

**International
Comparative
Legal Guides**



Practical cross-border insights into private client work

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Philip Raich

1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Individuals with domicile or habitual residence in the Principality of Liechtenstein (*Fürstentum Liechtenstein* – “FL”) are subject to income and property taxation without restriction on their total assets and earnings. Individuals without domicile or habitual residence in FL are subject to limited taxation on their domestic assets and earnings.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

“Domicile” is the place where a person resides with the intention of remaining permanently.

“Habitual residence” is the place or area in which a person stays for more than a temporary basis. A stay lasting for more than six consecutive months shall, in all cases and from the outset, be deemed to represent a habitual abode; short interruptions are not taken into account.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

If an individual has their (permanent) residence in FL, he or she is liable to pay income and wealth or property tax (*Vermögenssteuer*; see question 2.2) on his or her worldwide income and property. Temporary residence does not determine liability to taxation in FL. It must be noted that “property” in this paragraph means movable property. Real estate outside of Liechtenstein is not subject to income and wealth or property tax.

1.4 If residence is relevant, how is it defined for taxation purposes?

“Habitual residence” is the place or area in which a person stays for more than a temporary basis. A stay lasting for more than six consecutive months shall, in all cases and from the outset, be deemed to represent a habitual abode; short interruptions are not taken into account (see question 1.2).

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is not relevant in determining liability to taxation in FL.

1.6 If nationality is relevant, how is it defined for taxation purposes?

Nationality is not relevant in determining liability to taxation in FL.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

Natural persons who do not have their residence or place of habitual abode in FL shall be liable to limited taxation on their domestic assets and income. For instance, domestic income includes income from permanent establishments located in FL or rental income from real estate located in FL.

Double Taxation Agreements (“DTAs”) may contain further provisions.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

FL levies neither gift nor inheritance tax. However, FL levies a wealth tax or property tax (“*Vermögenssteuer*”). For further details, please refer to question 2.2.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Personal income and wealth or property tax

Individuals residing in FL have unlimited tax liability with their global property and income to property and income tax. Individuals neither domiciled nor habitually resident in Liechtenstein are subject to limited tax liability on their domestic assets and domestic income.

The tax liability commences on the day on which the taxpayer:

- takes up residence in FL or makes FL his or her place of habitual abode (unlimited tax liability); or
- has assets (real estate and domestic permanent establishments) in FL or generates earnings in FL (limited tax liability).

The national income tax is calculated based on the taxable income; other valuable property is converted into income. The first CHF 15,000 of a single person's income are exempt from income taxation. The national income tax rate is a progressive

tax rate and amounts from 1% on income up to CHF 20,000 to 8% on a single person's annual income above CHF 200,000.

In addition, a municipal surcharge is levied. The rate of this surcharge is determined every year as a percentage of the national tax. It ranges from 150% to 250%.

A variety of expenditures are tax deductible (see art. 16 Tax Act – “*Steuergesetz-StEG*”).

Further, for the tax year 2021, a wealth or property tax in kind of a notional interest of 4% on the fair market value of the total movable and immovable assets of a taxpayer is calculated and subject to income tax together with other income. Securities with a quoted price held by a natural person have the considered value on the basis of the quoted price.

In principle, dividends and profits deriving from shareholdings in domestic or foreign legal persons are exempt from income tax. However, shares in profits/dividends due to participations in or distributions of foreign legal entities are not exempt from income tax if the following cumulative conditions are fulfilled: (a) the total income of the foreign legal entity paying the dividends/shares in profits (i.e. distribution) is sustainable to more than 50% from passive income (exemption: the income is generated within the framework of an actual economic activity by the foreign legal entity making the distribution); and (b) the net profit of the distributing foreign legal entity is directly or indirectly subject to low taxation.

