
Liechtenstein Tax Law

Offprint

Chapter 14-20 Tax law

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Chapter 14

General Aspects of Tax Law

I. Introduction

- 14.1 Liechtenstein tax law was revised in its entirety with effect from 1 January 2011. The taxation of legal persons, in particular, has changed fundamentally under the new tax law. For example, a uniform tax rate of 12.5% was introduced for legal persons, and capital tax as well as coupon tax on distributions were abolished.
- 14.2 It should also be noted that under the Customs Treaty, which entered into force in 1924, and subsequent treaty norms, the entire Swiss **customs law** and various tax law provisions were declared directly applicable in Liechtenstein, including the norms on Swiss stamp duties. Finally, on 1 January 1995, on the basis of a treaty with Switzerland, value-added tax was introduced in the Principality of Liechtenstein at the same time as in Switzerland, the substantive Swiss provisions on value-added tax were incorporated into Liechtenstein law and their parallel enforcement at the administrative level were agreed. The Liechtenstein Value-Added Tax Act (Mehrwertsteuergesetz) hence largely corresponds to Swiss law.

II. Sources of law

- 14.3 Liechtenstein tax law is based partly on Liechtenstein standards and partly on Swiss enactments that due to bilateral agreements are directly applicable in Liechtenstein. The directly applicable provisions of Swiss tax law are regularly published in corresponding announcements. As the EEA Agreement excludes taxes and customs duties, European primary and secondary law in customs and tax matters does not apply in Liechtenstein. The Tax Administration's²³⁸ website provides a range of instructions, forms, circulars and factsheets.

²³⁸ www.stv.li.li.

- 14.4 The competent tax authority at the national level is the Liechtenstein Tax Administration. Pursuant to Article 116 of the Tax Act (Steuergesetz, SteG), objections against the assessment orders and other orders of the Tax Administration may be raised with the Tax Administration within 30 days from service, and the decision of the Tax Administration on the appeal may be appealed to the National Tax Commission. An administrative appeal may be lodged with the Administrative Court against a decision of the National Tax Commission. The Tax Administration also has the right to appeal.

A. Liechtenstein legal provisions

- 14.5 The Act of 23 September 2020 on National and Municipal Taxation (Gesetz über die Landes- und Gemeindesteuern, SteG) and the related Ordinance of 21 December 2010 on National and Municipal Taxation (Verordnung über die Landes- und Gemeindesteuern, SteV) are of key importance.
- 14.6 The Act of 22 October 2009 on Value-Added Tax (Gesetz über die Mehrwertsteuer, MWSTG) and the Ordinance of 15 December 2009 on the Act on Value-Added Tax (Verordnung zum Gesetz über die Mehrwertsteuer, MWSTV) both have adopted the substantive Swiss provisions under the aforementioned VAT treaty with Switzerland and regulate their parallel enforcement at the administrative level.
- 14.7 At the end of each year, a Finance Act (Finanzgesetz) is enacted for the coming calendar year. The Act determines, i.a., the projected income pursuant to Article 5 of the Tax Act. The projected income has a significant influence on the taxation of natural as well as legal persons: on the one hand, the projected income of domestic taxable assets is subject to income tax for natural persons, i.e., income in the amount of the projected income is fictitious and taxed (Article 14 para. 2 lit. I SteG). On the other hand, in the case of taxation of legal persons, interest on proprietary capital employed in the business is deducted from taxable income in the amount of the projected income (Article 16 para. 2 lit. b no. 2 SteG).

B. Swiss legal provisions

- 14.8 All Swiss tax provisions which are directly applicable in the Principality of Liechtenstein under certain bilateral treaties between Liechtenstein and Switzerland (e.g., Customs Treaty, Currency Treaty, Agreement on Stamp Duties) are recorded at least twice a year in the Official Law Gazette (Landesgesetzblatt) of Liechtenstein. For example, the Swiss standards for taxation of tobacco, beverages, motor vehicles and mineral oil apply in Liechtenstein. Swiss federal law on stamp duties also applies in Liechtenstein. Information on directly applicable provisions of Swiss tax law is available on the websites of the Liechtenstein Tax Administration²³⁹ and of the Swiss Federal Tax Administration²⁴⁰ (Eidgenössische Steuerverwaltung).
- 14.9 In addition, the substantive and formal customs law of Switzerland, above all the Customs Act (Zollgesetz, ZG) of 18 March 2005, together with the implementing ordinances, is directly applicable in Liechtenstein. The Liechtenstein-Austrian border is guarded by the **Federal Customs Administration**²⁴¹ (Eidgenössische Zollverwaltung), which also is in charge of customs import, export, and transit clearances. As Liechtenstein is an EEA Member State and Switzerland is not, there are sometimes deviations in EEA-specific agendas, e.g., when it comes to origin. In this regard, the Act of 22 March 1995 on Customs (Gesetz über das Zollwesen) is applicable, together with its implementing ordinances.

C. Double Taxation Agreements

- 14.10 To date, Liechtenstein has double taxation agreements in force with the following countries: Switzerland, Austria, Germany, Lithuania, Luxembourg, United Kingdom, Iceland, Czech Republic, Hungary, Singapore, Andorra, Hong Kong, San Marino, Monaco, Uruguay, Malta, Guernsey, Georgia, United Arab Emirates and Jersey. Further double taxation agreements with Bahrain, Italy and the Netherlands have been initialed, but are yet to enter into force.

²³⁹ www.stv.li.vi.

²⁴⁰ www.estv.admin.ch.

²⁴¹ www.ezv.admin.ch.

- 14.11 The European Parent-Subsidiary Directive 90/435/EEC²⁴², which regulates the taxation of dividend payments between associated companies and avoids double taxation in this area, as well as the European Interest and Royalties Directive 2003/49/EC²⁴³, which has the same effect with respect to interest and royalty payments, are unfortunately not yet applicable to Liechtenstein despite its EEA membership.

D. Automatic Exchange of Information and FATCA

- 14.12 The implementation of the automatic exchange of information (AEOI) based on the international reporting standard developed by the OECD took place in the AEOI Act and the AEOI Ordinance. Implementation of the AEOI was agreed with the EU Member States as part of the accession to the Convention on Mutual Administrative Assistance in Tax Matters (in force in Liechtenstein since 1 December 2016). With countries outside the EU, the AEOI is implemented via the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (in force in Liechtenstein since 1 December 2016).

On 16 May 2014, Liechtenstein and the USA signed a model 1 FATCA agreement²⁴⁴ (in force since 22 January 2015). Under said model 1 agreement, financial institutions submit reports to the Liechtenstein Tax Administration on accounts held by U.S. persons, and the Liechtenstein Tax Administration forwards this information to the U.S. Internal Revenue Service (IRS). In Liechtenstein, the FATCA agreement was implemented in the FATCA Act²⁴⁵.

²⁴² Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 1990/225, 6.

²⁴³ Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 2003/157, 49.

²⁴⁴ Agreement between the Government of the Principality of Liechtenstein and the Government of the United States of America to Improve International Tax Compliance and with respect to the U.S. Information and Reporting Provisions commonly known as the Foreign Account Tax Compliance Act.

²⁴⁵ Act of 4 December 2014 on the implementation of the FATCA Agreement between the Principality of Liechtenstein and the United States of America.

Sources:

Hosp/Langer, Steuerstandort Liechtenstein. Das neue Steuerrecht mit Doppelbesteuerungs- und Informationsabkommen (2011);

Meyer (Hrsg), Die Steuergesetze des Fürstentums Liechtenstein. Sammlung praxisrelevanter Steuererlasse 5 (2021);

Roth, Grundriss des liechtensteinischen Steuerrechts (2011);

Summer/Inetas, Liechtenstein, in Riches (Hrsg), The Private Wealth and Private Client Review 9 (2020) 261.

Chapter 15

Taxation of Legal Persons

I. Personal tax liability

- 15.1 Legal persons are **liable to tax without restriction** on their total income, if their registered office or their effective place of management is in Liechtenstein (Article 44 para. 1 of the Tax Act (Steuergesetz, SteG)).
- 15.2 The tax liability of legal persons, which do not have their registered office or effective place of management in Liechtenstein, as well as special asset endowments without legal personality (i.e., in particular, trusts), is **limited** to their domestic income. Domestic income is deemed to be income from the exploitation of land in Liechtenstein used for agriculture and forestry, rental and leasing income from real estate located in Liechtenstein, taxable net income from permanent establishments located in Liechtenstein, earnings from remunerations received for services as a member of the Board of Directors or Foundation Board or as a member of similar executive bodies of legal persons and special asset endowments having their registered office or effective management in Liechtenstein (Article 44 para. 2, 3 SteG).

