Liechtenstein

Branch Reporter
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Summary and conclusions

In the last few years the legal and regulatory framework for transparency and exchange of information for tax purposes has changed tremendously in Liechtenstein. Whereas in the year 2000 the OECD blacklisted the Principality of Liechtenstein as an uncooperative tax haven, the Global Forum on Transparency and Exchange of Information for Tax Purposes in autumn 2012 approved that Liechtenstein was ready to move to phase 2 of the peer review reports. This means that Liechtenstein has introduced the necessary legal and regulatory framework for providing an international exchange on request for foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party.

Up to now, Liechtenstein has concluded 21 tax information exchange agreements (TIEAs) and 5 double taxation agreements (DTAs) that correspond to the OECD standard. That means that all of these agreements enable an exchange of information in tax matters on request. It is worth mentioning that 22 of these 26 agreements are currently in force and that Liechtenstein has already received about 50 requests from foreign tax authorities. The average timeliness of response to a request for information is 90 days and is therefore in line with the obligation of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The Law on International Administrative Assistance in Matters of Taxation (LIAATM) implements the obligations arising out of the TIEAs and DTAs into domestic law. Article 2 LIAATM lays down the subject and the scope of application of the law. Basically, the LIAATM regulates international administrative assistance in matters of taxation if there is no legal regulation indicating otherwise. In this respect, article 2 paragraph 1 LIAATM explicitly specifies that administrative assistance only includes the exchange of information on request. This means that automatic or spontaneous exchange of information – as is for example provided in the commentary on article 26 of the OECD model agreement – is expressly excluded. While Liechtenstein policy only provides for an international exchange of information on request, the US Administrative Assistance Act also permits the submission of so-called group requests for a limited period of 12 months. It is

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worth mentioning that Liechtenstein has already received one group request from the USA based on this Act.

Currently, Liechtenstein is not only negotiating TIEAs and DTAs with further states, but is also working at exploring the possibility of so-called *Abgeltungssteuerabkommen* (withholding tax agreements) with Austria, Germany and other countries as well as concluding further tax agreements similar to the Liechtenstein disclosure facility (LDF) with the United Kingdom.

Furthermore, since 7 November 2006, the Principality of Liechtenstein has been negotiating an anti-fraud agreement with the European Union. It is the objective of the EU–Liechtenstein anti-fraud agreement to extend official and legal assistance between the European Union and its Member States on the one hand and the Principality of Liechtenstein on the other in order to fight fraud and other unlawful activities and to ensure administrative cooperation between the contracting parties through the exchange of information that is foreseeably relevant for determining, assessing, enforcing, or collecting taxes falling under this agreement. Administrative cooperation includes the exchange of information probably essential for the application and enforcement of domestic laws concerning direct and indirect taxes. This also includes information probably essential for determining and assessing as well as collecting and enforcing these taxes or for measures of investigation or prosecution in matters of taxation.

1. General overview

The Principality of Liechtenstein is an open micro-economy. With an area of 160 km², it is the sixth smallest state in the world. As a result of its limited domestic market, the Principality of Liechtenstein is closely connected with Switzerland, Austria and Germany in economic terms. This is shown among other things by the large number of inward commuters.

Liechtenstein is located at the centre of the European Alpine region. It borders Austria and Switzerland. To the west and south, Liechtenstein borders the Swiss cantons of St Gallen and Grisons; to the east and north it borders the Austrian province of Vorarlberg. Liechtenstein measures 24.8 km in length and 12.5 km in width. The highest elevation is the Grauspitz mountain at 2,599 metres above sea level, and the lowest point is the Ruggeller Riet at 430 metres above sea level.[1]

As per 31 December 2010, the Principality of Liechtenstein had a total population of 36,149. This results in a population density of 226 inhabitants per km². One-third of the population are foreigners, mostly coming from Switzerland, Austria and Germany. The municipality with the highest population is Schaan with 5,767 inhabitants, and the capital Vaduz has a population of 5,207.[2]

The Principality of Liechtenstein has a strongly industrialised economy. In 2008, the service sector had the highest share in gross value added with 58 per cent. The share of the industrial sector in gross value added was 36 per cent, making Liechtenstein much more industrialised than other industrialised countries.

1 Office of Statistics Principality of Liechtenstein, *Liechtenstein in Figures 2012*, p. 5.
2 *Ibid.*, p. 10.

The high growth rates of the Liechtenstein economy and the limited local supply of labour have led to a high number of inward commuters in Liechtenstein. In 2010, as many as 34,334 people were employed in Liechtenstein and that out of a total population of 36,149 people. The total number of employed persons in 2010 can be broken down into 16,764 employed inhabitants and 17,570 inward commuters.[3]

1.1. Legal framework

The structure of the Principality of Liechtenstein as a state is laid down in the Constitution of 1923, which was last amended in 2003. The Constitution states that the Principality of Liechtenstein is a federation of two regions and eleven municipalities. The region of Vaduz (*Oberland*) consists of the municipalities of Vaduz, Balzers, Planken, Schaan, Triesen and Triesenberg, and the region of Schellenberg (*Unterland*) consists of the municipalities of Eschen, Gamprin, Mauren, Ruggell and Schellenberg. There is no municipality in Liechtenstein that has city rights, so that the Principality of Liechtenstein does not have a capital city but simply a capital. The capital is Vaduz, and it is there that the Diet and the government reside.