In principle, capital gains from the sale or liquidation and unrealised increases in value of holdings in domestic or foreign legal persons are tax-exempt. Consequentially, capital losses cannot be deducted. Such capital gains and unrealised capital gains are not exempt from income tax if they relate to participations in foreign legal entities whose profit shares would also not be exempt from income tax.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Real estate capital gains tax

Real estate capital gains tax applies to any person earning profit from the sale of real estate located in FL. In general, the taxable gain is the difference between the sale proceeds and the acquisition price increased by value-enhancing expenditure. The basic tax rate is the income tax rate for single persons without children, depending on the amount of taxable real estate capital gain. In addition, as an alternative to the municipal surcharge for income tax, a surcharge of 200% is levied.

The transfer of the economic ownership of real estate (e.g. by transferring the majority of participation rights in legal persons, whose principal purpose is the acquisition, ownership, management and sale of real property) may trigger real estate tax as well. This tax applies to the vendor.

Taxation of endowments

In case assets cease to be subject to wealth or property tax of natural persons because they were transferred to a legal person or a trust, and wealth or property tax does not apply to the beneficial owner (i.e. wealth or property tax does not apply to the beneficial interest), the natural person as transferor of the assets shall pay tax in the ratio of 3.5% of the value of the contribution. Endowments made by settlors having their tax residence abroad are not subject to endowment tax in FL. In addition to the mentioned state-level tax set at 3.5%, there will be a surcharge for the community of 3.5% multiplied by 150% to 250%; consequently, the maximum endowment tax is 10.5%.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

FL has adopted the VAT law of Switzerland (“*CH*”). The general VAT rate is 7.7%. A reduced rate of 2.5% is applicable to deliveries of water in pipes, foods, drugs, newspapers, magazines and books and other goods. Accommodation (hotels, private rooms, holiday apartments, student housing, camping) is taxed at a rate of 3.7%. Various services of the health, social security, education and banking and insurance sectors are not subject to VAT. The VAT rates will increase as follows: to 8.1% for the standard rate; to 2% for the reduced rate; and to 3.8% for accommodation. The increased rate shall be effective as of 1 January 2024.

Based on the customs union treaty between FL and CH, CH customs duties and import tariffs are applicable for FL. The tariffs and duties depend on various specific attributes of the products and are listed on comprehensive tariffs and duties lists.

Several excise taxes apply in FL (e.g. petroleum tax, tobacco tax, car tax, performance-related heavy vehicle fee, beer tax and taxation of distilled spirits).

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Offshore arrangements of persons established in FL are accepted. With regard to recognition of trusts and legal entities, FL applies the incorporation theory for any entity worldwide. FL does not have any provisions for controlled foreign companies (“*CFC*”) but considers any corporate vehicle controlled from and managed in FL as subject to taxation in FL.

Entities (i.e. legal persons) are liable to taxation in FL without restriction on their total income if their registered office or their effective place of management is located in FL. The “effective place of management” is defined as the place at which the senior management of the undertaking is concentrated.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Any legal or actual structure that appears inappropriate with regard to the financial circumstances and seems to have the sole economic purpose of achieving tax advantages shall be considered abusive, if: (a) the granting of this tax advantage would be counter to the object and purpose of the respective tax law; and (b) the taxpayer is unable to present any economic or other significant reason for the choice of this structure and the structure does not produce any separate economic consequences. Where an abuse exists, the tax shall be levied on the basis on which it would have been levied if the legal structure had been appropriate to the economic events, facts and circumstances.

In July 2018, FL added several new anti-abuse provisions to its domestic Tax Act, following the recommendations of the EU in the context of an evaluation of the legislation and administrative practice of numerous jurisdictions.

As already indicated under question 2.2, shares in profits/dividends arising from holdings/participations kept by natural persons as business assets as well as by legal persons are no longer tax-exempt if:

1. the holding amounts to at least 25% of the votes or capital and the dividends can be applied as expenditure for tax purposes by the person making the payment; or
2. they stem from participations in a foreign legal person whose total return consists of more than 50% of passive

income (unless the passive income derives from an actual economic activity carried out either by the participation company or its underlying entities) and whose net profit is directly or indirectly subject to low taxation.

For participations below 25%, low taxation means a statutory tax rate below 6.25%. For participations of at least 25%, an effective tax burden abroad of less than half of the theoretical tax burden in FL is considered low taxation.