II. Objective tax liability and tax rate

- 15.3 The **earnings tax rate** is 12.5% of the taxable net income (Article 61 SteG). Taxable net income is to be determined based on the financial statement to be prepared under the Persons and Companies Act. However, a number of mandatory adjustments are to be made. For example, the tax expenses for determining the taxable net income are added back to the commercial net income (Article 47 para. 3 lit. f SteG).
- 15.4 Tax-exempt income includes, i.a., income from permanent establishments abroad, rental and leasing income from real estate located abroad, domestic capital gains on real estate, insofar as such gains are subject to real estate capital gains tax in Liechtenstein, and capital gains from the sale of foreign real estate, dividends from holdings in legal persons, capital gains from the sale or liquidation as well as unrealized losses from holdings in legal persons and distributions from foundations, establishments with a similar structure to foundations and special asset endowments with legal personality (Article 48 SteG).

- 15.5 **Profit shares** (dividends) and capital gains from the sale of holdings in legal persons generally are tax-exempt. Hence, not only income and **capital gains** from shares in largely or wholly controlled subsidiaries are generally tax-free, but so are income and capital gains from shares held as part of a securities portfolio.
- 15.6 In 2016, however, a number of OECD measures were incorporated into the Liechtenstein Tax Act as part of the BEPS project. Since then, dividends and distributions are counted as taxable net income in the case of holdings of at least 25% of the votes or the capital, or alternatively in the case of beneficial interests, if the dividends and/or distributions can be claimed as an expense against tax by the legal persons providing the dividend or distribution (Article 48 para. 3 lit. a SteG). This means, if a Liechtenstein undertaking receives dividend income which, in the country it was declared, is classified as a tax-deductible interest payment, Liechtenstein is forced to tax the dividend if the threshold of holdings of at least 25% is reached.
- 15.7 Moreover, further **abuse provisions** have been added to the Liechtenstein Tax Act with effect from the 2019 tax year. To end the previous asymmetric treatment of (tax-exempt) gains and tax-deductible losses, since 2019 realized and unrealized losses from holdings in legal persons have not been tax-deductible any longer (Article 47 para. 3, lit. c/bis SteG).
- 15.8 In addition, yet another abuse provision has been introduced so as to ensure that income from holdings in any foreign legal person that primarily generates unearned income and is subject to low (or no) taxation in its home country is additionally taxed in Liechtenstein.
- 15.9 Under this abuse provision, in deviation from the general tax exemption, dividends and distributions constitute taxable net income if:
1. more than 50% of the total earnings of the foreign legal person providing the dividend or distribution is permanently made up of unearned income, unless this income is achieved in the course of an actual commercial business of the providing legal person; and
 2. the net income of the foreign providing legal person is directly or indirectly subject to a low rate of taxation (Article 48 para. 3 lit. b SteG).

15.10 A **low rate of taxation** is understood as:

1. in the case of holdings of less than 25% of the votes or the capital, or alternatively in the case of beneficial interests, a deduction of earnings tax at a rate that is less than half the rate of taxation in Liechtenstein (i.e., less than 6.25%);
2. in the case of holdings of at least 25% of the votes or the capital, an effective deduction of earnings tax of less than 50% of the earnings tax charge in an equivalent situation in Liechtenstein in accordance with the provisions of this Act.

15.11 **Unearned income** as used in this abuse provision is understood as:

1. interest or similar income from financial assets, royalties or other revenue from intellectual property and income from financial leasing;
2. dividends from holdings in or distributions from foreign legal persons, in which more than 50% of their total income is made up of low-tax unearned income and insofar as this income is not achieved in the course of an actual commercial business;
3. capital gains from the sale or liquidation of holdings in foreign legal entities and unrealized capital gains from such holdings, provided these entities meet the requirements outlined in b).

15.12 In deviation from the general tax exemption, **capital gains** from the sale of holdings are deemed taxable net income if they are attributable to the sale or liquidation of holdings in foreign legal persons whose dividends are deemed taxable net income based on holdings in accordance with the aforementioned abuse provision. This shall also apply to unrealized capital gains (Article 48 para. 6 SteG).

15.13 When claiming for tax-free earnings, taxpayers must demonstrate in all cases that the above conditions have not been fulfilled (Article 48 para. 7 SteG).

III. Interest deduction on equity

- 15.14 To make sure that **borrowings** and **equity** are treated equally, the new tax law introduced an equity interest deduction, which is currently set at 4% of modified equity as the deemed expenses.
- 15.15 Modified equity is calculated by deducting the following items from the paid-in nominal capital, share capital and reserves (Article 54 SteG; Article 32 of the Tax Ordinance (Steuerverordnung, SteV)):
1. own shares;
 2. holdings in legal persons;
 3. assets that are not essential to business operations (assets that do not primarily serve the actual business objective, calculated according to Article 32a SteV);
 4. 6% of all assets, excluding the assets referred to in a) to c).
- 15.16 The reason for the deduction of holdings according to b) is that holdings generally generate tax-exempt income and capital gains and therefore cannot be used to justify an interest deduction on equity. The reason for the exclusion of assets that are not essential to business according to c) is that only interest is to be paid on assets required for business operations, fictitiously subject to the interest deduction on equity. In practice, the deduction of 6% of all assets, excluding a) - c) according to d), leads to a clear reduction in the significance of the interest deduction on equity in the case of a highly leveraged balance sheet.
- 15.17 Where receivables are due from shareholders, founders and beneficiaries, as well as persons related to them, for which the interest is below the equity interest rate, the interest deduction on equity is to be reduced by the difference between the actual interest and the interest calculated according to the equity interest rate. However, no deduction shall be made insofar as the receivables are derived from the principal operating activity of the legal person. (Article 54 para. 3 SteG).

- 15.18 Equity injections during the current year through contributions and equity reductions during the current year brought about by capital reductions and capital redemption, as well as through disclosed distributions, are to be taken into account when determining the modified equity capital on a pro rata basis in terms of time, whereby additions and disposals of one quarter are to be consolidated and are deemed as having arisen in the middle of the quarter (Article 32 para. 4 SteV). The average of the modified equity capital, which is relevant for the interest deduction on equity, is determined on a quarterly basis, whereby additions and disposals of one quarter are to be consolidated and are deemed as having arisen in the middle of the quarter. In special cases, the Tax Administration may, particularly in the case of holdings in legal persons and assets that are not essential to business operations, insist on a more specific averaging mechanism (Article 32 para. 5 SteV).
- 15.19 The timing of each of the aforementioned transactions hence in each case should be planned precisely in advance. For example, **capital contributions** in the first half of the quarter are not beneficial, as the interest deduction on equity for the increased capital is due only in the middle of the quarter.
- 15.20 The effect of the interest deduction on equity depends on the return on equity of the taxable legal person. At a 100% equity base, the effective interest deduction on equity is reduced from 4% to 3.76% of the balance sheet total due to the deduction of 6% of all assets ($100\% - 6\% = 94\%$; $94\% \times 4\% = 3.76\%$). At a 50% leveraged balance sheet total, the effective interest deduction on equity is reduced to 1.76% of the balance sheet total due to the deduction of 6% of the assets ($50\% \text{ equity} - 6\% \text{ of } 100\% = 44\%$ $\times 4\% = 1.76\%$).
- 15.21 The table below shows the effects of the interest deduction on equity based on the assumption of 100% equity financing for various **ROE scenarios** and the resulting earnings before interest and taxes (EBIT). It is clear that the interest deduction on equity can lead to a significant reduction in the effective tax rate. Obviously, the effect is higher the closer the ROE is to the effective interest deduction on equity of 3.76 percent. Even for a highly profitable company that achieves an ROE of 20%, the interest deduction on equity at 100% equity financing results in a reduction in the effective tax rate from 12.5% to 10.15%.

SCENARIOS	1	2	3	4	5
ROE	3,76%	5%	10%	15%	20%
Equity (before 6% deduction)	1.000.000	1.000.000	1.000.000	1.000.000	1.000.000
Equity (after 6% deduction)	940.000	940.000	940.000	940.000	940.000
EBIT (based on ROE)	37.600	50.000	100.000	150.000	200.000
Interest deduction on equity (4%)	37.600	37.600	37.600	37.600	37.600
Profit before tax	0	12.400	62.400	112.400	162.400
12.5% income tax	0	1.550	7.800	14.050	20.300
Effective tax rate	0	3,10%	7,80%	9,37%	10,15%

IV. Taxation as private asset structure

15.22 As an alternative to regular corporate taxation, the Liechtenstein legislator, inspired by the Luxembourg **private wealth management company** (private Vermögensverwaltungsgesellschaft; société de gestion de patrimoine familial, SPF), has created a new tax regime for legal persons that are only engaged in managing their own assets and do not conduct any commercial activity. A private asset structure (Privatvermögensstruktur, PVS) is only subject to the annual income tax of CHF 1,800 without having to file tax returns. On 15 February 2011, the EFTA Surveillance Authority recognized taxation as a PVS as being compatible with European competition law.

