

Mutual Legal Assistance Treaty between the United States of America and Liechtenstein

Important Proof of Trust and Quality in the Financial Market Place of Liechtenstein

On 2nd July 2002 a new Mutual Legal Assistance Treaty between the Principality of Liechtenstein and the United States of America was signed. This treaty is designed to protect the international financial markets against terror, organised and economic crime.

Under the pressure caused by the events of September 11th, 2001 and in the shadow of the fraudulent collapse of large businesses, the United States has demanded extensive Legal Assistance Treaties with various countries in order to enhance their security. Meanwhile over fifty agreements have been reached, the emphasis being on a deep desire for stability on the international financial market.

Liechtenstein and the United States had already exercised mutual legal assistance in the case of criminal acts on the basis of a diplomatic agreement. This type of agreement, however, no longer satisfied the USA who was striving towards a more extensive legal treaty.

Liechtenstein Insists on the Protection of Privacy

The first negotiations between Liechtenstein and the United States of America took place in Washing-

ton DC in April 2001. In addition to legal assistance in the case of criminal matters, the United States also demanded extensive bilateral exchange of information on tax affairs. With regard to safeguarding the investors' privacy, the American proposal was deemed unacceptable by Liechtenstein.

As a result, a second round of negotiations took place in February 2002

in Vaduz at which a sound compromise was reached.

Compromise Increases Liechtenstein's Competitiveness

It was in the interest of both states to reach a satisfactory agreement. Whereas security and fighting crime were the major factors motivating the USA, Liechtenstein placed emphasis on competitiveness and safeguarding the framework of its financial market for the following reasons:

- Liechtenstein banks enjoy QI-status in the United States, that of a Qualified Intermediary, essential

Legal Assistance in Liechtenstein

Legal assistance with other countries is not unusual for the judiciary of Liechtenstein. As early as 1970, Liechtenstein signed the «European Agreement on Legal Assistance for Criminal Acts» as well as the «European Agreement on Extradition». The first law governing International Legal Assistance for Criminal Acts was passed in 1992. Legal assistance with regard to fiscal matters is explicitly excluded from this law. A revision of this law was undertaken in the year 2000. This concerned itself primarily with the speeding up of legal assistance procedures. It was stipulated that legal assistance would not be granted in the case of violation of duty, customs or currency regulations. In the Legal Assistance Treaty with the USA this principle with regard to tax fraud has been waived. Tax fraud is also punishable under Liechtenstein Law.

Bank Secrecy and QI-Status Secured – No Changes for Wealthy Private Clients.

for a free international flow of capital. The USA set as a precondition for the continuation of the QI-status that an agreement should be reached on legal assistance.

- As a result of September 11th the USA passed the USA PATRIOT Act in the fight against international terrorism. It permits the US Treasury Department to implement wide-reaching sanctions against any country failing to offer cooperation. These sanctions can go as far as forbidding USA financial institutions to conduct business with banks in any country concerned.

Without any doubt, this would have had negative consequences for the Principality of Liechtenstein. A Legal Assistance Treaty is used by the US authorities as a yardstick on the willingness to cooperate.

Legal Assistance in the Case of Fiscal Fraud

In Article 1, Paragraph 4 of the new Legal Assistance Treaty, the USA and Liechtenstein have agreed that legal assistance in the case of fiscal fraud will only be given

- «where the conduct described constitutes tax fraud, defined as tax evasion committed by means of the intentional use of false, falsified, or incorrect business records or other documents,
- provided the tax due, either as an absolute amount or in relation to an annual amount due, is substantial».

Assistance shall include taking the testimony or statements of persons, providing items, locating or identifying persons or items, serving documents, transferring persons in custody for testimony or other purposes, executing requests for searches and seizures, assisting in proceedings related to immobilization and forfeiture of assets, restitution, collection of fines and any other form of assistance not prohibited by the laws of the requested state.

Comparison with Other Financial Market Places such as Switzerland and Luxembourg

The wording of the Legal Assistance Treaty uses as a guideline the European Agreement on Legal

Assistance for Criminal Acts and corresponds comprehensively in structure with existing treaties between the USA and other countries such as Switzerland and Luxembourg.

The image shows two tax forms. The top form is Schedule C (Form 1040) for 2002, titled 'Profit or Loss From Business (Sole Proprietorship)'. It includes fields for the proprietor's name, principal business, and social security number. The bottom form is U.S. Corporation Income Tax Return for 2001, which includes fields for the corporation's name, address, and identification number. Both forms are from the Department of the Treasury, Internal Revenue Service.