Capital gains from the sale or liquidation and unrealised value increases arising from holdings in foreign legal persons that meet the above-mentioned specifics are no longer tax-exempt. Persons liable to taxation in FL have to prove that the above-mentioned conditions are not met.

Upon the EU commission's recommendation to add specific anti-abuse rules concerning certain transactions between related persons, FL's legislative authority added respective provisions to the Tax Act (art. 54 paras 4 and 5 Tax Act).

The first possible abuse in question is parent companies who fund their holdings in a subsidiary through debt instead of equity financing, which can enable an interest deduction on equity that is too high. To avoid these so-called "double-dipping-structures", the new art. 54 para. 4 Tax Act provides that the funding of such holdings through debt financing will lead to a tax-effective offset at the parent company.

Further transactions that were considered to be prone to possible abuse are contributions in cash or in kind by related persons, the acquisition of businesses held by affiliated companies and the transfer of shareholdings within a group of companies. Art. 54 para. 5 Tax Act now specifically names these three types of transactions and states that an interest deduction on equity will only be allowed if the concerned taxpayer can prove that the transaction was made based on economic, rather than tax-related reasons.

The third and last constellation criticised by the EU was the asymmetrical treatment of profits and losses. Since the government wanted to keep the possibility to exempt the gains on holdings from corporate income taxation (under the conditions of art. 48 para. 3 to art. 5 Tax Act), the deductibility of participation losses from the taxable profit was eliminated. To accomplish this undertaking, the former art. 53 Tax Act was removed.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

In May 2017, FL implemented Action 13 of the BEPS Action Plan by activating the exchange of Country-by-Country Reports ("CbC Reports") of the CbC Multilateral Competent Authority Agreement ("MCAA") with 26 jurisdictions on a bilateral basis (the first exchanges took place in 2018 for the reporting period of 2017). Multinational Enterprises ("MNEs") with annual consolidated group revenue of more than CHF 900 million have to file CbC Reports. Based on art. 7 of the MAC, since 1 January 2017, FL Tax Authorities have been required to exchange information on tax rulings spontaneously. FL has not implemented any measures in accordance with Action 12 of the BEPS Action Plan (which requires taxpayers to disclose their aggressive tax planning arrangements).

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

FL does not levy estate and gift taxes; hence no pre-entry estate and gift tax planning needs to be undertaken.

Before taking up residence or habitual abode in Liechtenstein, individuals may reduce their property tax obligation by bestowing their assets (in particular, bankable assets, participations, art works, jewellery, cars, yachts and private jets) to foreign or Liechtenstein discretionary irrevocable foundations or trusts whereby real estate situated abroad and permanent establishments located in a foreign country are not subject to wealth or property tax. Furthermore, art collections are exempt from property tax, if they are regularly made accessible for public viewing without any commercial motivation on the part of the owner, serve to educate the public or are likely to promote tourism.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Lump-sum taxation

FL offers an appealing flat tax based on expenditure for natural persons. This tax on expenditure is levied instead of wealth or property tax and income tax. Individuals considering this tax regime must meet the following requirements:

- foreign citizenship;
- taking up residence or habitual residence for the first time or after a period of 10 years of absence;
- no engagement in any gainful activity in FL;
- living off the gain of global personal property; and
- application approved by the tax authority.

The tax base is the overall and global expenditure from maintaining the individual's living standard. The following expenses are typically taken into account: housing; wages for employees; further education; and leisure activities, including ownership or special expenses for holiday residences, yachts and airplanes, respectively. The effective tax rate applied to the overall sum is 25%.

A further advantage of the tax on expenditure is that the tax can be fixed for several years in advance, therefore an individual does not have to meet any other reporting obligations except considerable alterations on the expenditures themselves.

Group taxation

FL implemented the concept of group taxation. Upon application, associated legal persons may form a group of undertakings and set off the losses incurred within the group in the course of one year against the profits achieved in the same year. Group taxation allows setting off losses of domestic and/or foreign group members against the profit of the group leader (i.e. lead undertaking) in proportion to the equity interest of the group leader in the group members. The group leader must have its registered office or effective place of management in FL.