- 15.23 The main characteristic with regard to the **tax privilege** is the lack of commercial activity. Referring to the Asset Management Act (Vermögensverwaltungsgesetz, VVG), Article 64 para. 1 lit. a SteG clarifies what is not considered a commercial activity. The provision specifies acquiring, holding, managing and selling transferable securities such as bonds, shares, money-market instruments, units in investment undertakings and derivatives.
- 15.24 Likewise, it is generally also possible to buy, hold and sell precious metals, works of art and similar assets. However, in its decision approving the PVS provisions, the EFTA Surveillance Authority has noted that securities transactions constitute a commercial activity if they are carried out „in the course of commercial share trading.“ This means that a PVS must not engage in regular and active trading in securities (and other assets), unless decisions are delegated to an independent asset manager. It is, however, permitted in any case to buy and sell securities as part of a long-term investment strategy.
- 15.25 Since merely exercising the ownership right and granting benefits by the company to its shareholders or beneficiaries are not considered commercial activities, holding real estate does not constitute a business activity as long as the real estate is used by the PVS or its shareholders and beneficiaries and no rent is charged.
- 15.26 If a PVS holds shares in a **subsidiary** that carries out a commercial activity, neither the PVS nor its shareholders or beneficiaries may exercise direct or indirect control over the management of the subsidiary. Otherwise, the PVS itself is considered commercially active and loses its status as a PVS.
- 15.27 A comparison of regular and PVS taxation shows that the tax burden for purely asset-managing legal persons in some cases differs only slightly, since even under regular taxation, the income from the management of the legal person's own assets is in principle tax-exempt anyway.

The following table shows where **PVS taxation** has advantages over regular taxation

Investment	Profits	Regular taxation (12,5% income tax)	Potential PVS advantage
Shares	Dividends	Tax-exempt (subject to the abuse provisions of Article 48 para. 3 SteG)	-
	Realised capital gains	Tax-exempt (subject to the abuse provisions of Article 48 para. 3 SteG)	-
Bonds	Interest income	Taxable if net income exceeds the 4% interest deduction on equity	Yes
	Realised capital gains	Taxable if net income exceeds the 4% interest deduction on equity	Yes
Commodities (physical, e.g. gold in a safe)	Realised capital gains	Taxable if net income exceeds the 4% interest deduction on equity	Yes
Real estate (outside of Liechtenstein)	Rent	Tax-exempt	-
	Realised capital gains	Tax-exempt	--
Derivatives	All earnings	Taxable if net income exceeds the 4% interest deduction on equity	Yes
Investment funds	Treated as transparent; investments are treated as if they were held directly by the legal person. ¹⁴³		Yes (except for pure equity or real estate funds)

¹⁴³ Cf. in detail the Tax Administration's factsheet on fund units held by legal persons.

- 15.28 The table shows that a Liechtenstein legal person taxed as a PVS does not enjoy any tax advantage over a regularly taxed company if it only holds shares or real estate outside Liechtenstein. This is because even in case of regular taxation, any income or capital gains generated by these asset classes are generally tax-exempt anyway (subject to the abuse provisions under Article 48 para. 3 SteG). As far as other asset classes are concerned, whether taxation as a private asset structure is preferable to regular taxation depends primarily on whether the asset classes generate more than the interest deduction on equity applicable under regular taxation.

V. Taxation of trusts

- 15.29 Special **endowments of assets with no legal personality** (including trusts) which were established under Liechtenstein law or whose place of effective administration is in Liechtenstein, currently are liable to an annual tax of CHF 1,800. They are not subject to tax assessment (Article 65 SteG).

VI. Formation tax

- 15.30 Under Article 66 SteG, a formation tax at the rate of 1% of capital, applying a general exemption threshold of CHF 1 million, is levied on the foundation, establishment or increase in the capital of legal persons, or relocation of their registered office to Liechtenstein, provided that Swiss **stamp duty** legislation does not apply. For capital in excess of CHF five million, the rate is reduced to 0.5%, and to 0.3% for capital in excess of CHF ten million. The capital established in the articles of incorporation is used as a basis. This means that in contrast to stamp duty under Swiss law, formation tax is not levied on shareholder contributions made without consideration.
- 15.31 The formation tax is also levied in the event of change of ownership of participation rights in legal persons that have been financially liquidated or that have been returned to liquidity.
- 15.32 Foundations and asset endowments with no legal personality pay a formation tax of 2‰ of the capital referred to in para. 1, but a minimum of CHF 200.

VII. Tax on insurance premiums

15.33 According to Articles 67 et seqq. SteG, unless Swiss legislation on stamp duty applies, a tax is levied on insurance premiums under the Liechtenstein Tax Act. The tax is levied on premiums paid on the basis of an insurance relationship established under a contract or by other means, provided that the insured risk is located in Liechtenstein. Article 69 SteG provides for exceptions for numerous types of insurance. Under Article 70 SteG, insurance undertakings that conduct insurance business in Liechtenstein are liable to tax. According to Article 71 SteG, the tax is 5% of the cash premium and 2.5% of the cash premium in the case of life insurance

Chapter 16

Taxation of Natural Persons

I. Income and property tax

- 16.1 The Liechtenstein tax system for the taxation of natural persons combines an income tax and a property tax. The **property tax** is based on a notional income of currently 4% of the taxpayer's assets, which is subject to the **income tax** instead of the real income from these assets, which is tax-exempt. Income tax is determined based on a scale comprising eight brackets.
- 16.2 Natural persons are liable to taxation without restriction on their total assets and earnings, if their **residence** or **habitual abode** is in Liechtenstein. „Residence“ means the place where a person resides with the intention of remaining permanently. „Habitual abode“ is the place or area in which a person is staying on more than a temporary basis. Under the Liechtenstein Tax Act, a stay lasting for more than six consecutive months is deemed to represent a habitual abode, with short interruptions not being taken into account.
- 16.3 Natural persons who do not have their residence or place of habitual abode in Liechtenstein are liable to limited taxation on their domestic assets and earnings.

II. Subject of income tax

- 16.4 Income tax is generally levied on all earnings in cash or cash equivalents, in particular:
1. any earnings from self-employment;
 2. all earnings from employment under private or public law;
 3. all payments to members of the Board of Directors, foundation board members or members of similar executive bodies of legal persons and trusts, that these members receive for their services in these functions; and
 4. contributions that the taxpayer receives as beneficiary, insofar as the beneficial interest is not subject to property tax (Article 14 para. 2 of the Tax Act (Steuergesetz, SteG)).

- 16.5 Tax-free earnings include income from assets on which the taxpayer pays property tax, recurring benefits received by the taxpayer that are taken into account in the assessment of the taxable assets, as well as income from permanent establishments situated abroad (Article 15 SteG).

III. Taxation of households

- 16.6 Assets and earnings of married couples, who are legally and effectively living together in **matrimony**, or of persons who are legally and effectively living together in a **registered partnership** are generally aggregated and assessed jointly. The spouses or partners may be assessed separately for tax purposes if they both request it (Article 8 SteG).

IV. Subject of property tax

- 16.7 Property tax is levied on the total movable and immovable assets of the taxpayer. Individuals who are subject to a limited tax liability are liable to taxation only for their domestic assets, i.e., real estate and permanent establishments located in Liechtenstein (Article 6 para. 4 SteG).
- 16.8 The Tax Act provides for certain **exemptions** from property tax. In particular, real estate and permanent establishments located in a foreign country are exempt from property tax (Article 10 SteG). The taxpayer is furthermore entitled to make certain deductions, such as the reduction of assets by debts and other liabilities, provided that the taxpayer is liable as the principal debtor.

V. Trusts or foundations with founders/settlors or beneficiaries resident in Liechtenstein

- 16.9 The following rules apply to trusts, foundations and similar structures whose founders or beneficiaries are Liechtenstein residents:
- 16.10 The assets of **revocable foundations, trusts and establishments** with a foundation-like structure are attributed to the founder and the property tax is paid by the founder. It is possible, however, to instead choose taxation at the level of the trust, foundation or similar structure.

- 16.11 In case of **irrevocable foundations, trusts and establishments** with a foundation-like structure, a distinction is made between legal persons with determinable beneficiaries who benefit from a certain quota and legal persons where this is not the case.
- 16.12 In case of trusts, foundations or establishments with a foundation-like structure with identifiable **beneficiaries** entitled to a certain quota, property tax is levied at the level of the beneficiaries. However, beneficiaries may request taxation at the level of these structures, but require the consent of the governing body responsible for distributions. Such a structure does not itself become a taxpayer, but must comply in place of the beneficiaries with the property tax liability or personal tax liability.¹⁴⁴
- 16.13 If such structures do not have identifiable beneficiaries who are entitled to a specific quota, then no property tax has to be paid, since the assets cannot be attributed to any natural person. However, if such structures are established by Liechtenstein tax residents, the establishment itself triggers a special tax as follows (**taxation of endowments**).
- 16.14 Transfers to a discretionary structure are subject to taxation if the relevant assets are no longer liable to property tax, and benefits, services or units do not become liable to property tax (Article 13 para. 1 SteG). The taxation of transfers to a fiduciary structure also applies in the event that circumstances change after a fiduciary structure was established that has resulted in the discontinuation of the liability to pay property tax. Consequently, the conversion of an identifiable benefit into a discretionary benefit also results in taxation.¹⁴⁵
- 16.15 The transferring domestic taxpayer must pay a tax equal to 3.5% of the property tax value of the contribution plus the applicable municipal tax surcharge. This means that if a taxpayer resident in Vaduz (with a municipal surcharge of 150%) sets up a foundation or trust where no quota can be allocated to the beneficiaries and the assets thus are no longer liable to property tax, the formation will be taxed at a total rate of 8.75%. In such case, the assets are longer subject to property tax. However, distributions made by such a foundation or trust to a beneficiary who is subject to tax in Liechtenstein are subject to income tax.