Pursuant to article 2 of the Constitution, the Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. Sovereignty rests with the prince and the people and is exercised by both.

1.2. International affairs

The Principality of Liechtenstein not only has a large number of bilateral relations but is also integrated into the international community by multilateral agreements. Below is an overview of the bilateral and multilateral relations of Liechtenstein.

1.2.1. Bilateral agreements

The Principality of Liechtenstein maintains bilateral agreements with Germany, Austria and Switzerland (among others). Until the end of World War I, the Principality of Liechtenstein was closely associated with Austria. This association was the result of the customs and tax agreement of 1852 between the Principality of Liechtenstein and the Austro-Hungarian Empire. Following the collapse of the Austro-Hungarian Empire after World War I, that customs agreement lost its practical significance for Liechtenstein. Subsequently, Liechtenstein therefore turned to Switzerland for closer ties. That approach resulted in the introduction of the Swiss franc in Liechtenstein in 1921 and the customs treaty of 29 March 1923 between the Principality of Liechtenstein and the Swiss Confederation.

This constellation is also the reason for the fact that the older laws, such as the *Allgemeines Bürgerliches Gesetzbuch* (ABGB, General Civil Code),[4] are strongly influenced by Austrian legal developments, while modern laws, such as labour legislation, come from the Swiss legal tradition.

[3] *Ibid.*, p. 26.

[4] General Civil Code (*Allgemeines bürgerliches Gesetzbuch*) of 1 June 1811, Liechtenstein Law Gazette No. 34/1967.

1.2.2. Multilateral agreements

The Principality of Liechtenstein is a member of the UN family, and this entails among other things its membership in the following UN organisations:

- International Court of Justice in The Hague (ICJ);
- International Criminal Court (ICC);
- Universal Postal Union;
- International Telecommunication Union (ITU);
- United Nations Conference on Trade and Development (UNCTAD);
- International Atomic Energy Agency (IAEA);
- World Intellectual Property Organisation (WIPO);
- United Nations Organisation (UNO);
- Economic Commission for Europe (ECE).

On the European level, the Principality of Liechtenstein is part of the following organisations and institutions, among others:

- European Conference of Postal and Telecommunications Administrations (CEPT);
- Organisation for Security and Cooperation in Europe (OSCE);
- Council of Europe Development Bank;
- Council of Europe (CE);
- European Court of Human Rights (ECtHR);
- European Patent Organization (EPO);
- European Telecommunications Satellite Organisation (Eutelsat);
- European Free Trade Association (EFTA);
- European Bank for Reconstruction and Development (EBRD);
- European Economic Area (EEA);
- European Conference of Ministers of Transport (ECMT).

In addition, Liechtenstein is a member of the following international organisations and institutions:

- International Criminal Police Organization (INTERPOL);
- Intergovernmental Organisation for International Carriage by Rail (COTIF);
- International Telecommunications Satellite Organisation (INTELSAT);
- International Union for the Conservation of Nature and Natural Resources (IUCN);
- World Trade Organisation (WTO);
- International Olympic Committee (IOC);
- Permanent Court of Arbitration (PCA) in The Hague;
- World Organisation for Animal Health (OIE);
- International Renewable Energy Agency (IRENA).

1.3. The Liechtenstein Declaration

A milestone with regard to Liechtenstein's attitude towards the exchange of information and cross-border cooperation between tax authorities was set by the Liechtenstein Declaration of 12 March 2009. For although His Highness Hereditary Prince Alois of Liechtenstein had already explained in his speech on the occasion of Liechtenstein's national holiday on 15 August 2008 that it was time to put the system of legal and official assistance in tax matters on a new basis, the Liechten-

stein Declaration of 12 March 2009 is not just a commitment to a new system of legal and administrative assistance in the field of taxation but an official statement by the Liechtenstein government. Through the Liechtenstein Declaration, the Liechtenstein government committed itself to OECD standards for transparency and the exchange of information in matters of taxation and also expressly supports international measures against non-compliance with tax legislation.[5]

2. Sources

2.1. Bilateral or multilateral approach

2.1.1. Overview

Over the last 12 years, the Principality of Liechtenstein has changed from a blacklisted state to an internationally accepted treaty partner. The following summarises this development.