Private Asset Structures ("PAS")

The status of a PAS can be granted to legal persons who in the pursuit of their objective do not perform any commercial activity (such as renting or lending), in particular if they exclusively acquire, hold, manage and sell bankable assets according to the FL Assets Management Act and participations in legal persons, liquid funds and bank balances. The PAS may only hold participations in companies if it can be proved that the shareholders or beneficiaries do not exercise actual control over the management of these companies through direct or indirect influence.

The articles of incorporation of PAS must indicate that they are subject to the restrictions applying to PAS under the Tax Act of FL.

Investors of a PAS can only be natural persons acting within the context of management of his or her private assets, an asset structure acting exclusively in the interests of the private assets of one or more natural person or an intermediary for one of these mentioned persons.

A PAS only pays the annual minimum corporate profit tax of CHF 1,800.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

FL structures can be used for succession and tax planning as well as asset protection purposes. Concerning pre-entry planning, a foreign settlor of a FL structure should consider whether any transfer of assets to the FL structure is treated as taxable disposal in the jurisdiction of which he or she is a tax resident. In such cases, foreign settlers of FL structures may have capital gain equal to fair value of the contributed assets reduced by the historic cost of their acquisition. Such gain might trigger taxation in the jurisdiction of the settlor. Through our professional international network of tax experts, advice can be provided to foreign investors in this context.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

Investments made by a non-resident person are not subject to tax in FL. FL does not levy capital gains tax.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Importation of goods and services for private use is subject to VAT. Certain goods, such as mineral oil, alcoholic beverages, meat, tobacco and automobiles, are subject to special custom and excise duty. They are exempt from customs under the so-called *de minimis* exemption of CHF 300.

FL is part of the European Free Trade Association (“EFTA”) and the European Economic Area (“EEA”). Within a global perspective, it is noteworthy that FL is a member of the World Trade Organisation (“WTO”) as well as of the General Agreement on Tariffs and Trade (“GATT”). Therefore, customs duties are mostly negligible and crossing of borders from the neighbouring countries, both Austria and Switzerland, is hassle-free.

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

Due to the small size of the country, the purchase of residential property is strictly regulated. In principle, buying real estate for non-residents is not permitted. If the acquisition of property is permitted, negligible charges are levied and some fees are paid in order to adjust the land register. The vendor selling real estate located in FL is liable for real estate capital gains tax calculated on the profit generated from the sale of real estate in FL.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Legal persons shall be liable to corporate profit tax without restriction on their total income if their registered office or their effective place of management is in FL. Legal persons include,

in particular, corporations, establishments (i.e. “Anstalt”) and foundations (i.e. “Stiftung”).

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The corporate income tax on worldwide income amounts to a flat rate of 12.5%.

Corporate profit tax is determined on the basis of the taxable net income, which in turn shall be determined on the basis of the annual financial statements to be drawn up in accordance with the provisions of the FL Persons and Companies Act. In this respect, it should be noted that the determination of the taxable net income based on international accounting standards like the IAS and the IFRS (art. 1139 PGR) is explicitly prohibited (art. 47 para. 1 Tax Act).

Interest income is taxable and must be at arm’s length if it refers to related parties. An interest at the rate of 4% of the modified equity capital can be deducted from the total corporate income as commercially justified expense (i.e. “notional interest deduction on equity”).

Formation tax at the rate of 1% of capital, applying a general exemption threshold of CHF 1 million shall be levied on the foundation, establishment or increase in the capital of legal persons or relocation of their registered office to FL, provided that Swiss stamp duty legislation does not apply. For capital in excess of CHF 5 million, the rate shall be reduced to 0.5% and to 0.3% for capital in excess of CHF 10 million. Foundations and assets endowments with no legal personality (such as trusts) shall pay a formation tax of 2‰ of the capital, but at least CHF 200.

Securities transfer tax is due on the transfer of taxable securities for consideration, provided a security dealer is involved. The rate of securities transfer tax amounts to 0.15% for Swiss securities, levied on the consideration paid. A rate of 0.3% is applied on the transfer of foreign securities. *Inter alia*, securities dealers comprise banks and financial intermediaries.