¹⁴⁴ Report and Motion 2010/48.

¹⁴⁵ Report and Motion 2010/48.

VI. Tax calculation

- 16.16 The taxation of individuals is based on a combination of property and income tax: the tax is incorporated into the income tax by converting part of the property into an additional income class. This conversion is based on a notional income.¹⁴⁶
- 16.17 To determine the **basis for assessment of tax**, assets and income are calculated separately and then a notional income from assets is assumed. The interest rate for determining the notional income from assets is set annually in the Finance Act and in 2021 is 4%.
- 16.18 After a basic tax free allowance of CHF 15,000 to CHF 30,000, the taxable income (including notional income from property tax) is then taxed at different rates in eight tax rate brackets (Article 19 SteG), with the highest rate for national income tax being 8%. In addition, Liechtenstein municipalities may levy a **municipal tax surcharge** on the national tax of between 150% and 250%. At present, all Liechtenstein municipalities levy a surcharge of between 150% and 200% on the national income tax. The rate in Vaduz is 150%. The maximum tax rate for a resident of Vaduz hence is 20% and applies to a single taxpayer without children if their annual income exceeds CHF 200,000.

VII. No inheritance or gift tax

- 16.19 Inheritance and gift tax were abolished in the course of the revision of the Liechtenstein Tax Act. The new Liechtenstein Tax Act merely requires that **gifts, inheritances, bequests**, or endowments be declared to the Tax Administration (Article 96 SteG). This means that donors and recipients of gifts who are Liechtenstein residents must state any gifts in their tax returns. The purpose of this declaration is to make it possible to comprehend the information on the property situation contained in the tax returns of such persons (i.e., the information is only of a declaratory nature). The **duty of disclosure** applies only to gifts, inheritances or bequests that exceed CHF 10,000 (Article 43 of the Tax Ordinance (Steuerverordnung, SteV)).

¹⁴⁶ Report and Motion 2010/48.

VIII. Tax based on expenditure (flat-rate taxation)

- 16.20 For persons who take up residence or establish their habitual place of abode in Liechtenstein for the first time, or after an absence from the country of at least ten years, who are not gainfully employed in Liechtenstein and live off the income from their assets or other funds received from abroad, a **tax based on expenditure** may, upon application, be collected in lieu of property tax and income tax (Articles 30-34 SteG). Liechtenstein nationals, however, are not eligible for tax based on expenditure, even if they meet the other requirements.
- 16.21 Tax based on expenditure does not apply to real estate in Liechtenstein, which in any case continues to be subject to property tax.

The discretionary decision regarding tax based on expenditure lies with the Liechtenstein Tax Administration. The calculation in respect of taxation based on expenditure is based on the taxpayer's total expenditure. Tax based on expenditure is collected at a rate of 25% of the expenditure. Tax based on expenditure may be set for several tax years.

Chapter 17

Value-Added Tax

IX. Basic principles and VAT rate

- 17.1 Effective from 1 January 1995, Switzerland introduced value-added tax. Under the Customs Treaty with Liechtenstein and the resulting common economic area, Liechtenstein and Switzerland on 28 November 1994 concluded a VAT treaty, together with a supplementary agreement, which provides for the parallel introduction of VAT in Liechtenstein and the adoption of the substantive Swiss VAT law. Thus, value-added tax has been levied in Liechtenstein as well since 1 January 1995. On 12 June 2009, the Swiss legislator passed a new, simplified Value-Added Tax Act (Mehrwertsteuergesetz, MWSTG), which came into force on 1 January 2010.
- 17.2 In Liechtenstein, VAT is regulated by the Liechtenstein MWSTG of 22 October 2009 and the VAT Ordinance (Mehrwertsteuerverordnung, MWSTV) of 15 December 2009, both of which are based on the Swiss model.
- 17.3 Value-added tax has replaced the turnover tax on goods (Warenumsatzsteuer) that had been levied prior to 1995, and covers the **sale of goods and services**. Liechtenstein levies a general consumption tax based on the net all-phase tax system, with input tax deduction (value-added tax). The purpose of the tax is to tax non-business end use on Liechtenstein territory (Article 1 para. 2 MWSTG).
- 17.4 In addition, value-added tax is levied on the following services:
1. a tax on goods and services supplied for consideration by taxable persons on Liechtenstein territory (**domestic tax**);
 2. a tax on the acquisition by recipients on Liechtenstein territory of supplies from businesses domiciled abroad (acquisition tax) (Article 1 para. 2 MWSTG).
- 17.5 The tax is assessed based on the scope of consumption, i.e., the amount expended by the individual for the acquisition of the supplies and services. Suppliers are liable to pay value-added tax. However, as they are allowed to pass on the VAT to the consumers (final consumers), it is called an indirect tax. Moreover, to avoid distortions of competition, the import of goods (Article 50 MWSTG), own use (Article 31 MWSTG) and supplies of services by businesses based abroad (Article 45 MWSTG) are also taxed.

- 17.6 Any person, irrespective of legal form, objects and intention to make a profit, is liable to pay VAT if that person carries on a business and makes supplies on Liechtenstein territory through that business or has their registered office, domicile or permanent establishment on Liechtenstein territory.
- 17.7 A person carries on a business if they independently perform a professional or commercial activity with the aim of sustainably earning income from supplies, and act externally under their own name (Article 10 para. 1 MWSTG). The purchase, holding and sale of interests may also qualify as a business activity. Interests are participations in the capital of other businesses that are held with the intent of long-term investment and confer significant influence. Participations of at least 10 per cent in the capital are deemed to be an interest in this sense (Article 29 para. 3 MWSTG).
- 17.8 Exempt from tax liability is, in particular, any person who within one year generates on Liechtenstein territory and abroad turnover from supplies of less than CHF 100,000 that are not exempt from the tax (Article 10 para. 2 MWSTG).
- 17.9 Turnover is calculated based on the agreed charges, excluding tax. The place of business in Liechtenstein and all domestic permanent establishments together represent a single taxable person (Article 10 MWSTG).
- 17.10 Article 25 MWSTG stipulates a **VAT rate** of 7.7% (standard rate). A reduced tax rate of 2.5% applies to the supply of a range of essential goods, such as tap water, foodstuffs with the exception of alcoholic beverages, medication, newspapers, magazines, books (printed or electronic) as well as agricultural supplies that consist of land cultivation directly related to initial production or cultivation of products connected with the land (Article 25 para. 2 MWSTG). The tax on accommodation services is 3.7% (Article 25 para. 4 MWSTG).

X. Tax liability

- 17.11 Domestic tax is levied on supplies made by taxable persons on Liechtenstein territory for consideration; they are taxable unless the Act provides otherwise. Dividends and other profit shares, contributions to businesses, in particular interest free loans, recapitalization payments and written-off debt, payments of damages, satisfaction and the like as well as charges, contributions or other payments received for sovereign activities are explicitly exempted from value-added tax (Article 18 para. 2 MWSTG).
- 17.12 „Territory“ as used in the MWSTG means the territories of Liechtenstein and of Switzerland. Public law entities are also subject to VAT for their commercial services (e.g. for the supply of electricity or water, waste disposal, etc.), but not for sovereign acts, even if these are subject to a fee.
- 17.13 Based on the principle of **self-assessment**, Articles 34 et seqq. MWSTG require the taxpayer to file on their own accord a return in respect of their turnover and input taxes to the Liechtenstein Tax Administration within 60 days of the end of the reporting period (usually quarterly).
- 17.14 Pursuant to Article 50 MWSTG in conj. w. Article 5 para. 2 of the supplementary agreement of 28 November 1994, the import of goods into Liechtenstein is also subject to value-added tax, unless such goods are tax-exempt, e.g., money or goods of insignificant value. In case of **import tax**, the persons liable to pay customs duties are the taxpayers.
- 17.15 According to Article 10 para. 2 MWSTG, any person who within one year generates on Liechtenstein territory and abroad turnover from supplies of less than CHF 100,000 that are not exempt from the tax without credit under Article 21 para. 2, is exempt from tax liability. Also exempt is anyone who carries on a business based abroad that exclusively makes supplies on Liechtenstein territory irrespective of turnover or renders only services on Liechtenstein territory irrespective of turnover pursuant to Article 8 para. 1 MWSTG. These include, for example, services provided by foreign attorneys, advertising experts or banks. Any person who supplies telecommunication or electronic services to recipients who are not liable to tax are expressly excluded from this exemption.