Tax Forms 1120 and 1040 Named in the Treaty

The Legal Assistance Treaty with the USA Strengthens the Trust of International Investors in the Quality and Safety of the Liechtenstein Financial Market Place.

Comments on the Treaty

«The Legal Assistance Treaty with the USA serves to strengthen the international acceptance of the Financial Market Place Liechtenstein.»

Otmar Hasler, Head of Government of the Principality of Liechtenstein

«Our goal is to maintain as many local advantages as possible and – given the opportunity – to develop them. With this new treaty we have succeeded in accomplishing that goal.»

Ernst Walch, Foreign Minister of the Principality of Liechtenstein

«This treaty is bad news for Ministers of Finance with incorrect tax policies and empty treasuries. It will be even more difficult in future to exercise pressure on Liechtenstein.»

H.S.H. Prince Nikolaus von Liechtenstein, Liechtenstein Ambassador to Brussels, Head of the Negotiating Committee

The new treaty will be applied to all requests for legal assistance irrespective of whether the illegal act took place before or after the treaty was implemented.

Legal Assistance Limited Only to Serious Cases of Tax Fraud

Legal assistance on tax matters, which the USA insisted on, is limited as a result of the compromise reached, to serious cases of tax offences as described in Article 1, Paragraph 4 of the Treaty (see insert at the top of page 2).

The wording more or less corresponds to the Liechtenstein definition of tax fraud.

Precise Definition of Fraudulent Action Provides Secure Legal Basis
Parallel to the signing of the Legal Assistance Treaty, diplomatic notes were exchanged, which provided an exact definition of the term «tax fraud». It was agreed that the following activities, if committed intentionally, would constitute «tax fraud»:

1. *preparing, causing to be prepared, signing, or filing any document that:*
 - (a) *is required by law to be filed as evidence to the tax authorities to evaluate the amount of taxable income,*
 - (b) *serves as the basis for an assessment of tax, and*

(c) *is false as to any matter necessary to the assessment of such tax:*

2. *keeping a double set of books,*
3. *making false entries or alterations or false invoices or documents,*
4. *destroying books or records, or*
5. *concealing assets or covering up sources of income by means as described in Article 1(4).*

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No Compromise from Liechtenstein with Regard to Bank Secrecy

Further, it was agreed that the term «document» includes special forms used by the parties, in as far as these serve as proof of book-keeping (balance, income and expenditure accounts) of a company.

These forms are: Form 1120 «U.S. Corporation Income Tax Return» and Schedule C of Form 1040 «Profit or Loss from Business (Sole Proprietorship)» as used by the US Tax Authorities.

In addition, any forms which may be designated in future, providing that both states agree.

Safeguarding the Strategic Competitiveness of the Liechtenstein Financial Market Place

The treaty negotiated with the United States contributes, without doubt, to safeguarding in the long term the competitiveness of the financial market place in Liechtenstein and its international acceptance. In addition, the treaty represents an important argument in respect of the increased international pressure on financial market places, especially those projects of the «Organisation for Economic Cooperation and Development» in Europe (OECD) to fight the so-called

unfair tax competition as well as similar efforts of the EU to harmonise taxation.

Liechtenstein has set a clear signal in this respect and has shown that the exchange of information with regard to tax affairs must remain limited to cases of serious fraudulent nature.

Bank Secrecy Remains Untouched – Important Signal to Investors

Liechtenstein has continued to emphasise its support in the fight against terrorism, organised and economic crime. Safeguarding the financial market place and the interests of the investors demands bringing in high standards of quality which will simultaneously keep laundered money out of the market. This necessitates changes in the rules and norms which currently govern the financial markets worldwide in respect of due diligence and forms of legal assistance.

Liechtenstein along with other recognised financial market places such as Switzerland and Luxembourg, has now moved in the same direction with regard to legal assistance.

It is reassuring for the investor that Liechtenstein has upheld its clear standpoint without any compromise on the strict banking secrecy rules.

Summary of Services

- International financial, tax and business consulting
- Incorporation, domiciling and administration of domestic and foreign companies
- Consulting in international trade and financial transactions
- Legal representation in civil, administrative and criminal matters
- Investment consulting and investment management
- Trust administration
- Family office services
- Bookkeeping and auditing
- Intellectual property, licensing and franchising
- Legal opinions

ADVOKATURBÜRO

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