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**Dispute resolution
procedures in
international
tax matters**



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Summary and conclusions

Conflicts of interpretation of provisions in a domestic tax law or DTAs may lead to disputes between tax authorities and taxpayers. To avoid those disputes, Liechtenstein's fiscal authority can issue rulings to provide legal certainty. Although Liechtenstein's tax code does not provide an explicit provision with a mechanism for dispute resolution, taxpayers can obtain rulings based on administrative guidelines.

In Liechtenstein, there is no procedural difference between a ruling and an advance pricing agreement (APA). Rulings deal with interpretation of domestic tax law or double taxation agreements (DTAs) as well as valuation issues, such as attribution of profits to a permanent establishment (PE) or transfer pricing issues. Moreover, rulings do not have a retroactive effect, as they only apply to present and future transactions.

Rulings are binding on the fiscal authority as long as they reflect the true facts of the case and the relevant provisions do not change. On the other hand, rulings are not binding on any instances of appeal outside the fiscal authority.

In case of dispute with the tax authorities, taxpayers have two options. The first one is to apply for a mutual agreement procedure (MAP). Liechtenstein's tax code provides that, as a result of an MAP, an assessment decree shall be issued, voided or amended. A second option is to go through a process where the taxpayer can request a review of the assessment decree or exhaust up to three instances of appeal. The revision request is analysed by an appeal division within the fiscal authority. In case of further disagreement, the taxpayer can appeal before the National Tax Commission (first instance of appeal), then the Administrative Court (second instance of appeal) and, finally, in case of violation of constitutional rights, before the Constitutional Court.

With regard to international instruments, Liechtenstein has 16 signed DTAs, of which 11 were in force at the time this report was written. All of the 16 DTAs already signed have an MAP provision, 10 have an arbitration clause and 3 have a

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This report expresses the views of the reporters only and not those of the Fiscal Authority of Liechtenstein.

most favoured nation clause that will allow for arbitration if the partner enters into another DTA that contains such a clause. It is apparent that the national policy of providing for means of resolving disputes is also a bilateral scenario.

Regarding the domestic procedure in Liechtenstein to apply for an MAP, there are no harsher requirements than those set forth by article 25 of the OECD model: a written request stating the facts of the case filed by the unsatisfied taxpayer, if positively evaluated by the fiscal authority, will initiate the procedure. A point to be raised is that Liechtenstein does not have a dynamic interpretation approach, so a specific case will be tied to the corresponding commentaries when the negotiations took place and the DTA was signed. There is no impediment to contesting a tax assessment in court procedures, but the fiscal authority is aware of it when a taxpayer challenges a statement judicially and would try to ensure that there was no conflict between decisions. This hypothesis has not yet been observed empirically, however.

Still, of all the solutions to resolving a conflict, the best are those preventing the dispute in the first place. Liechtenstein has some interesting examples of how to deal with conflicts at this level. While Liechtenstein wishes to prevent tax evasion, it also understands that tax certainty is a relevant factor for investment decisions currently. This is the reason why a generally accepted accounting rules (GAAR) provision is part of the national DTA policy, which includes a consultation requirement, instead of a unilateral application of the rule. In one treaty, a body of five experts bilaterally appointed by the treaty partners had to decide whether a *Stiftung* (foundation) was to be considered fiscally opaque or transparent for the purposes of the treaty. Regular consultations also take place with DTA partners regarding the interpretation of clauses, as well as other consultations with tax information exchange agreement (TIEA) partners regarding the application of the fundamental freedoms.

From this report, the conclusion that can be drawn is that the Principality of Liechtenstein is a quite small jurisdiction and, deriving from this, its legal system is not as complex as those of other larger jurisdictions, and administrative practice is considerably influenced by international organizations' and bodies' guidelines on different topics. Still, for its size, the tax system is quite developed and it went through a comprehensive overhaul in 2009–2010, which allowed for an increased relevance in the international scenario, reflected in, among other things, the expansion of the treaty network.