- 17.16 Any business that has its registered office, domicile or permanent establishment in Liechtenstein but supplies services exclusively abroad, is also exempt from value-added tax. However, Article 11 MWSTG provides for the option of a waiver of exemption from tax liability.
- 17.17 Moreover, any person who as a non-profit, voluntarily-run sporting or cultural association or as a charitable organization generates on Liechtenstein territory and abroad within one year a turnover from supplies of less than CHF 150,000 that are not exempt from the tax without credit under Article 21 para. 2 is also exempt.
- 17.18 In addition, a wide range of transactions is generally exempt from value-added tax (Article 21 para. 2 MWSTG). The exempt transactions are, among others, services in the field of health care, education, culture, insurance, renting or leasing of real estate, and monetary and capital transactions, albeit with the exception of, i.a., asset management and the debt collection business.
- 17.19 Article 23 MWSTG furthermore includes a list of supplies **exempt from value-added tax**, especially in the context of exports.

XI. Competences

- 17.20 The Liechtenstein Tax Administration is the competent authority for levying VAT on the transactions of taxpayers domiciled in Liechtenstein. Articles 68 et seqq. MWSTG provide that objections and subsequently appeals may be raised against decisions of the Tax Administration with the National Tax Commission, and finally administrative appeals may be lodged with the Administrative Court. With the exception of decisions in criminal matters, appellate decisions of the Administrative Court may be appealed to the Swiss Federal Supreme Court (Bundesgericht) in Lausanne within 30 days of notification in accordance with Article 72 MWSTG.
- 17.21 According to Article 5 of the VAT Supplementary Agreement of 28 November 1994 (MWST-Zusatzvereinbarung), the collection of tax on the import of goods (import tax) is the responsibility of the Swiss Federal Customs Administration¹⁴⁷. The relevant Swiss legal provisions apply.

¹⁴⁷ www.ezv.admin.ch.

- 17.22 **Criminal provisions relating to VAT** are laid down in Articles 86 et seqq. MWSTG. Minor tax fraud and tax evasion are punished by the Tax Administration and are subject to administrative appeal. Value-added tax fraud according to Article 88 MWSTG constitutes a misdemeanor and is subject to criminal sanctions.
- 17.23 Tax offenses in the case of imports of goods are punished by Swiss authorities, applying Swiss law.
- 17.24 Under Article 95 para. 1 MWSTG, the Tax Administration is responsible for punishing violations of procedural regulations, tax evasion as well as aiding and abetting tax evasion.
- 17.25 The Princely Court is the competent body to punish tax fraud, qualified tax evasion and aiding and abetting qualified tax evasion (Article 95 para. 2 MWSTG).

Chapter 18

Swiss Federal Stamp Duties

XII. Basic principles

- 18.1 Stamp duties are taxes on **legal transactions** (procurement of capital and turnover) with certain instruments, in particular securities. Based on the Customs Treaty of 1923 and the implementing provisions concerning the implementation of federal legislation on stamp duties of 14 May 1974, Liechtenstein is considered Swiss domestic territory in terms of stamp duty law. All persons resident (Wohnsitz), permanently staying (dauernder Aufenthalt), or domiciled (Sitz) in Liechtenstein or Switzerland, or enterprises entered onto the Public Register/Commercial Register are thus considered domestic persons within the meaning of stamp duty law. The Swiss Federal Law Concerning Stamp Duty (Bundesgesetz über die Stempelabgaben, StG) of 27 June 1973 as well as the associated Ordinance of 3 December 1973 (StV) continue to apply in Liechtenstein without any changes.

18.2 The competent authority for enforcing stamp duty law is the Swiss Federal Tax Administration. Extensive information and instructions are available on its website¹⁴⁸. However, it is also possible to apply for registration with and pay the duties to the Liechtenstein Tax Administration¹⁴⁹. Articles 5, 10 of the implementing provisions provide that the Liechtenstein Tax Administration is to inform the Swiss Federal Tax Administration of any entry in the Commercial Register of a legal entity with capital divided into shares (e.g., public companies limited by shares, cooperative societies, companies with limited liability, establishments with capital divided into shares, etc.) as well as of any request by a Liechtenstein person required to pay stamp duty, to be removed from the Commercial Register. The legal entity can only be removed once a confirmation has been obtained from the Swiss Federal Tax Administration that the stamp duties have been paid.

18.3 There are three kinds of stamp duties:

- The **tax on the issue of securities** (Emissionsabgabe) is primarily payable on the issue, or the increase of the nominal value, of domestic participation rights (shares, etc.), as well as on direct shareholder grants.
- The **tax on turnover** (Umsatzabgabe) is levied on the turnover of certain domestic and foreign instruments (shares, equity stake certificates, fund share certificates, debentures, etc.), where a contractual party or an intermediary is a securities broker.
- The **tax on insurance premiums** (Abgabe auf Versicherungsprämien) is owed upon payment of insurance premiums, however, many insurance classes are exempted.

XIII. Tax on the issue of securities

18.4 **Tax on the issue of securities**, as stipulated in Article 5-12 and 9-17b StV is the creation, or the increase in nominal value, of **participation rights** of Liechtenstein legal entities (shares, limited liability company contributions, shares in cooperative societies, dividend right certificates or other legal entities with capital divided into shares). Members' contributions without corresponding consideration as well as the transfer of the majority of the shares in a legal entity that has closed their business and has been wound up are equivalent. The creation and issuance of fund shares is not subject to tax on the issue of securities (Article 6 para. 1 lit. i StG).

¹⁴⁸ www.estv.admin.ch.

¹⁴⁹

www.stv.liv.li.

- 18.5 The person liable to pay tax is the respective domestic legal entity whose participation rights are concerned.
- 18.6 Pursuant to Article 8 StG, there is a 1% tax on the issue of securities for participation rights which is computed from the amount the legal entity gains in exchange for the participation rights, at least, however, from the nominal value. Accordingly, where shares are issued above par, the duty is payable not only on the nominal value but on the aggregate amount for which the shares are issued. In the case of shareholder grants without corresponding consideration, the tax on the issue of securities is levied on the amount of the grant. For dividend right certificates issued free of charge, a tax of CHF 3 is payable per certificate.
- 18.7 Article 6 para. 1 lit. h StG contains an exemption from the tax on the issue of securities that are issued for consideration upon the formation or capital increase of a company limited by shares, a partnership limited by shares or a limited liability company, provided that the shareholders' total payment does not exceed CHF 1 million. It should be noted that this **exemption** does not apply if a shareholder grant without corresponding consideration takes place outside the issuance of participation rights.
- 18.8 In addition, Article 6 para. 1 StG contains numerous other exceptions, i.a., for certain recapitalizations as well as the creation or increase of participation rights in connection with mergers, conversions or spin-offs of corporations or cooperative societies as well as the transfer of the registered office of a foreign company to Switzerland/Liechtenstein. Objects and rights, including contributed participations, intangible property rights, etc., are to be valued at their **market value** at the time of their contribution (Article 8 para. 2 StG).

XIV. Tax on turnover

- 18.9 **Tax on turnover**, which is stipulated in Articles 13-20 StG and in Articles 18-25a StV, is levied on the **transfer of ownership** of certain instruments for consideration, provided that one of the contracting parties or one of the brokers is a domestic securities trader. Pursuant to Article 13 para. 2 StG, subject to the tax on turnover are **debentures and shares** issued by a domestic person, instruments issued by a foreigner, which are to be regarded as analogous in their economic function to debentures and shares, as well as documents evidencing sub-participation in the above-mentioned instruments. Pursuant to Article 13 para. 3 StG, **securities traders** include banks, finance companies similar to banks, as well as all domestic natural

and legal persons and partnerships, Liechtenstein establishments and branches of foreign companies, whose activities exclusively or to a significant extent consist of

- trading in taxable instruments on behalf of third parties (traders), or
- acting as investment advisers or asset managers (intermediaries), arranging the purchase and sale of taxable instruments.

- 18.10 Similarly, Liechtenstein companies limited by shares, partnerships limited by shares, limited liability companies and cooperative societies as well as Liechtenstein pension and tied pension schemes whose assets consist of taxable instruments in excess of CHF 10,000,000 according to the most recent balance sheet, are also considered securities traders.
- 18.11 The most important exception from the tax on turnover is the issue of shares and debentures, etc., as they are subject to tax on the issue of securities. Moreover, no tax on turnover is payable on the trade in subscription rights, the issue of eurobonds and participation rights in foreign companies and the trade in domestic and foreign money market securities (debentures with a maturity of less than twelve months) (Article 14 StG). Additional exceptions apply in connection with restructuring.
- 18.12 A professional securities trader is exempt from the part of the tax attributable to themselves insofar as they sell securities from their trading portfolio or acquire securities for the purpose of accumulating such portfolio.
- 18.13 The tax on turnover is calculated on the consideration or on the market value of the agreed consideration and pursuant to Article 16 StG amounts to 1.5‰ for instruments issued by domestic persons and 3 ‰ for instruments issued by foreigners. If consideration is not a sum of money, then the **market value** of the agreed consideration is decisive (Article 16 StG).
- 18.14 The securities trader is the person liable to pay the tax. Pursuant to Article 17 StG, the securities trader owes half the amount, if they act as an intermediary for a contracting party that is not a registered securities trader or an exempt investor, or as a contracting party for themselves and the counterparty that is not a registered securities trader or an exempt investor.
- 18.15 **Exempt investors** (Article 17a StG) include certain Liechtenstein and foreign investment undertakings, foreign states and central banks, foreign life insurers and foreign social security or occupational pension institutions.