The securities transfer tax is payable by the securities dealer. Legal entities with qualifying securities of more than CHF 10 million in book value are considered securities dealers and are therefore liable for the payment of securities transfer tax.

Securities issuance stamp tax is payable when a shareholder contributes equity to a FL company in excess of CHF 1 million. Various exemptions exist.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

Foreign corporations (i.e. corporations that do not have their registered office or effective place of management in FL) are subject to corporate profit tax in FL with the net income generated by their branches located in FL. FL does not levy any withholding tax on profit transferred from the branch to its head office.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

FL has agreed to a number of DTAs and Tax Information Exchange Agreements (“TIEA”). The list of all FL DTAs and FL TIEAs can be found at <https://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf>.

The DTAs allocate taxing rights on items of income or capital to one contracting state and shall hence eliminate the taxation of the same income or capital in the hands of the same person by more than one contracting state.

A tax imposed by this foreign state corresponding to wealth or property tax and income tax is to be set off against the national and municipal tax applicable to the assets and income in question, if (a) the assets are located or (b) the income has been generated in a state with which a DTA has been concluded that allows for the foreign tax to be set off against these assets or this income, or (c) in cases where reciprocity has been granted between the contracting states.

If the assets are located, or the income has been generated, in a foreign state with which a DTA has been concluded, which provides for tax exemption in respect of these assets or this income, or in cases where reciprocity has been granted, the assets or income in question shall be exempt from tax.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

In general, the DTAs concluded by FL follow the OECD Model Tax Convention.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

As estate and gift taxes have been abolished in FL, it has not entered into any special treaty in this context.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

Cf. question 6.3.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The relevant rules can be found in art. 29 *et seq.* of the International Private Law Act (“IPRG”). According to art. 29 IPRG, succession is to be judged according to the personal status of the deceased at the time of death. A person’s personal status is the law of the state whose nationality they have.

In general, if an inheritance procedure is held at a FL court, succession shall be judged according to FL law. Nevertheless, a foreign testator and a domestic testator living abroad may, however, submit their succession by last will or by testamentary contract to the law of which they are a citizen or to the law of their last habitual residence.

According to art. 30 IPRG, the validity of a disposition on the basis, in particular, of a will, an inheritance contract (*Erbvertrag*) or an inheritance renunciation contract is given if the legal requirements of one of the following jurisdictions are met: the law of the state whose nationality the testator had at the time of the legal act (last will, etc.) or at his or her death; the law of the state in which the testator had his or her habitual residence at the time of the legal act or at his or her death; or the law of FL, if the succession procedure is held in FL.

Under FL inheritance law, the testator can declare his or her last will verbally in front of a certain number of witnesses out-of-court, or at the court where it is recorded, sealed and deposited. If someone wishes to declare his or her last will in written form without witnesses out-of-court, he or she must write the same by his or her own hand and has to sign it by his or her own hand. Engaged couples and married couples as well as registered civil partnership partners (same-sex couples) may draw up joint wills (*gemeinsames Testament*) for the benefit of a third party and/or on the basis of a reciprocal and mutual disposition. Such joint will is revocable (contrary to a contract of inheritance concluded by an engaged couple, married couple or civil partnership partners (*Erbvertrag*), which is only revocable under certain conditions).

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

The domestic jurisdiction for the settlement of an estate is given over the immovable property located in FL. Thus, the Liechtenstein courts are not competent for probate proceedings over real estate situated abroad.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

The right to a compulsory portion ensures the beneficiary of the compulsory portion (*Pflichtteil*) a minimum share of the value of the estate. It prevents the testator from disposing his or her entire estate by testamentary will, thus restricting his or her testamentary freedom. The persons whom the testator must consider in the last will are his or her children, in the absence of such, his or her parents, and the spouse or registered partner.

8 Powers of Attorney

8.1 In your jurisdiction, can an individual create a power of attorney which continues to be effective after the individual has lost capacity?