1. Avoidance of double taxation

1.1. Double taxation in Liechtenstein

International investments lead to double taxation when a taxpayer is taxed in two or more jurisdictions. This consequence may be the result of the lack of unilateral measures to avoid double taxation in the tax code, the lack of a DTA, conflicts of interpretation of a DTA or domestic provisions, among others. In order to avoid double taxation, Liechtenstein's tax code provides relief either by bilateral meth-

ods in DTAs or, in the case of reciprocity, a resident in Liechtenstein could be granted a foreign tax credit or exemption.¹

In order to avoid conflicts of interpretation of DTAs or domestic provisions, Liechtenstein's fiscal authority can issue rulings to provide legal security. Rulings apply to questions on the interpretation of provisions in the tax code or DTAs as well as questions on the attribution of profits to PEs and transfer pricing issues. Therefore, there is no practical distinction between a ruling and an APA in Liechtenstein.

1.2. Rulings

In principle, Liechtenstein's tax code does not contain an explicit provision to provide a mechanism of dispute resolution with the fiscal authority. Furthermore, besides its DTAs containing an MAP and an arbitration clause,² Liechtenstein does not apply the EU Arbitration Convention as it is not a Member State of the EU.

Considering that besides the tax code there are not many published administrative guidelines which clarify how to interpret tax provisions, taxpayers may search for legal security in advance to avoid any potential conflict with the fiscal authority. In order to guarantee the interpretation of provisions in the tax code or DTAs, the fiscal authority can issue rulings based on internal administrative guidelines.

Rulings in Liechtenstein can only be issued in connection with present and future transactions concerning income tax, wealth tax, property tax, and VAT. This means that rulings do not have a retroactive effect. Such rulings can be requested by individuals, legal entities, partnerships, trusts and any other person having a legitimate interest in the tax outcome of taxable events. In order to apply for a ruling, the applicant should provide a written request with the relevant facts of the case, which includes the names of the taxpayers to whom the ruling will apply, relevant and concise questions on the interpretation of the relevant provision and the applicant's opinion on how the questions could be answered.³ Then, the fiscal authority should confirm whether it agrees with the opinion. If the fiscal authority does not share the opinion, the ruling will be denied. The administrative cost for obtaining a ruling is up to 2,000 Swiss francs.

Rulings are not publicly available and only apply to taxpayers explicitly stated in the written application for a period, generally, of five to ten years. During that period, rulings are binding on the fiscal authority as long as the facts of the case or the relevant legal provisions do not change. However, rulings have no binding effect outside the fiscal authority. Therefore, the National Tax Commission (first instance of appeal) or the Administrative Court (second instance of appeal) can overrule a ruling.

¹ Tax Act (*Steuergesetz* or *SteG*) art. 22.

² See s. III 533–534.

³ Benedetter, Martina, Wytzens and Cordula, Liechtenstein branch report, *The practical protection of taxpayers' fundamental rights*, *Cahiers de droit fiscal international*, vol. 100b, 2015, p. 528.

2. Domestic remedies

2.1. Alternative means to resolve disputes

Liechtenstein's tax code provides that together with the taxpayer, the fiscal authority must determine the actual and legal circumstances relevant to full and correct taxation.⁴ Once a taxpayer submits its tax return, a tax commissioner assesses it and in case of adjustments the fiscal authority will issue an assessment decree (*Veranlagungsverfügung*) with a detailed explanation of the changes required. This explanation includes changes in the taxable base, the applicable tax rate and the tax amount due.⁵ During the assessment, the taxpayer has the duty to fully cooperate with the tax commissioner to enable him to issue an accurate assessment decree.⁶

In case of disagreement about the assessment decree, the taxpayer has various alternatives to resolve a dispute with the fiscal authority. Article 124 of the Tax Act provides that as a result of an MAP pursuant to a DTA an assessment decree shall be issued, voided or amended. Although there is no explicit provision in the Tax Act which provides the procedure to apply for an MAP, administrative practice requires the taxpayer to file a request in writing stating the relevant facts of the case.

