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Focus on: Liechtenstein – The highlights of the announced tax reform



On 14th April the Government of the Principality of Liechtenstein published the cornerstones of the announced tax reform. A Working Group appointed in November 2006 is now preparing the tax reform proposal that will be discussed with the business associations and the municipalities. The final report is expected by the end of May 2008 and a consultation draft should be published by the end of this year.

The planned tax reform is aimed at adapting the existing system in order to make Liechtenstein continue to have an attractive taxation both nationally and internationally, as well as being productive and competitive. The tax reform should enable the Principality to continue to position itself as an internationally successful business location and financial centre.

The main goals announced by the Working Group entail: conformity with the Liechtenstein constitution, tax justice and tax tradition, revenue and decision-making neutrality, competitiveness, performance and attractiveness, as well as simplicity, transparency and conformity with the European law.

The highlights of the reform include:

- Abolition of capital tax and coupon tax. Legal persons commercially operating in the Principality will be only subject to a tax on earnings and a supplementary real estate gain tax.
- Dividends, capital gains and liquidation gains will be exempt (with the exception of the trading assets of banks, insurances and other regulated financial companies).
- Negative taxable income can be carried forward without restrictions and offset against positive income.
- A reduction of foreign withholding taxes on dividends, interest and royalties will continue to be achievable only through the conclusion and the application of double taxation conventions and the application of the parent/subsidiary and interest/royalties directives in relation to Liechtenstein.
- Particular attention will be paid to the taxation of various manifestations of asset-managing structures, including foundations, establishments and trusts.
- The principle of transparency will be applied to all collective capital investments as well as special funds for qualifying investors. Accordingly, investment funds that retain or distribute earnings are themselves not taxable and taxation will be levied at the level of the unit-holders in their respective State of domicile.

Opportunities for taxpayers: new opportunities for tax planning.

EUROPEAN UNION

Taxation of dividends in the EU Single Market

The EU Commission takes the first step of the infringement procedure against Bulgaria and Romania and the second step against Spain and Portugal

The European Commission sent requests for information in the form of a letter of formal notice to Bulgaria and Romania. According to the Institution, Bulgarian and Romanian rules on taxation of dividends paid to non-resident companies are contrary to EU law, being subject to a heavier taxation in than a purely domestic situation. At the same time, the

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commission made the second step of the same procedure against Spain and Portugal, whose legislations with respect to dividends paid to foreign pensions funds have been considered to be in breach of EU law. Such dividends are in fact taxed more heavily than those paid to domestic pension funds.

The letter of formal notice sent to Romania and Bulgaria concerns the taxation of dividends paid to companies resident elsewhere in the EU or in the EEA/EFTA countries.

According to Romanian legislation, domestic dividends on participations of up to 15% of the shares are subject to a final withholding tax of 10%. On similar outbound dividends, Romania levies a withholding tax of 16% or the reduced one set forth in the applicable bilateral treaty. Domestic dividends on participations of 15% or more are tax exempt. In contrast, Romania levies a final withholding tax of 10% on dividends paid to companies resident in Norway and of 16% on similar outbound dividends paid to companies resident in the other EEA/EFTA countries.

Bulgarian legislation exempts domestic dividends from withholding tax or corporation tax. However, outbound dividends paid to companies resident in the EU with a shareholding of less than 15% are subject to a withholding tax of 5% (if shareholding is of 15% or more they are exempt from withholding tax). Outbound dividends paid to companies in the other EEA/EFTA countries are also subject to a withholding tax of 5%, regardless of the size of their shareholding.

Similarly, Spain and Portugal provide for a higher tax on dividends paid to foreign pension funds than domestic ones. This may dissuade funds established in other Member States from investing in their jurisdictions. Spain exempts pension funds from tax on their income, and they can claim back any Spanish withholding tax on the dividends that they receive. The domestic dividends that they receive are thus effectively tax free. In contrast, Spain levies a withholding tax of 18% on dividends paid to pension funds established elsewhere in the EU or in the EEA/EFTA countries (Iceland, Norway and Liechtenstein). This results in a higher taxation of dividends paid to foreign pension funds, unless a bilateral tax treaty provides for a more favourable tax rate.

Correspondingly, Portugal exempts the dividends received from domestic pension funds and levies a withholding tax of 25% on dividends paid to pension funds established elsewhere in the EU or in the EEA/EFTA countries.

The four Member States have been asked to reply within two months and the Commission is not aware of any justification for such restrictions.

BRAZIL

New regulations for the tax on financial operations

Brazilian tax on financial operations has been recently reduced to 0% rate for some currency exchange transactions, such as exchange transactions:

- resulting from exports of goods and services;
- related to investments in international investment funds, within the limits and conditions established by the Securities and Exchange Commission (Comissão de Valores Mobiliários);
- made by foreign investors to invest in the Brazilian financial and capital markets regulated by the National Monetary Counsel (Conselho Monetário Nacional);
- for interest on equity and dividend payments to foreign investors in connection with certain investments in the Brazilian capital markets;
- carried out by international air transport companies (resident outside Brazil), for remittances of their Brazilian revenues to their country of residency; and
- for the inflow of foreign currency to cover expenses of credit cards issued outside Brazil.

The maximum applicable rate for fixed term credit transactions is 1.5% for corporate borrowers and 3% for individuals, plus an additional rate of 0.38%.

The 0.38% additional tax does not apply to the following, unless additional funds are made available to the borrower:

- extensions;
- renewals;
- renegotiations;
- consolidations; and
- other similar loan/credit transactions.

INTERNATIONAL MODELS

Setting up a managed trust company in Switzerland

Switzerland is a very important financial centre and banks, accountancy, legal, fiduciary and financial service firms intending to create their own trust company abroad may chose this jurisdiction where the start-up and managing costs are reduced.

Although trusts are typical from common law countries, they have been recognised under Swiss law for a number of years both for succession planning and asset protection. As of July 1st, 2007 Switzerland ratified the Hague Convention on Trusts and this has improved the environment for the establishment and the management of trusts and the provision of trustee services. According to the Convention, although trust itself does not exist as a legal entity, foreign trust law is recognised by the Swiss authorities.

A foreign parent company could therefore incorporate a subsidiary company in Switzerland to act as a trust company. With respect to its constitution, there are no specific licensing agreements or regulatory framework for Swiss trustees. Swiss anti-money laundering regulations must however be observed and financial intermediaries have to be registered with a Swiss authorised compliance organisation. The reason for such a registration is to help prevent money laundering and to oblige financial intermediaries to report suspicious transactions.

Information regarding the beneficial owner of the professional firm and the financial position of the parent is required, as well as a copy of the Management Agreement and a detailed business plan. This information must be retained at the managed trust company office in Switzerland.

The benefits to constitute a managed trust company in Switzerland are:

- The managed trust company can have the same name of the parent company. This is beneficial in terms of continuity for the clients;
- It is possible to avoid incurring in the start-up costs, such as expenses of renting premises, recruiting staff, etc. and the constitution fees are not expensive;
- Under Swiss law a trust is not considered a legal entity in Switzerland for taxation purposes, even if the administrative office and trustee are in Switzerland. Consequently, a trust with a non-Swiss settlor or beneficiaries is not subject to taxation in Switzerland;
- The parent company can benefit from the income produced by the managed trust company, as well as from the management of the companies and trusts.



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