

PRIVATE CLIENT ADVISING - SUMMARY INFORMATION

In cooperation with LEGACON TREUHAND ANSTALT, Ospelt & Partner advises high net worth clients and ultra-high net worth clients on legal and tax issues. Professional legal and tax advice for private clients covers several legal areas. In this article, we summarize key facts on Liechtenstein tax law, foundations and trusts, as well as matrimonial law and residency in Liechtenstein.

1. Taxation of natural persons

Within the framework of general tax planning, the domicile or habitual residence of clients is decisive for income and wealth taxation. In the Principality of Liechtenstein, persons with domicile or habitual residence are subject to taxation without limitation of total assets and income. The same applies in neighbouring countries such as Germany, Switzerland and Austria. However, when seeking personal legal advice, the differences in the relevant law as to what is to be understood as "domicile" are decisive. In some jurisdictions, unrestricted power of disposal over an apartment or house is sufficient; in other jurisdictions, the centre of own life must also be located there. "Ordinary residence" means the place or area where a person resides on a more than temporary basis. A stay of more than six consecutive months is considered habitual residence.

When transferring assets, any gift or inheritance tax must be taken into account. Austria and Liechtenstein do not levy gift or inheritance taxes, Germany and Switzerland do. However, family members are subject to preferential taxation or tax exemption.

2. Liechtenstein Tax law in short terms

The national income tax is calculated based on the taxable income; other valuable property is converted into income. The first CHF 15,000.00 of a single person's income are exempted from income taxation. The national income tax rate is a progressive tax rate and amounts from 1% on income up to CHF 20,000.00 to 8% on a single person's annual income above CHF 200,000.00. 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%. Therefore, the total tax rate is between 1.5% (1% x 150%) and 16% (8% x 200%). The assets are taxed in the form of a notional interest rate of 4% on the market value of all movable and immovable assets of a taxpayer and are subject to income tax together with other income. It is irrelevant whether income was actually earned from the assets at this rate. Therefore, it is a

notional entry rate. Generally exempt from tax are dividends and gains from participations in domestic or foreign legal entities as well as capital gains from the sale or liquidation and unrealized appreciation of participations in domestic or foreign legal entities.

Real estate capital gains tax applies to any person earning profit from the sale of real estate located in Liechtenstein. 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.

Liechtenstein has adopted the VAT law of Switzerland ("CH"). The current general VAT rate is 7.7 %. A reduced rate of current 2.5% is applicable to deliveries of water in pipes, foods, drugs, newspapers, magazines and books. Accommodation 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. As of 1 January 2024, the VAT rates will be raised to 8.1% general, 2.6% reduced and 3.8% for accommodation.

Liechtenstein 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 Liechtenstein;
- 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%.

3. Corporate income tax

The Corporate income tax amounts 12.5% on its worldwide income. *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 Liechtenstein Persons and Companies 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").

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 the book value of more than CHF 10 million are considered as 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 Liechtenstein company in excess of CHF 1 million. Various exemptions exist.

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

4. Double taxation treaties

In order to avoid double taxation of individuals and companies liable to tax in Liechtenstein, Liechtenstein has concluded a number of double taxation agreements (DTAs). The DTAs allocate the right of taxation of income or assets to one or the other contracting state and are thus intended to preclude the taxation of the same income or assets 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, that 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.

5. Foundations and Trusts

Foundations are governed by art. 552 § 1 et seq. PGR. A foundation is a legally and economically independent special-purpose fund which is formed as a legal entity through the unilateral declaration of will of the founder. In general, assets of the founder endowed by him to the foundation are not subject to his succession. If the testator was entitled to derive benefits from the foundation only during his lifetime, his beneficial entitlement in the foundation ends with his death and does not form part of his estate.

Special attention has to be paid to the forced heirship rules in Liechtenstein.

Foundations established in Liechtenstein are liable at least to the minimum corporate income tax of CHF 1,800 per year. Foundations with their registered office or effective place of management in Liechtenstein are liable to corporate income tax at a rate of 12.5% on their total income. Charitable foundations can be tax-exempted.

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.

Trusts are also recognised in Liechtenstein. The trust is governed by art. 897 to art. 932 PGR. The Trust Enterprise is governed by Art 932a § 1-170 PGR. The (simple) trust does not have legal personality. The trust enterprise has legal personality. On 1 April 2006, the Hague Trust Convention entered into force in Liechtenstein.

Liechtenstein 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 heirs with a compulsory share of his estate. If a settlor submits the transfer of assets to a trust to the laws of Liechtenstein, his 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 Liechtenstein 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 Liechtenstein trust if the assets were transferred to the trust two years prior to the demise of the settlor (§ 785 para. 3 ABGB).

Trusts established under Liechtenstein Law or having their effective place of management in Liechtenstein 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 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.

6. Matrimonial Issues

In matrimonial and family law, we advise in particular in connection with the conclusion of marriage and inheritance contracts. Marriage does not establish community of property in Liechtenstein (§ 1233 ABGB). However, the legal presumption of community of property at death applies. After the death of one spouse, the other spouse shall have the right to retain half of the joint property (§ 1234 ABGB). However, the spouses are free to arrange their joint property as they wish. They can establish a comprehensive community of property for past and future assets as well as the community of certain jointly used assets and even extend this agreement to a community of property.

Divorce of the marriage leads to the division of the assets acquired during the marriage (the so-called gain) and in most cases gives rise to a claim of one partner to post-marital spousal support. If no mutual agreement is reached and if it is not possible or reasonable for one of the spouses to meet current expenses, the other is obliged to support him or her in order to maintain the previous common standard of living (Art 68 EheG). The division of the property jointly used by the separated partners is subject to judicial equity (Art 78 EheG).

Property that belonged to a spouse at the beginning of the marriage or that he or she acquired gratuitously by inheritance or otherwise is in principle not subject to division in the event of divorce (Art. 75 EheG). Businesses are not subject to division in the event of divorce, but the power to dispose of them remains with the spouse who has previously managed them (Art. 79 EheG).

7. Residency

For persons from the EEA member states who do not intend to stay in Liechtenstein for more than three months without the intention of working, no restrictions or qualifications regarding settlement apply.

In case of a longer stay, a residence permit must be applied for. Permits for stays longer than three months are granted very selectively by the responsible government.

For EEA citizens and Swiss citizens, the Free Movement of Persons Act (PFZG) applies. Third-country nationals are subject to the Foreign Nationals Act (AuG). Within the framework of the AuG, permits are only granted taking into account the national interest. However, those who receive a residence permit are entitled to family reunification (Art. 40 ff. PFZG; Art. 32 ff. AuG).