On the other hand, the taxpayer can also submit a review request to the fiscal authority. If disagreement persists, then the taxpayer has up to three instances of appeal. As described below, the first instance of appeal is the National Tax Commission, the second instance is the Administrative Court, and finally, if the taxpayer considers that the decision rendered by the Administrative Court violates his constitutional rights, he can file an appeal before the Constitutional Court for a final decision.

2.2. Review process

After the assessment decree has been issued, the taxpayer has 30 days to pay the tax due⁷ or, in case of disagreement, to submit a review request in writing to the fiscal authority stating the review request, the grounds of the request, evidence that supports the request and the signature of the taxpayer or his legal representative.⁸ This means that the taxpayer has the right to defend his position before the fiscal authority and that he bears the burden of proof.

If the formal requirements to file the review request are met, an appeal division within the fiscal authority must re-examine the assessment decree and, if necessary, the assessment notice will be amended in whole or partially. It is worth noting that according to the internal procedures of the fiscal authority, a tax commissioner

⁴ Tax Act (*Steuergesetz* or *SteG*) art. 93.

⁵ *Ibid.*, art. 103.

⁶ *Ibid.*, art. 97.

⁷ *Ibid.*, art. 114.

⁸ *Ibid.*, art. 116.

who makes a tax audit and issues an assessment decree does not belong to the appeal division within the fiscal authority.

After the fiscal authority has re-examined the review request, it should render a new assessment decree. In case of further disagreement, the taxpayer has 30 days to appeal against the decision before the National Tax Commission (*Landessteuerkommission*), which is the first instance of appeal. In order to appeal the decision, the same formal requirements to submit a review request to the fiscal authority apply (i.e. the appeal must be submitted in writing, the request for appeal, the grounds of objection, evidence that supports the objection and the signature of the taxpayer or his legal representative). For this instance of appeal, evidence withheld in the assessment or objection procedure may not be accepted.

2.3. Administrative Court

After the National Tax Commission has rendered a decision, either the taxpayer or the fiscal authority has the possibility to present the case within 30 days before the Administrative Court. In contrast to the appeal presented before the National Tax Commission, the taxpayer can provide new evidence to the Administrative Court.

3. Bilateral mechanisms

3.1. DTAs

When it comes to bilateral mechanisms available, Liechtenstein currently has, as of 9 October 2015, DTAs that have been already signed or initialled with 17 jurisdictions,⁹ and other tax treaties signed with over 30 jurisdictions, such as TIEAs, the convention on mutual administrative assistance in tax matters, and tax cooperation agreements.¹⁰ These “other” tax treaties, although not directly aimed at resolving double taxation issues, can have considerable influence in providing legal certainty and, eventually, preventing double taxation that could arise as a result of tax disputes. Exchange of information is one of the most relevant tools to fight tax evasion and having an effective mechanism also fends off possible justifications that would prevent the full application of the fundamental freedoms present in the EU Treaty/ European Economic Area Agreement.

As for DTAs, there are 16 already signed, entered into by Liechtenstein with the jurisdictions shown in Table 1.

⁹ In addition to Table 1, the treaty with Bahrain has been initialled.

¹⁰ DTAs: Andorra, Austria, Bahrain, the Czech Republic, Germany, Georgia, Guernsey, Hong Kong (China), Hungary, Luxembourg, Malta, San Marino, Singapore, Switzerland, the United Arab Emirates, the United Kingdom, Uruguay; other tax treaties: Andorra, Austria, Antigua and Barbuda, Australia, Austria, Belgium, Canada, China, Denmark, Germany, Faroe Islands, Finland, France, Greenland, Iceland, India, Ireland, Italy, Japan, Mexico, Monaco, the Netherlands, Norway, South Africa, St Kitts and Nevis, St Vincent and Grenadines, Sweden, the United Kingdom and the United States (TIEA + FATCA), available at <http://www.llv.li/#/11469/internationalesteuerabkommen> (accessed July 2015).