Power of attorney is governed by Art 1002 ABGB (*Allgemeines Bürgerliches Gesetzbuch*; Civil Law Code). It is a contract by which a person undertakes to perform a task assigned to him or her in the name of another person. The power of attorney shall be concluded orally or in writing. The document issued by the principal, the grantor of the power, is called a power of attorney. The attorney, the holder of the power of attorney, is obliged to carry out the transaction diligently and honestly in accordance with the power of attorney received. The attorney is entitled to use all means that are necessarily connected with the nature of the transaction or are in accordance with the declared intention of the principal. If the attorney exceeds the limits of the authorisation, he or she is liable for the consequences.

The principal may revoke the power of attorney anytime at will. He or she must compensate the attorney for the costs incurred and the damage suffered and maybe a part of the reward commensurate with the effort.

The power of attorney is terminated both by the death of the principal and the attorney. There is no legal provision on the termination of the power of attorney upon legal incapacity (*Geschäftsunfähigkeit*). According to Liechtenstein judgments, the power of attorney is **not** terminated upon legal incapacity of the principal (Liechtenstein Supreme Court, OGH, of 5 July 2013, 02 PG.2012.69) – the power of attorney is terminated upon legal incapacity of the attorney.

8.2 To what extent would such a power of attorney made by an individual in their home jurisdiction be effective to allow the attorney to deal with assets belonging to the individual which are located in your jurisdiction?

The attorney located in FL is obliged to carry out the transaction diligently and honestly in accordance with the power of attorney received. The attorney is entitled to use all means that are necessarily connected with the nature of the transaction or in accordance with the declared intention of the principal. If the attorney exceeds the limits of the authorisation, he or she is liable for the consequences.

There are no restrictions regarding the location where the power of attorney was made, i.e. the principal's home jurisdiction, and no restrictions on dealing with assets belonging to the principal located in FL.

9 Trusts and Foundations

9.1 Are trusts recognised/permited in your jurisdiction?

Trusts are recognised in FL. Trusts are governed by arts 897 to 932 PGR. Trust Enterprises are governed by Art 932a § 1-170 PGR. A trust consists of the trust fund transferred by the settlor to a trustee. The trustee is obliged to administer or use the trust fund in his or her own name as an independent legal owner for the benefit of one or several beneficiaries. A trust is not a legal entity, but rather a contractual legal relationship. Trust relationships or trusts have no legal personality. Trusts can be set up for charitable, social, cultural or similar purposes and as a trust settlement or a family trust for the benefit of one or more families. Contrary to the (simple) trust, Liechtenstein also recognises Trust Enterprises with legal personality.

On 1 April 2006, the Hague Trust Convention entered into force in Liechtenstein.

9.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

Trusts established under FL law or having their effective place of management in FL are liable to the minimum corporate income tax of CHF 1,800 per year. Trust Enterprises with legal personality are subject to regular corporate income taxation at a rate of 12.5% and are therefore subject to tax assessment.

The endowment/transfer of assets located abroad to a Liechtenstein trust by a natural person (settlor) is not subject to the endowment tax of 3.5% of the value of the contribution if the settlor is not subject to unlimited tax liability in Liechtenstein. Distributions made by a Liechtenstein trust to beneficiaries who are not subject to unlimited tax liability in Liechtenstein are tax-free in Liechtenstein.

9.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

FL trusts may be established for an indefinite period. Therefore, trusts are not *per se* affected by succession.

The law of the state whose nationality the settlor has may provide his or her heirs with a compulsory share of his or her estate. If a settlor submits the transfer of assets to a trust under

the laws of FL, his or her heirs may claim payment from the trust fund if the estate of the deceased settlor does not suffice to cover their compulsory share (art. 29 para. 5 IPRG and § 951 para. 3 ABGB). If FL law was chosen as the law to be applied on the transfer of assets, payment in the amount of the shortfall in the compulsory share cannot be claimed from the FL trust if the assets were transferred to the trust two years prior to the demise of the settlor (§ 785 para. 3 ABGB).

9.4 Are private foundations recognised/permited in your jurisdiction?

Foundations are recognised in FL and governed by art. 552 § 1 *et seq.* PGR.

