

Liechtenstein Bank Secrecy Continues

No automatic exchange of information in cases of tax fraud and tax evasion

In the "Liechtenstein Declaration" on 12th March 2009 the Government of the Principality of Liechtenstein made it known that it was aspiring, in accordance with the OECD standards, towards comprehensive cooperation on tax questions with other states. At the same time, the Government confirmed that it would continue to uphold legitimate privacy rights of clients, worldwide, in the Liechtenstein financial market place. As before, in the area of bank secrecy, Liechtenstein still continues to have solid legislation.

The Liechtenstein Government, having already developed an advancement strategy in 2008 in order to safeguard the future of the financial market place, emphasized with the "Liechtenstein Declaration" its stance regarding the protection of privacy and defence of bank secrecy. In addition, Liechtenstein affirmed its readiness to accelerate negotiations on agreements regarding tax information exchange in order to have a network of agreements at its disposal as soon as possible. Within the framework of this process Liechtenstein reconfirmed its responsibility not only towards tax claims of other states but also to the trust of its international clientele. Since March the success of this strategy has been crowned when the OECD recognized Liechtenstein's compliance with the international tax cooperation standards and removed the Principality from the grey list of non-cooperating countries.

Legitimate Protection of Secrecy

In front of a backdrop of efforts to stabilise global economy and international financial systems, Liechtenstein decided on a pro-active strategy and presented itself to the world through the "Liechtenstein Declara-

tion" as a fully responsible and reliable partner. The ratification of an interest tax agreement with the European Union and the completion of a tax agreement with the USA, based on OECD standards, paved the way. Bank secrecy protection continues contrary to the general misconception that it has been abolished, but, in future, judicial assistance will be afforded not only in the case of tax fraud but also, under certain circumstances, in the case of tax evasion. Previous misconceptions compared bank secrecy, which was never absolute, with a bank safe. Liechten-

Protection of Privacy

Liechtenstein Declaration to the OECD-Standards on Tax Matters

"With this declaration, Liechtenstein commits itself to the implementation of the global standards of transparency and information exchange on tax questions as developed by the OECD as well as intensive participation in international efforts to fight the non-compliance to foreign tax laws. With this declaration, Liechtenstein emphasized its position on the protection of privacy and bank customer secrecy. It confirmed its willingness to accelerate the negotiations on agreements regarding information exchange on tax matters and other agreements in order to have, as soon as possible, a network of agreements at its disposal, which not only counteracts the problem of tax fraud and evasion but also double-taxation".

Declaration of the Government of the Principality of Liechtenstein on 12th March 2009

Liechtenstein was removed from the grey list of non-cooperating countries on tax matters by the OECD on 11th November 2009

stein had, in the past, always given judicial assistance in the case of criminal action.

Model Agreement with the USA

Prior to the "Liechtenstein Declaration" Liechtenstein had, on 8th December 2008, signed an agreement

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with the USA on cooperation and information exchange on tax matters (TIEA).

The Government declared that this change of paradigm from a restrictive, defensive to a cooperative attitude showed its desire to safeguard Liechtenstein's Financial Market Place and its economic position in the long term.

From September 2009 the Tax Information Exchange Agreement (TIEA) with the USA served as a guideline to the cooperation agreements which were finalised with a number of other countries. In signing the TIEA agreement, Liechtenstein Banks fulfilled the requirements for the extension of QI-Status (Qualified Intermediary) which was extended by the USA from 1st January 2010 for a further six years. The judicial assistance law based on the TIEA found the approval of the Liechtenstein Bankers' Association as it contained clear and, at the same time strict regulations guaranteeing legal assistance. The Liechtenstein Bankers' Association praised as a positive step that, within the framework of the judicial assistance law, any foreseen exchange of information would be based solely on a precise request. Through this law, as before, no sensitive tax data will be given abroad without a targeted and individual request. Consent also came from the export in-

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dustry which described the legal assistance law as an important building block for constructive cooperation and continuing good relations with the USA.

Information on Request

The exchange of information between Liechtenstein and the USA is provided for by means of judicial assistance. The agreement explicitly stipulates that information between the competent tax authorities is not automatically exchanged but on the basis of a precisely phrased request. Liechtenstein must only fulfil a request if the set conditions are fulfilled. The request for information addressed to Liechtenstein must contain:

- The identity of the tax payer whose tax or criminal liability is in question.
- The time period for which the information is required
- The justification for believing that the required information can be found in Liechtenstein
- The name and address of the person who is believed to be in posses-

Liechtenstein protects the legitimate privacy rights of its clients around the world in the area of bank secrecy

sion of or in control of the requested information

- A declaration that the USA has exhausted all possible means at its disposal within its area of sovereignty.