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Table 1. Liechtenstein DTAs

Treaty partner	MAP clause?	Deviates from OECD?	Arbitration clause?	Art. 9(2)?
Andorra ^a	Yes, art. 24	Art. 24(2)	No ^b	Yes
Austria	Yes, art. 25	Art. 25(1), (2) and (4)	No	No
Czech Republic ^c	Yes, art. 24	Art. 24(4)	No ^d	Yes ^e
Georgia ^f	Yes, art. 24	No	Yes	Yes
Germany	Yes, art. 25	Art. 25(3),(6), (7),(8).	Yes	Yes
Guernsey	Yes, art. 24	No	Yes	Yes
Hong Kong (China)	Yes, art. 24	Art. 24(1) and (3)	Yes	Yes
Hungary ^g	Yes, art. 25	No	No ^h	Yes
Luxembourg	Yes, art. 24	Art. 24(3)	Yes	Yes
Malta	Yes, art. 24	No	Yes	Yes
San Marino	Yes, art. 25	Art. 25(3)	Yes	Yes
Singapore	Yes, art. 24	No	No	Yes
Switzerland ⁱ	Yes, art. 25	Art. 25(2),(6)	Yes	Yes
United Arab Emirates ^j	Yes, art. 25	No	No	Yes
United Kingdom	Yes, art. 24	Art. 24(4) and (6)	Yes	Yes
Uruguay	Yes, art. 25	Art. 25(3)	Yes	Yes

^a Signed but not yet in force (NYIF) at the time this report was written.

^b Item 3 of the protocol in the treaty provides that an arbitration clause should be negotiated between Andorra and Liechtenstein if Andorra signs any other DTA with an arbitration provision.

^c NYIF.

^d Item 4 of the protocol in the treaty provides that an arbitration clause should be negotiated between the Czech Republic and Liechtenstein if the Czech Republic signs any other DTA with an arbitration provision.

^e The provisions of para. 2 shall not apply in the case of fraud, gross negligence or wilful default.

^f NYIF.

^g NYIF.

^h Item 4 of the protocol in the treaty provides that an arbitration clause should be negotiated between Hungary and Liechtenstein if Hungary signs any other DTA with an arbitration provision.

ⁱ Refers to the new Liechtenstein–Switzerland treaty that already has been signed and will most probably enter into force in January 2017.

^j NYIF.

3.2. MAP experience

Liechtenstein does not yet have official MAP statistics available to the general public and, therefore, cannot contribute to the OECD MAP statistics¹¹ or to the Joint Transfer Pricing Forum.¹² None the less, each MAP is numbered for internal

¹¹ <http://www.oecd.org/ctp/dispute/map-statistics-2013.htm> (accessed July 2015).

¹² http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm#membership (accessed July 2015).

control purposes and the MAP data will probably be consolidated for analysis and added in 2016 to the official Liechtenstein statistics, which already include the latest DTAs entered into or the number of exchange of information requests, etc., which are published annually and also available online.¹³

The almost exclusive majority of the DTAs are dated from or after 2009, which shows how recently Liechtenstein's DTA network has begun to develop. Hence, it is rather difficult to comment on whether it is "common" for companies to request MAPs after tax assessments. Indisputably, though, there are both finalized cases and others that are currently under discussion. Examples of topics related to MAPs analysed by the fiscal authorities of Liechtenstein include transfer pricing, abuse/income attribution, exit taxation and the interpretation of DTAs.

There have been cases in which Liechtenstein has refused to start an MAP on the grounds that the taxpayer's behaviour indeed was deemed as abusive. There are unresolved cases, but it could be said that those are exceptional. In the majority of cases a satisfactory solution is found and can be agreed upon by all the parties.

3.3. Arbitration

Regarding arbitration, as shown in Table 1, 8 of the 11 DTAs currently in force contain a provision establishing arbitration as a method to resolve controversies, and this is in line with the desired national DTA policy design.