- 18.16 If, when concluding a transaction in foreign securities or derivatives, a foreign bank or a foreign stock exchange agent is a contracting party, the half-tax relating to that party does not apply.
- 18.17 Before their tax liability commences, every securities trader must register with the Swiss Federal Tax Administration for the purpose of their **registration** without being requested to. Furthermore, pursuant to Article 21 StV, the securities trader must keep a turnover register for their head office and for each branch that is liable to tax. Each taxable transaction must be entered within three days after conclusion or after receipt of the statement of account.
- 18.18 Pursuant to Article 15 StG, the tax claim arises upon conclusion of the transaction or, in the case of conditional transactions or transactions granting a right of option, upon performance of the transaction.
- 18.19 Tax on turnover is payable 30 days after the end of the quarter in which the tax claim accrued (Article 20 StG).

XV. Tax on insurance premiums

- 18.20 **Premium payments** for insurance contracts concluded with a domestic insurance company and for insurance contracts concluded by a domestic person with a foreign insurance company are subject to stamp duty pursuant to Articles 21 - 26 StG and Articles 26 - 28 StV. „Domestic“ in this sense means Switzerland or Liechtenstein and „foreign“ means all other state territories. Article 22 StG provides a catalog of types of insurance that are exempt from stamp duty. These include, in particular, certain life insurance products, reinsurance and health insurance, as well as life insurance policies taken out by a policyholder domiciled abroad, i.e., outside Switzerland and Liechtenstein.
- 18.21 According to Article 24 StG, the tax rate is 5% of the cash premium for property insurance and 2.5% for life insurance. The domestic insurance company is liable to pay tax and in case of an insurance contract with a foreign insurance company, the domestic policyholder is liable. The tax claim accrues upon payment of the premium and is due 30 days after the end of the quarter in which the premium was paid. It must be declared and paid without being requested to do so.

- 18.22 Unless Swiss legislation on stamp duty applies to insurance premiums, it must be checked in each instance whether a tax is levied on insurance premiums under the Liechtenstein Tax Act pursuant to Articles 67 et seqq. SteG (cf. 15.33).

Chapter 19

Fiscal Criminal Law

XVI. Criminal offenses

- 19.1 This chapter will take a closer look at the Liechtenstein **law relating to fiscal offenses**. International tax law, i.e., the legal and mutual administrative assistance provided by the state to foreign authorities in tax matters, will be dealt with in the following chapter.
- 19.2 In the case of both direct and indirect taxes, Liechtenstein law distinguishes among various **fiscal offenses**. The most significant of these are tax evasion and tax fraud. In the current Tax Act, the law relating to fiscal offenses is regulated in Articles 135-152. Penal provisions are also included in a range of other tax decrees in relation to the types of taxes stipulated therein (e.g., Articles 86 et seqq. of the Value-Added Tax Act (Mehrwertsteuergesetz (MWSTG) etc.).

XVII. Tax evasion

- 19.3 **Tax evasion** is regulated in Article 137 SteG for the types of taxes standardized in the Tax Act (Steuergesetz, SteG). The provision stipulates that a person commits tax evasion if they
- frustrate a demand for tax which they are liable to pay, by making in correct or incomplete statements on a tax return or in voluntary disclosures, or by providing incorrect or incomplete information, or otherwise culpably withhold payment of tax,
 - do not make a tax deduction or make an incomplete deduction,
 - withhold formation tax or tax on insurance premiums for their own benefit or the benefit of another person, or
 - obtain an unlawful refund or an unjustified abatement.

- 19.4 The offense can be committed willfully or through negligence and essentially corresponds to tax evasion under Swiss law (Article 175 of the Swiss Federal Direct Federal Taxation Act (Schweizerisches Bundesgesetz über die direkte Bundessteuer, DBG). Attempted tax evasion is equally punishable (Article 138 SteG). Tax evasion is punished by the Liechtenstein Tax Administration¹⁵⁰ in administrative criminal proceedings pursuant to Articles 152 et seqq. of the Act on Administrative Procedures (Landesverwaltungs-pflegegesetz, LVG) and not in judicial proceedings (Article 150 SteG). This means that a convicted tax evader does not have a criminal record, but in addition to **back tax** (Nachsteuer), tax owing plus interest in the case of intentional non-payment, must also pay a **fiscal penalty** (Strafsteuer).
- 19.5 Pursuant to Article 120 SteG, back tax is levied in the amount of the withheld tax, including interest, with the default interest pursuant to Article 45 of the Tax Ordinance (Steuerverordnung, SteV) amounting to 4%. The claim for back tax covers the last five years of the incorrect assessment. As a rule, the fine is the amount of the tax or charge evaded. It may be reduced by up to two thirds in the event of a minor fault or misdemeanor, or increased by up to three times the amount in the case of a serious offense (Article 137 para. 2 SteG). In case of VAT evasion, a fine of up to twice the tax benefit may be imposed in case of willful action if the tax benefit obtained as a result of the act exceeds the potential penalty amount (Article 87 para. 5 MWSTG). Tax evasion cannot be punished with imprisonment.

XVIII. Tax fraud

- 19.6 Article 140 SteG stipulates that any person who evades tax by deliberate use of false or falsified business accounts with untrue content, or other documents commits tax fraud. This does not cover the incorrect completion of tax returns by not declaring assets, but includes falsifying business records or a balance sheet to be submitted to the Tax Administration for assessment. The criminal offense thus corresponds to tax fraud under Swiss law, as stipulated, for example, in Article 186 DBG. It is an offense punishable in court by **imprisonment** of up to six months or a fine of up to 360 daily rates. It also becomes statute-barred after five years (Article 145 SteG).

¹⁵⁰ www.stv.llv.li.

XIX. Voluntary declaration and responsibility

- 19.7 According to Section 142 para. 1 SteG, if a person liable to tax or a person involved voluntarily reports an instance of tax obstruction, tax fraud or misappropriation of tax to be deducted at source, or a tax fraud committed by themselves, for the first time after 1 January 2011, without being induced to do so by an imminent risk of discovery, no penalty will be imposed on that person, who will only be liable for back tax (**voluntary disclosure** (Selbstanzeige)). If a person has already made a voluntary disclosure, any further voluntary disclosure will no longer be exempt from punishment. In this case, the tax evaded is payable, together with interest on arrears (back tax). In addition, a fine in the amount of one fifth of the tax evaded will be charged. If heirs have done everything that could be reasonably expected of them, of their own accord, to enable the tax authorities to establish a tax evasion, according to Article 142 para. 4 SteG, no fiscal penalty will be imposed on them and only back tax has to be paid, without any surcharge (**provision regarding heirs** (Erbenregelung)).
- 19.8 **Article 143 provides that legal persons** are subject to a fine in case of procedural duties, tax obstruction and tax evasion (including attempts). The governing bodies are liable for the fines imposed, insofar as the fine is not paid by the legal person. The governing body is penalized in the case of misappropriation of tax to be deducted at source.
- 19.9 Voluntary disclosures must always be made in writing, and the form provided by the Tax Administration may be used for property and income tax.¹⁵¹

¹⁵¹ Cf. also the Liechtenstein Tax Administration's „factsheet on voluntary disclosures“.

Chapter 20

Mutual legal and mutual administrative assistance in fiscal matters

- 20.1 **„Mutual legal assistance“** (Rechtshilfe) means the performance of an official act by a court or prosecutor's office for a foreign judicial authority that has requested such assistance. It is thus a matter of cooperation between judicial authorities. Liechtenstein mutual legal assistance law in fiscal matters is presented below. Appeals against mutual legal assistance decisions are decided by the courts.
- 20.2 In contrast to mutual legal assistance, **„mutual administrative assistance“** (Amtshilfe) means cooperation between administrative authorities. As a rule, this is less formal and therefore quicker. Mutual administrative assistance rulings can be challenged in the administrative court system. Especially in financial market law, mutual administrative assistance plays an important role. As international mutual administrative assistance has increased significantly in recent years, the distinction from mutual legal assistance is becoming ever more blurred. In parts, administrative authorities also deal with criminal cases and are able to take coercive measures to comply with requests from foreign authorities. The decisions of the competent administrative authorities in such matters are subject to judicial review.
- 20.3 For decades, like many other states, the Principality of Liechtenstein also did not grant any mutual legal or administrative assistance at all to foreign states in fiscal matters (absolute fiscal reservation). However, this basic attitude has changed in recent years.
- 20.4 By declaration of 12 March 2009, Liechtenstein has committed to implementing international standards on the exchange of information in fiscal matters and has renewed this commitment to international standards with the Government Declaration of 14 November 2013. Liechtenstein has joined the early adopter initiative of the G5 (Germany, UK, France, Italy, Spain) and on 14 March 2014 supported a Joint Statement of the G5 initiative on the timeline for the introduction of automatic exchange of information as a global standard. Mutual legal assistance in fiscal matters was also expanded and the fiscal reservation was lifted with the amendment of the Act on Mutual Assistance (Rechtshilfegesetz, RHG) as of 1 January 2016.