Foundations have had a long tradition in Liechtenstein. The common type is the family foundation using the assets comprised therein for the benefit of members of one or more families, also often used as a holding of family business companies. Liechtenstein is a well-known jurisdiction for foundations with common-benefit purposes.

The foundation is a legal entity established by a founder. The founder specifies its purpose and endows it with assets. These assets become property of the foundation and are separated from the founder's private assets. The corporate body of a foundation is the foundation council, which conducts the business, represents the foundation in its relations with third parties and is responsible for the fulfilment of the foundation's purpose. The foundation council must consist of at least two members. The founder can designate additional corporate bodies to manage the assets, and to advise and assist the foundation council.

9.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Foundations established in FL are liable to at least the minimum corporate income tax of CHF 1,800 per year.

Foundations with their registered office or effective place of management in FL are liable to corporate income tax at a rate of 12.5% on their total income. Charitable foundations can be tax-exempt.

The endowment/transfer of assets located abroad to a Liechtenstein foundation by a natural person (founder) is not subject to the endowment tax of 3.5% of the value of the contribution if the founder is not subject to unlimited tax liability in Liechtenstein.

Distributions made by a Liechtenstein foundation to beneficiaries who are not subject to unlimited tax liability in Liechtenstein are tax-free in Liechtenstein.

9.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

A foundation is a legally and economically independent special-purpose fund that is formed as a legal entity through the unilateral declaration of will of the founder. In general, assets of the founder endowed by him or her to the foundation are not subject to his or her succession. If the testator was entitled to derive benefits from the foundation only during his or her lifetime, his or her beneficial entitlement in the foundation ends with his or her death and does not form part of his or her estate.

Special attention must be paid to the forced heirship rules in FL (for further details *cf.* question 9.3).

10 Matrimonial Issues

10.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

On 1 September 2011, the Act on the registered partnership for same-sex couples entered into force. Hence, same-sex partnerships are permitted and recognised in FL.

10.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Marriage does not establish conjugal community of property (§ 1233 ABGB). The law provides a legal presumption of common property *causa mortis*. Upon the death of one spouse, the other one is supposed to be entitled to retain half of all property in common use (§ 1234 ABGB).

10.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

As the mentioned stipulations with regard to separation of property are *ius dispositivum*, the spouses are free to organise their common fortune *ad libitum*. They can establish a comprehensive community of past and future property, as well as a community comprising certain goods in common use, and even extend this agreement to a property regime of the community of accrued gains.

10.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The divorce of the marriage leads to the division of property acquired during the marriage (i.e. the surplus) and will in most cases entitle one partner to post-marital spouse support. If no common agreement is found and if for one of the spouses it is not possible or reasonable to cope with ongoing expenditure, the other one is obliged to support him or her in order to maintain the previously common standard of living (art. 68 Marriage Act, EheG). The division of any property used commonly by the separated partners is subject to judicial equity and fairness (art. 78 EheG).

In general, assets belonging to one spouse at the beginning of the marriage or acquired by inheritance or otherwise at no cost are not subject to the division between them in the event of divorce (art. 75 EheG).

Enterprises shall not be subject to division in the event of divorce, rather the control over the same shall remain with the spouse having managed them so far (art. 79 EheG).

11 Immigration Issues

11.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

No restrictions or qualifications apply to visitors staying for no longer than three months without the intention to work.

The government is competent for the granting of residence permits. Permits for staying longer than three months are granted very selectively.

EEA residents and Swiss citizens are subject to the Act on the Freedom of Movement of Persons (“PFZG”). Third-country nationals are subject to the Act on Foreigners (“AuG”). Within

the scope of the AuG, permits are granted under consideration of national interest only. Those awarded residence are entitled to family reunions (art. 40 *et seq.* PFZG; art. 32 *et seq.* AuG).

As many high-net-worth individuals and other private clients qualify for an allowance for residence for non-economic activity or are distinguished professionals needed by the industry, permits are usually obtained.

Please note that individuals with no economic activity can apply to be taxed based on their expenditures (*cf.* question 3.2). Applications for residence permits must be filed with the government and are treated independently from the mentioned quotas or any other restrictions.