Liechtenstein being a member of the EEA, but not of the European Union, is not a signatory to the EU Arbitration Convention. However, arbitration rules have been implemented by section 8 (*Schiedsverfahren*) of the Liechtenstein Code of Civil Procedure (ZPO) in articles 594 to 635. Those are only generally applicable if Liechtenstein is the place of arbitration,¹⁴ and the full or partial applicability of these rules in exclusively tax related cases without previous consent from the other state has not yet been tested.

No tax related arbitration procedure has taken place in Liechtenstein so far, in spite of the fact that apparently no legal provisions seem to prevent it from taking place. This may be the result of disputes having been resolved at an earlier stage. Liechtenstein tries to protect itself from absurd results and has, in its DTA model, a provision stating that if all parties agree, an arbitration decision can be overruled. As for other kinds of arbitration, Liechtenstein's arbitration system is recognized as well established and capable of handling large international commercial disputes. The procedures respect important constitutional principles and pay close attention to the rights of the parties, which can none the less cause the procedure to be prolonged considerably if it goes through three or even four possible court revisions,¹⁵ a result which is unwanted by all parties.

¹³ <http://www.llv.li/#/116601/>, p. 63 (accessed 31 July 2015).

¹⁴ Art. 594(1) of the *Zivilprozessordnung*, with exceptions listed in art. 594(2).

¹⁵ Gasser and Baltliner, *Litigation and Arbitration in Liechtenstein – An Introduction to Off-Shore Conflict Resolutions*, 2nd edn, 2013, Stämpfli Publications, Berne, pp. 98–101.

4. Domestic regulations regarding the MAP

4.1. Internal guidelines

Regarding MAPs, Liechtenstein's general guidelines that govern administrative practice do not impose any kind of additional restriction on a possible MAP when compared to those set forth by article 25 of the OECD model convention tax convention on income and on capital (OECD model).

It is accurate to state that when it comes to MAPs, Liechtenstein generally follows the OECD model and, thus, observes the rules suggested by the OECD in the commentary on article 25 (concerning the MAP) of the OECD model,¹⁶ in addition to the OECD transfer pricing guidelines¹⁷ and the manual on effective MAPs.¹⁸

In order to apply for an MAP, the taxpayer must file a request before Liechtenstein's fiscal authority in writing, setting out the detailed facts of the case in question.¹⁹ If the request is positively evaluated by the Liechtenstein fiscal authority, a letter is sent to the competent authorities of the other country informing them about the MAP and the case characteristics. The form of communication between the states involved should depend on the complexity of the case, but in most cases meetings in person are advisable and will be arranged between the competent authorities.

Regarding the implementation of the results of an MAP, it is usually ready in a few weeks and will come in the form of a new assessment decree. In this respect, the rights of the taxpayer are ensured by law in article 124 of the Tax Act (*Steuer-gesetz* or *SteG*),²⁰ which states that even a tax assessment that has already been finalized can be amended or revised to reflect the contents of an arbitration decision or an MAP. This article ensures the proper legal basis for swift implementation of the decision.

4.2. Court versus MAP

Liechtenstein law imposes no limitation or restrictions on the taxpayer either electing for an MAP or contesting an assessment through juridical measures – or even both concomitantly, but the fiscal authority is aware that a taxpayer is challenging the assessment before the courts, and should take the appropriate measures to ensure that there is no conflicting outcome.

¹⁶ OECD (2014), *Model Tax Convention on Income and on Capital 2010 (Condensed Version)*, OECD Publishing, Paris, pp. 371 *et seq.*

¹⁷ OECD *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010*, OECD Publishing, Paris. As stated in <http://www.llv.li/#/11469/internationale-steuerabkommen> (accessed July 2015).

¹⁸ Manual on effective mutual agreement procedures (MEMAP), available in <http://www.oecd.org/ctp/38061910.pdf> (accessed July 2015).

¹⁹ Benedetter, Martina, Wytrzens and Cordula, *op. cit.*, pp. 533–534.

²⁰ Art. 124. “Verständigungsvereinbarung und Schiedsspruch. Eine Veranlagungsverfügung ist zu erlassen, aufzuheben oder zu ändern, soweit dies zur Umsetzung einer Verständigungsvereinbarung oder eines Schiedsspruches nach einem Abkommen zur Vermeidung der Doppelbesteuerung geboten ist.”