XXI. Mutual legal assistance in fiscal matters

A. General

- 20.5 International mutual legal assistance in criminal matters includes all measures taken by one state (requested state) at the request of another state (requesting state) to facilitate the prosecution and punishment of crimes in the requesting state. Mutual legal assistance provisions are included in the bilateral and multilateral treaties applicable to Liechtenstein as well as in the Act on Mutual Assistance (RHG). As a rule, mutual legal assistance is applied and implemented by the respective prosecution authorities.
- 20.6 Mutual legal assistance can be divided into **extradition, ancillary mutual assistance, delegated prosecution** and **enforcement of foreign criminal judgments**.¹⁵² In case of so-called „ancillary mutual legal assistance“ – which includes all types of mutual legal assistance, with the exception of extradition and the assumption of criminal prosecution and enforcement – the requested state assists the requesting state by performing official acts on its territory and transmitting the results of such acts to the requesting foreign law enforcement authority.
- 20.7 Ancillary mutual assistance comprises, i.a.,
- taking statements of witnesses/accused (defendants),
 - home searches,
 - surrender or seizure of evidence or assets, or
 - service of subpoenas, judgments and other court documents.¹⁵³
- 20.8 Since 1 January 2021, mutual legal assistance may also be granted in any state in the world through enforcement of a foreign property law order (Article 64 para. 1 no. 3 RHG). A foreign final decision on expiry based on an exclusively fiscal act which is also punishable under Liechtenstein law, such as tax fraud, thus can now be enforced in Liechtenstein by way of mutual legal assistance. However, it is still not possible to enforce foreign judgments in fiscal criminal cases that have imposed a final monetary fine or imprisonment as well as preventive measures.¹⁵⁴

¹⁵² Report and Motion 2015/90.

¹⁵³ Report and Motion 2020/17.

¹⁵⁴ Report and Motion 2020/17.

B. Abandoning fiscal reservation

- 20.9 The amendment of the Mutual Assistance Act in 2015 initially abandoned the **fiscal reservation** for ancillary mutual assistance in fiscal criminal matters. In Liechtenstein, fiscal criminal matters are considered criminal acts in the area of duties, monopolies, customs, and foreign exchange that are punished by a criminal court with a judicial penalty (imprisonment or fine) and thus constitute at least a misdemeanor or crime.
- 20.10 International standards by now require that mutual legal assistance be provided in cases of serious fiscal crimes in the area of direct and indirect taxes. In 2012, the FATF adopted the revised version of its recommendations, which stipulate that serious fiscal crimes in the area of direct and indirect taxes must be **predicate offenses to money laundering**. The obligations to provide mutual legal assistance therefore also extend to these predicate offenses and to related cases of money laundering. New obligations also arise with regard to extraditions.
- 20.11 In connection with the amendment to the RHG as of 1 January 2016, having weighed all circumstances, notably international developments and the major challenges arising due to the implementation of mutual administrative assistance on request with a large number of states, in particular, also on the basis of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), which is to be ratified, as well as with the implementation of the automatic exchange of information in tax matters, the Government resolved to provide mutual legal assistance at least in case of all tax offenses that are also punishable by a court in Liechtenstein. The Liechtenstein Government decided not to extend mutual legal assistance with DTA or TIEA treaty partners to the temporal and substantive scope of the applicable administrative assistance agreements, which also cover tax evasion offenses.¹⁵⁵

¹⁵⁵ Report and Motion 2015/90.

C. Schengen Accession

- 20.12 The Protocol on the Accession of Liechtenstein to the Schengen and Dublin systems entered into force on 19 December 2011. At that time, the so-called **Schengen Acquis**, which also includes the provisions on mutual legal assistance, became binding for Liechtenstein.
- 20.13 The Schengen Acquis has extended the obligation to provide mutual legal assistance and Liechtenstein is obliged to provide mutual legal assistance in fiscal criminal matters to all Schengen states. As for direct taxes, the obligation for Liechtenstein has yet to take effect.¹⁵⁶ When it comes to indirect taxes, coercive measures are permitted in the event of tax fraud under Article 88 or qualified tax evasion under Article 89 of the Value-Added Tax Act (MWSTG). Aiding and abetting tax evasion under Article 90 MWSTG is also covered if the underlying offense is tax fraud or qualified tax evasion. Moreover, Swiss law applicable in Liechtenstein provides for an obligation to provide mutual legal assistance in the area of indirect taxes, including coercive measures, in cases of tax fraud and qualified evasion offenses (mineral oil tax, motor vehicle tax, and customs duties).¹⁵⁷
- 20.14 The Schengen Convention¹⁵⁸ also regulates extradition (Articles 59 et seqq. Schengen Convention) and thus supplements the provisions of the EU Extradition Convention (LGBI 1970/29). Accordingly, in the area of indirect taxation, the above-mentioned offenses (Articles 88 - 90 MWSTG) are extraditable to Schengen states.

¹⁵⁶ Report and Motion 2015/90.

¹⁵⁷ Report and Motion 2015/90.

¹⁵⁸ Report and Motion 2008/79.

- 20.15 In connection with requests for mutual legal assistance concerning searches and seizures, the underlying offense must in all cases either be punishable by imprisonment for at least six months under the law of the requesting and of the requested state, or it must be punishable by imprisonment for at least six months under the law of only one of the two contracting states and must also be punishable in the other contracting state by authorities whose decision may be appealed before a court with jurisdiction in criminal matters. As, under Liechtenstein law, **tax fraud** pursuant to Article 140 SteG and Article 88 MWSTG is punishable by imprisonment of up to six months or one year, respectively, double criminal liability applies in this case. However, this is not the case with **tax evasion**, which is not punishable by imprisonment of at least 6 months. Moreover, since it is not possible to appeal penal decisions of the Tax Administration in tax evasion cases before a „court with jurisdiction also in criminal matters“, but only to the National Tax Commission, the Administrative Court and, if necessary, the Constitutional Court (cf. 14.4), the second variant of Article 51 lit. a of the Schengen Convention is not met either. The final act to the Schengen Protocol for Liechtenstein hence also includes a declaration by Liechtenstein that „in the case of tax offenses punishable by Liechtenstein authorities [i.e., administrative authorities], it is not possible to go to a court that also has jurisdiction in criminal matters“.
- 20.16 As a result, on the basis of the Schengen Acquis, Liechtenstein is obligated to provide mutual legal assistance in cases of tax fraud, in fact for both indirect and (since Article 8 of the Protocol to the EU Convention on Mutual Assistance came into force) direct taxes, but not for tax evasion.

D. EU Anti-Fraud Treaty

- 20.17 In addition to the Schengen Acquis and the EU Agreement on the taxation of savings income, negotiations on an **Anti-Fraud Treaty** between Liechtenstein, on the one hand, and the EU and its Member States, on the other, were conducted in 2007 and 2009. However, the EU Council has yet to approve conclusion and signing of the Agreement, but the Liechtenstein Government no longer expects that the Anti-Fraud Treaty will be signed.¹⁵⁹

¹⁵⁹ Report and Motion 2015/90.

E. Other bilateral and multilateral agreements concerning mutual legal assistance

- 20.18 In addition to the mutual legal assistance agreements already mentioned, additional agreements of this type exist on international mutual legal assistance in criminal matters. **Bilateral agreements** concerning mutual legal assistance have been concluded with the USA, Germany, Austria and Switzerland. There is a range of multilateral agreements on mutual legal assistance and extradition.
- 20.19 An overview of the existing legal bases for international mutual legal assistance is available on the Government's website, more specifically on that of the Ministry of Infrastructure and Justice.¹⁶⁰

F. Mutual administrative assistance in fiscal matters

- 20.20 To date, Liechtenstein has concluded 27 **tax information exchange agreements** (TIEAs) and 21 **double taxation agreements** (DTAs) (as of November 2021)¹⁶¹, which provide for an exchange of information within the context of mutual administrative assistance in fiscal matters based on the applicable standard of the OECD and the Global Forum.
- 20.21 The obligation to provide administrative assistance is comprehensive and also extends to coercive measures. Mutual administrative assistance is provided for both criminal tax proceedings and tax assessment proceedings.