With this, by no means complete catalogue of requirements, mere “fishing expeditions” or “fact finding missions” should be prevented. In addition, the terms of the agreement also provide that a State can refuse to provide information which is protected by attorney secrets, company secrets or professional secrets. Information is not protected if the professional secret only applies to the financial service itself.

Agreement with Germany

Following the USA model, Liechtenstein concluded agreements on information exchange with Germany and a number of other countries. When signing the agreement, Liechtenstein’s Prime Minister Klaus Tschütscher emphasized that the agreement was a further example of how the OECD standard in the field of tax information exchange could be applied on a wide international plain.

Successful cross-frontier cooperation on tax matters pre-requisites, according to Tschütscher, that the contractual partners guarantee mutual interstate relationships and legal procedures in the interest of their citizens. This agreement also con-

OECD-Standards on Questions of Taxation

“The declaration of 12th March on future cooperation in tax matters has been followed by the first relevant agreements in the past few weeks.

Transforming our financial centre in the middle of the biggest economic crisis in decades is certainly not an easy undertaking. I am, however, convinced that the course we have taken is the right one and will ultimately be successful. It is the only course to ensure the stable and sustainable growth of our financial centre. To achieve this growth, we must take the next steps now, with the necessary determination and speed. Slackening off all too soon because competing centres appear to be slower than us harbours the risk of an opportunity wasted.”

H.S.H. Hereditary Prince Alois von Liechtenstein in his address on the state holiday on 15th August 2009

“The Liechtenstein Bankers’ Association welcomes the Liechtenstein Declaration of the Government of the Principality of Liechtenstein and its willingness to apply the global OECD standards on tax questions. The Liechtenstein Bankers’ Association endorses, at the same time, a speedy conclusion to the negotiations with the EU on a fraud agreement. It supports the Liechtenstein Government in its intention, in the sense of a balance of interest, to reach concrete results in the negotiations on tax information exchange on request, in accordance with OECD standards as soon as possible. Intensified tax cooperation is not contradictory to the protection of privacy which is still guaranteed in respect of unwarranted access of third parties. The Bankers’ Association fundamentally rejects an automatic exchange of information. So-called fishing expeditions contradict the underlying philosophy of Liechtenstein Banks in the protection of privacy.”

Comment by the Liechtenstein Bankers’ Association on the Liechtenstein Declaration on 12th March 2009

cerns itself with the legitimate protection of privacy of citizens from arbitrary access by the State as well as

guaranteeing legal certainty. Exchange of information with Germany is only provided through pre-

Liechtenstein stands for transparency and offers trust and credibility in an ever changing global financial order

cisely worded requests. The Principality of Liechtenstein relinquished the fiercely protected principle of mutual criminal liability as a precondition for the exchange of information. Germany and Liechtenstein set out a protocol to the agreement which requires that the tax payer not involved in a criminal tax case will be informed about the intention to place a request for information.

However, this rule can be waived if the aim of the investigation is endangered.

Agreement with England

The agreement signed on 11th August 2009 between the United Kingdom and Liechtenstein goes beyond the information exchange agreement with other countries. Following the aim of "Clients first" the Government is of the opinion, that they now have an agreement based on customer orientation. The TIEA foresees a number of protective measures with the aim that the required tax information does not encroach on the privacy of a person using the financial market place in Liechtenstein.

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

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F.L.BULLETIN

The international financial and economic crisis did not pass without leaving its mark on Liechtenstein, although the second half of 2009 saw the first signs of an upward trend. The expectations, according to an economic survey, of the production sector, are that the lower turning point has passed and stabilisation is expected towards the end of the year with a slight upturn in 2010.

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Direct exports of industrial goods, excluding exports to Switzerland, dropped by 32% from January to August 2009, but only by 29% between January and October when compared with the previous year. Most companies were able to re-introduce fulltime working during the second half of the year. Metal working and machine construction were particularly affected in the first half of the year, however, food production and dental products were far less influenced.

*

The financial services sector was less affected and saw a drop of only 10% compared with the previous year. The "net new money drain" of the three largest banking groups continued in the first half of 2009 but at 3 billion Swiss Francs it was lower than the second half of 2008. Due to stock market developments up to the middle of 2009 managed customer assets were able to increase by 5% compared to their status at the end of 2008.