An important point to be raised is that the commentary on article 25 of the OECD model has developed significantly over the years and, therefore, a specific case will be tied to the timely commentary on this article – depending on the date of the DTA and when the negotiations took place.

It remains unclear, however, what would be the outcome of a taxpayer concomitantly holding a positive MAP result and also a court decision divergent from the MAP – either positive or negative to the taxpayer. These issues go into complex legal matters involving the legal hierarchy of the decisions as well as the taxpayer's acquired rights and unfortunately these have not been empirically tested yet.

5. Alternative solutions

5.1. Pre-consultation

Naturally, pre-consultation should be a highly valued tool, for it avoids a problem as opposed to having resources wasted by trying to remediate it, such as litigation *per se* and post-litigation procedures. The fiscal authority in Liechtenstein understands the relevance of legal certainty when it comes to fostering economic activity. However, on the one hand, while this is an important goal to keep in mind, on the other hand, supplementary issues should be considered and avoided, such as double non-taxation, tax evasion and violation of taxpayers' rights.

One measure that combines these two aspects and has been adopted by the Liechtenstein DTA policy is a GAAR-like provision. It was elected in order to combat the abusive use of Liechtenstein DTAs and tax evasion, but with a consultation requirement, in order to grant some protection to taxpayers' rights against arbitrariness. The idea behind this provision has already been adopted in practice in, for instance, an anti-abuse clause set forth by article 28 of the recent Liechtenstein–Czech Republic treaty, reproduced below:

“It is understood for the purposes of the Agreement that the competent authority of a Contracting State may, after consultation with the competent authority of the other Contracting State, deny the benefits of the Agreement to any person, or with respect to any transaction, if in its opinion the granting of those benefits would constitute an abuse of this Agreement.”

Another example of measures that can be taken before any litigation is initiated between taxpayer and the fiscal authority derives from DTA provisions. Article 25(3) of the OECD model allows for the possibility for the competent authorities of the contracting states to resolve “by mutual agreement any difficulties or doubts arising as to the interpretation or application of the convention” or to “consult together for the elimination of double taxation in cases not provided for in the convention”. In this regard, Liechtenstein has already based requests on this prerogative and concluded consultations with a DTA partner's competent authorities with regard to the DTA signed with Liechtenstein.

A similar measure that can be observed in the Liechtenstein practice is the exchange of communications with clarification requests to EEA countries that have

not yet entered into a DTA with Liechtenstein, but have already concluded an exchange of information treaty. The communications address general situations and are requested because of the sometimes disputable position regarding the enforcement of the EEA freedoms in the invested country or also in the case of investment in Liechtenstein. Nevertheless, the lack of a DTA brings complicating factors to the scenario. For instance, the legal basis or provision that would compel the receiving competent authority to provide an answer is no longer there; with the absence of a DTA, the communication can no longer count on the application of article 25(3) and related commentary, thus relying exclusively on peer cordiality.

5.2. Other tools

Another example of alternative solutions adopted by Liechtenstein is a type of joint control body in a treaty signed with Austria.²¹ In this example, an independent bilaterally appointed body of five experts shall decide in practice whether a specific foundation (*Stiftung*) is to be considered fiscally transparent or fiscally opaque for the purposes of the treaty.²²

Except for the resolution described above, mediation and joint audits are not among the current methods presented by the Liechtenstein legislation. None the less, Liechtenstein's Law on International Administrative Assistance in Tax Matters (LIAATM) has a provision²³ that would allow, under certain conditions, for the foreign competent authority to be present during an audit, even if no powers were granted in the sense of allowing them to conduct or aid the process of the audit.

²¹ *Abkommen zwischen der Republik Österreich und dem Fürstentum Liechtenstein über die Zusammenarbeit im Bereich der Steuern*, 2013.

²² *Ibid.*, art. 44.

²³ As envisioned per art. 17 of the LIAATM (*Steueramtshilfegesetz*).



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