¹⁶⁰ www.regierung.li, „Internationale Rechtshilfe in Strafsachen“.

¹⁶¹ www.llv.li, „Übersicht DBA TIEA“.

G. Repeal of the Savings Tax Directive and revision of the Mutual Assistance Directive

- 20.22 In June 2013, the EU Commission had proposed amendments to Directive 2011/16/EU¹⁶² („**Mutual Assistance Directive**“). This proposal was meant to provide Member States with an adequate legal basis at EU level for the implementation of the global standard for the automatic exchange of information. To ensure that there is only one applicable standard for the automatic exchange of information in the EU and to avoid situations where two standards are applied in parallel, it was proposed to repeal the Savings Tax Directive. In terms of content, the Savings Tax Agreement was reshaped and almost completely restructured by an amending protocol to an AEOI Agreement with the EU. The AEOI Agreement entered into force on 1 January 2016.
- 20.23 The revised Agreement (AEOI Agreement with the EU) contains two core elements:
- the reciprocal automatic exchange of information based on the OECD's global standard (CRS),
 - the exchange of information upon request according to the applicable OECD standard (Article 26 of the OECD Model Tax Convention).

H. Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters

- 20.24 The **Convention on Mutual Administrative Assistance** (MAAC) was established in 1988 as a result of cooperation between the Council of Europe and the OECD. In recent years, both the G20 states and the OECD have called on all countries to join. Due to this support and the broad base of signatory states (over 100 states), accession to the Convention on Mutual Administrative Assistance now is standard practice in the international cooperation on fiscal matters. The Convention on Mutual Administrative Assistance is a comprehensive instrument of multilateral cooperation in the area of taxation. It makes it possible to provide mutual administrative assistance concerning a wide range of taxes. In Liechtenstein, the Convention entered into force on 1 January 2016.

¹⁶² Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 2011/64, 1.

20.25 The Convention on Mutual Administrative Assistance provides for three types of information exchange:

- The contracting parties are obliged to **exchange information on request** (Article 5 of the Convention on Mutual Administrative Assistance). In this form of information exchange, information about a specific case is transmitted based on a specific request from another state. The exchange of information upon request also includes so-called „group requests“ (Article 5 of the Convention on Mutual Administrative Assistance).
- The Convention on Mutual Administrative Assistance provides that one or more contracting parties may mutually agree on an **automatic exchange of information** (Article 6 of the Convention on Mutual Administrative Assistance). Under the system of automatic exchange of information, information is precisely defined in advance (for example, information on financial accounts or country-by-country information in the area of corporate taxation) and then routinely forwarded to another state at regular intervals.
- The contracting parties are furthermore obliged to **spontaneously exchange information** (Article 7 of the Convention on Mutual Administrative Assistance). In case of spontaneous exchange of information, information is not transmitted after a prior request, but when the informing state has grounds for supposing a possible tax interest of another state in the case of already existing information. The spontaneous exchange of information has entered into force in Liechtenstein on 1 January 2018 with the amendment of the Tax Administrative Assistance Act (Steueramtshilfegesetz, SteAHG).

20.26 In addition to the exchange of information, the Convention on Mutual Administrative Assistance also contains legal bases for other forms of mutual administrative assistance in the area of taxation: simultaneous tax examinations (Article 8 MAAC), tax examinations abroad (Article 9 MAAC), administrative assistance in the recovery of tax claims (Article 11 MAAC) including measures of conservancy (Article 12 MAAC) as well as administrative assistance in the service of documents (Article 17 MAAC) or the direct service of documents (Article 17 para. 3 MAAC). These forms of cooperation are not part of the mandatory part of the Convention on Mutual Administrative Assistance and may be excluded by means of a reservation or declaration.

I. Exchange of information upon request

- 20.27 As mentioned above, Liechtenstein has already concluded a wide range of agreements on international cooperation in the fiscal area (DTAs, TIEAs as well as the AEOI Agreement with the EU). The Convention on Mutual Administrative Assistance serves as a further legal basis for providing and receiving administrative assistance. The various agreements exist in parallel. For the exchange of information upon request, this means that in the future, states that already have a DTA or a TIEA with Liechtenstein will have two possible legal bases for mutual administrative assistance. The same applies to the EU Member States. Differences arise, however, in connection with the temporal applicability and the taxes covered by the respective agreement. In its request for information to Liechtenstein, a requesting state must indicate the **legal basis** underlying its request. The Tax Administration will then check whether the conditions specified in the selected legal basis have been met. If the Tax Administration refuses the request, the requesting state has the option to re-submit the same request based on a different legal basis.
- 20.28 According to the Convention on Mutual Administrative Assistance, the parties should mutually exchange information that is likely to be relevant to the application and enforcement of their domestic law. So-called „**fishing expeditions**“ are excluded, as is the exchange of information that is not relevant for the taxation of a specific taxable person or a definable group of persons.
- 20.29 Under the Convention on Mutual Administrative Assistance, states may provide in their national law that data subjects must be notified before any information can be transferred to another state. However, the effective exchange of information should not be prevented or unduly delayed by notifying the data subject in advance. The Liechtenstein SteAHG provides for the **prior notification** of the data subject as well as of other persons who are entitled to file complaints (Article 10 para. 1 SteAHG, exceptions to this are stipulated in Articles 28a et seqq.).

- 20.30 The execution of the exchange of information upon request is governed in Liechtenstein law by the SteAHG, the Act on Administrative Assistance in Tax Matters with the United States of America (Gesetz über die Amtshilfe in Steuersachen mit den Vereinigten Staaten von Amerika, AHG-USA) and the Act on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Ireland (Gesetz über die Amtshilfe in Steuersachen mit dem Vereinigten Königreich von Grossbritannien und Nordirland, AHG-UK).
- 20.31 With the amendment to the Tax Administrative Assistance Act, which entered into force on 1 January 2016, an explicit legal basis was introduced for group requests so as to take into account the addition of the OECD commentary to Article 26 OECD Model Tax Convention. According to the transitional provisions, group requests relating to tax years prior to 1 January 2016 are explicitly inadmissible (Article 31a SteAHG). A retroactive effect with regard to group requests hence is neither provided for nor permitted under this provision.

J. Automatic exchange of information

- 20.32 According to the Convention on Mutual Administrative Assistance, two or more parties can agree on an automatic exchange of information in certain categories of cases and based on a mutually agreed procedure.
- 20.33 The international legal basis for the automatic exchange of information is, on the one hand, the Convention on Mutual Administrative Assistance together with the Multilateral Competent Authority Agreement on the Automatic **Exchange of Financial Account Information** (MCAA-AIA) and, on the other hand, the AEOI Agreement with the EU. Likewise, an AEOI Act and AEOI Ordinance have entered into force in Liechtenstein on 1 January 2016.
- 20.34 With regard to the USA, the automatic exchange of information is based on the FATCA Agreement, which Liechtenstein has already signed on 16 May 2014, and the FATCA Act.
- 20.35 In 2015, information on the financial accounts of U.S. persons was automatically exchanged with the USA for the first time on the basis of the FATCA agreement. In 2017, Liechtenstein exchanged information regarding financial accounts with EU Member States for the first time. The automatic exchange of information with non-EU states initially took place in 2018.

20.36 Similarly, the Convention on Mutual Administrative Assistance forms the basis for the introduction and implementation of so-called „country-by-country reporting“ in the area of corporate taxation. To this end, in January 2016, Liechtenstein signed the Multilateral Competent Authority Agreement on the **Exchange of Country-by-Country Reports** (MCAA CbC). The corresponding act implementing the MCAA CbC (CbC Act) entered into force on 1 January 2017 and in the summer of 2018, Liechtenstein exchanged country-by-country reports for the first time. In this context, a bilateral agreement is in place with the USA (CAA- CbC-USA), under which country-by-country reports relating to the 2019 tax period must be exchanged for the first time ever.

K. Spontaneous exchange of information

20.37 In the case of spontaneous exchange of information, information held by one party is forwarded without prior request if the informing party has grounds for supposing that the information concerned may be of interest to the other party. In contrast to the exchange of information upon request, the information is transferred without prior request for information („spontaneously“). Unlike the AEOI, it is not determined in advance, what information will be routinely transmitted.

20.38 The **spontaneous exchange of information** is reciprocal. Liechtenstein thus is not only a transmitting state, but also receives information from contracting parties which, in the opinion of the other contracting party, is likely to be of interest to Liechtenstein.

20.39 In addition, as part of the BEPS project (Action 5), the OECD/G20 states defined a BEPS minimum standard and described in more detail the cases and the manner in which mandatory **tax rulings** and information on such tax rulings must be exchanged spontaneously.

20.40 At present, a TIEA is in place with the United States that does not provide for spontaneous exchange of information. The U.S. has also not ratified the Convention on Mutual Administrative Assistance. The TIEA with the UK also does not provide for spontaneous exchange of information, but the DTA (Article 25) does. A spontaneous exchange of information with the UK thus is possible under both the DTA and the Convention on Mutual Administrative Assistance.

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