11.2 Does your jurisdiction have any investor and/or other special categories for entry?

FL does not provide any investor or other special categories for entry.

11.3 What are the requirements in your jurisdiction in order to qualify for nationality?

The requirements to be met in order to qualify for nationality are stipulated in the Citizen Act (“BüG”). As mentioned above, FL follows the principle of *ius sanguinis* (*cf.* question 1.6). Any child of a mother or father with citizenship of the Principality becomes an FL citizen.

11.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Obtaining nationality in FL is not linked to tax matters.

11.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The concept of tax on expenditure or lump-sum taxation (art. 30 *et seq.* Tax Act) is designed to attract wealthy foreigners (*cf.* question 3.2).

12 Reporting Requirements/Privacy

12.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

FL has committed to OECD standards and endorses the global Common Reporting Standard (“CRS”) for the automatic exchange of information in tax matters (“AEOI”). FL has been exchanging information with reportable AEOI-partner states since 2017. Annex 1 of the AEOI-Ordinance (“*ALA-Verordnung*”) contains the list of reportable partner states. The list comprises 108 states (as at 1 January 2019).

The legal basis for the AEOI between FL and the EU Member States is the “Agreement between the European Union and the Principality of Liechtenstein on the automatic exchange of financial account information to improve international tax compliance”. The legal basis for the AEOI between FL and non-EU countries are the multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (“*CRS MCAA*”).

Further, FL complies with the US Foreign Account Tax Compliance Act (“*FATCA*”) provisions. FL has also entered into a Model I intergovernmental agreement (“*IGA*”).

12.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

No specific reporting requirements are imposed by domestic law in respect of structures outside FL. Still, as anybody is liable to taxation in FL with his or her global income and wealth, he or she is supposed to make an honest declaration of all assets worldwide.

12.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

FL passed the new Act on the Register of the Beneficial Owners of Legal Entities (“*VwbpPG*”) on 3 December 2020. The main purpose of the *VwbpPG* is preventing money laundering,

predicating money laundering offences, and terrorist financing. As a consequence, it implements the Register of Beneficial Owners of Legal Entities (“*VwbpP*”) and the processing and disclosure of data and supervision of this Register of Beneficial Owners of Legal Entities. It implements arts 30 and 31 of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. The FL Department of Justice shall keep an electronic register of beneficial owners of legal entities. The register includes information on the legal entities and the beneficial owners associated with the entities. The disclosure of information in the register is limited to certain authorities and parties and subject to information required for preventing money laundering and terrorist financing.



Dr. Alexander Ospelt established the law firm Ospelt & Partner Attorneys at Law in 1997. In 1993, prior to opening his own full-service law firm, he worked as a staff member of Liechtenstein's Permanent Representation at the United Nations ("UN") in New York. From 1994 until establishing his chambers in 1997, he practised at the Princely Court of Justice and in a reputed law firm in Liechtenstein.

From 1987 to 1993, he studied at the Faculty of Law at St. Gallen University, Switzerland, and went on to complete a degree in European Law at ULB in Brussels, Belgium. He passed the Liechtenstein Bar Examination in 1997 and obtained a doctorate in Law from St. Gallen University, Switzerland, in 1999.

Dr. Alexander Ospelt has authored various publications, e.g. his dissertation on the free movement of freelancers in the European Economic Area and its impact on Liechtenstein professional law. In practice, he won a case against Liechtenstein in relation to the residence requirement for his client before the EFTA Court in Luxembourg. In addition, he has served in several associations of the legal profession (e.g. the Liechtenstein Bar Association, as a Member of the Board of Directors (2001–2004), and the European Advocats' Association DACH, as a Member of the Board (2007–2017)), and since 2013, has been a Member of the Scientific Advisory Board of the Private University in the Principality of Liechtenstein.

Dr. Alexander Ospelt was also Chairman of the Board of Liechtenstein Life Assurance Ltd. (2012–2017), and has been Chairman of the Board of Seed X Liechtenstein Ltd. since 2016, Chairman of the Board of Wefox Insurance AG since 2017, and Member of the Board of Banque Havilland (Liechtenstein) Ltd. since 2019.

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