechtenstein.

8.2 Does Liechtenstein impose tax on the transfer of an indirect interest in real estate located in Liechtenstein and, if so, what constitutes an indirect interest?

The real estate profit tax is triggered even with a seller having indirect interest in real estate located in Liechtenstein. An indirect interest will be qualified as such by an economic analysis of the transaction. It mostly consists in the seller holding shares of a company engaged in the real estate business.

8.3 Does Liechtenstein have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Liechtenstein does not have a special tax regime for Real Estate Investment Trusts or their equivalent.

9 Anti-avoidance

9.1 Does Liechtenstein have a general anti-avoidance or anti-abuse rule?

The Liechtenstein Tax Act provides in its Art. 3 a general rule covering anti-avoidance and anti-abuse. Any legal or factual arrangements that do not reflect the actual state of affairs, or whose only purpose consists in gaining tax advantages, is unlawful when granting tax advantages would be against the purpose of the Tax Act or when no reason for such arrangement can be given and it does not bear any specific economic fruits. The consequence of any ascertained abuse is that taxes are levied according to the real circumstances.

Art. 135 *et seqq*. Tax Act provides for the respective penal provisions with regard to infringing procedural requirements, unlawful lowering of fiscal burden and, most severely, tax evasion and tax fraud.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

Liechtenstein does not impose requirements to make special disclosure of avoidance schemes. Any avoidance scheme within the legal framework can be applied.

10 BEPS and Tax Competition

10.1 Has Liechtenstein introduced any legislation in response to the OECD's project targeting Base Erosion and Profit Shifting (BEPS)?

No, Liechtenstein has not introduced any legislation in response to the OECD Action Plan on Base Erosion and Profit Shifting (BEPS). For the time being, Liechtenstein deems its general provisions, as outlined under question 9.1, sufficient. As Liechtenstein is very attentive and receptive with regard to the development of international tax law, it is at least conceivable that, at some time in the future, legislation targeting BEPS will be introduced.

10.2 Does Liechtenstein maintain any preferential tax regimes such as a patent box?

With Art. 55 Tax Act, provisions for the so called intellectual property box (IP-Box) have been introduced. The national legislature herewith intends to foster research and development to be carried out in the Principality of Liechtenstein.

The Liechtenstein IP-Box regime allows the subtraction of a stunning 80% of income from intellectual property from tax liabilities. The taxable base is the net income from intellectual property rights. As the Liechtenstein corporate income tax rate is 12.5%, the effective tax burden levied on income from intellectual property rights is as low as 2.5%. Intellectual property rights include for example patents, trademarks and designs. These rights must be protected via their registration in a public and official register. Software as well as technical and natural sciences databases are also included. Not included are copyrights, know-how and mere commercial designations. As regards the broader context, we point out that the Liechtenstein IP-Box regime is compliant with OECD standards and does not constitute prohibited state aid within the meaning of Art. 87 para. 1 of the EC Treaty.

In conclusion, we highlight that in Liechtenstein neither inheritance tax nor gift tax is levied.

Alexander Ospelt

Ospelt & Partner Attorneys at Law Ltd.
Landstrasse 99
P.O. Box 532
LI-9494 Schaan
Principality of Liechtenstein

Tel: +423 236 19 19
Email: alexander.ospelt@ospelt-law.li
URL: www.ospelt-law.li

Dr. iur. HSG, LL.M., Attorney at Law.

Dr. Alexander Ospelt established the law firm Ospelt & Partners Attorneys at Law Ltd. in 1997. His main areas of activity are: European Law; Business and Commercial Law; Corporate Law; Arbitration; National and International Tax Law; Energy and Telecommunications Law; Health Law; Intellectual Property Law (Copyright, Trademark, Design and Patent Law); Sport, Entertainment and Art; Criminal Law; Bankruptcy Administration; and Out-of-court Settlements (Mediation).

From 1987 to 1993 he studied at the Faculty of Law at St. Gallen University, Switzerland, before he went on to take a degree in European Law at ULB in Brussels, Belgium, where he completed the Master of Laws programme (LL.M.).

In 1993, he worked as a staff member of Liechtenstein's Permanent Representation at the United Nations (UN) in New York. Dr. Alexander Ospelt passed the Liechtenstein Bar Examination in 1997 and gained the doctorate in law from St. Gallen University, Switzerland in 1999.

He has been active in politics and various associations. Among others, he is currently President of the Foundation for crisis intervention Liechtenstein KIT; since 2008 he has been a member of the Board of the European Advocates' Association (DACH); and since 2012 he has been Chairman of the Board of Liechtenstein Life Assurance Ltd. and a member of the Board of Directors of Liechtenstein Marketing, as well as a member of the Scientific Advisory Board of the Private Universität Liechtenstein. Dr. Alexander Ospelt has also published several academic studies.

He speaks German, English, French and Italian.

Martin Gassner

Ospelt & Partner Attorneys at Law Ltd.
Landstrasse 99
P.O. Box 532
LI-9494 Schaan
Principality of Liechtenstein

Tel: +423 236 19 19
Email: martin.gassner@ospelt-law.li
URL: www.ospelt-law.li

Mag. iur. et MMag. phil., Liechtenstein Fiduciary Specialist.

Martin Gassner has been working at Ospelt & Partner Attorneys at Law Ltd. since 2013. His main areas of activity are: Business and Commercial Law; Corporate Law; Contract Law; Tax Law; National and International Arbitration; Inheritance Law; Administrative Law; and Criminal Law.

He started his career as a lawyer in 2009 and has worked for several years in private-sector companies and administration.

Martin Gassner studied law and philosophy in Liechtenstein, Spain, Austria, France and Chile and completed his studies in Vienna, Innsbruck and Liechtenstein. After graduation and starting his career, he further qualified as a Liechtenstein Fiduciary Specialist at the University of Liechtenstein.

He speaks German, English, French, Spanish and Lithuanian.

OSPELT & PARTNER
RECHTSANWÄLTE AG / ATTORNEYS AT LAW LTD.

CLARITY, TRUST, SECURITY

Advice to meet your needs

Since 1997, Ospelt & Partner Attorneys at Law Ltd. has provided legal knowledge for business decisions that have contributed to professional success. We take care of your individual concerns and lead you to sustainable solutions.

We advise you in all areas of civil and criminal law as well as all kinds of public matters. Our aim is to advise you as an independent partner and to create a basis for your future decisions.

No matter how complex your concerns are, our team handles them with care, experience and an outstanding network. We are flexible and enjoy facing challenges.