The starting point of this development was the year 2000, in which the OECD published a blacklist of uncooperative tax havens, Liechtenstein being part of that list. In 2001, the US implemented the qualified intermediary (QI) regime,[6] which also mentioned a number of Liechtenstein banks. In 2002, Liechtenstein and the USA entered into a mutual legal assistance treaty, which for example provides for an exchange of information in cases of tax fraud.[7] In 2004, Liechtenstein reached an agreement on a withholding tax on some interest income with the EU (EU Savings Agreement).[8]

A very important factor in the further development and dynamic was the financial crisis of 2007–2008. This led to the 2008–2012 global recession and contributed to the European sovereign debt crisis. Therefore many countries were looking to increase their revenue base. One solution was to enforce their fight against tax havens in general and banking secrecy in particular. The following quote from the final communiqué provided by the G20 on the 2 April 2009 illustrates this: "We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over."

This led on the one hand to the Liechtenstein Declaration in March 2009 and on the other hand to the OECD recognising Liechtenstein as a state that had implemented international cooperation standards in tax matters on 11 November 2009. This meant that Liechtenstein was removed from the so-called "grey list" and is now on the "white list". The prerequisite was the completion of 12[9] tax agreements

5 In detail regarding the Liechtenstein Declaration see Hosp and Langer, *Steuerstandort Liechtenstein*, p. 182.

6 *Ibid.*, p. 176.

7 For a detailed analysis of the mutual legal assistance treaty between Liechtenstein and the USA see *ibid.*, p. 178.

8 For a detailed analysis of the EU Saving Agreement see Langer, "EU-Zinsbesteuerung: Aktuelle Entwicklungen und Problemfelder", in Birk, Saenger and Töben (eds.), *Forum Steuerrecht 2011*, p. 161.

9 The number of 12 tax agreements was a requirement of the Global Forum in the year 2009.

in line with OECD standards. Meanwhile, Liechtenstein has a total of 20 TIEAs and 5 DTAs that correspond to the OECD standard.

Table 1. Liechtenstein's tax agreements

	Agreement	Signed	In force
Japan	TIEA	5 July 2012	–
Australia	TIEA & MOU	21 June 2011	21 June 2012
Denmark	TIEA	17 December 2010	7 April 2012
Sweden	TIEA	17 December 2010	8 April 2012
Finland	TIEA	17 December 2010	4 April 2012
Norway	TIEA	17 December 2010	31 March 2012
Iceland	TIEA	17 December 2010	31 March 2012
Greenland	TIEA	17 December 2010	13 April 2012
Faroe Islands	TIEA	17 December 2010	3 April 2012
Uruguay	DTA	18 October 2010	3 September 2012
Hong Kong	DTA	12 August 2010	8 July 2011
St Kitts and Nevis	TIEA	11 December 2009	19 February 2011
Antigua and Barbuda	TIEA	25 November 2009	16 January 2011
Netherlands	TIEA	10 November 2009	1 December 2010
Belgium	TIEA	10 November 2009	–
Ireland	TIEA	13 October 2009	30 June 2010
St Vincent and the Grenadines	TIEA	2 October 2009	16 May 2011
San Marino	DTA	23 September 2009	19 January 2011
France	TIEA	22 September 2009	19 August 2010
Monaco	TIEA	21 September 2009	14 July 2010
Andorra	TIEA	18 September 2009	10 January 2011
Germany	TIEA	2 September 2009	28 October 2010
	DTA	17 November 2011	–
Luxembourg	DTA	26 August 2009	17 December 2010
United Kingdom	TIEA & MOU	11 August 2009	2 December 2010
	DTA	11 June 2012	–
USA	TIEA	8 December 2008	1 January 2010

2.1.2. Liechtenstein TIEAs

Basically, the Liechtenstein TIEAs follow the model agreement for effective exchange of information in tax matters published by the OECD Committee on Fiscal Affairs on 18 April 2002. So far, Liechtenstein has entered into bilateral TIEAs exclusively.

2.1.3. Liechtenstein DTAs

As per 30 August 2012, the Principality of Liechtenstein has entered into a total of seven DTAs and what is called a *Rumpfabkommen* (limited agreement) with

Switzerland on individual tax matters.[10] The DTAs with Luxembourg,[11] San Marino,[12] Hong Kong,[13] Uruguay,[14] Germany,[15] and the UK,[16] are the result of the Liechtenstein Declaration and are oriented at the OECD model agreements of 2008 and 2010. The DTA with Austria of 1969[17] is essentially oriented to the OECD model agreement of 1963, which was the most current at the time.

2.1.3.1. Exchange of information

While the DTA with Austria and the limited agreement with Switzerland do not provide for any exchange of information (in accordance with treaty policy at the time), the new DTAs stipulate a comprehensive exchange of information in line with the Liechtenstein Declaration and the OECD standard.

For example, article 25 of the DTA between Liechtenstein and Luxembourg lays down the exchange of information between the two. Essentially, article 25 of the DTA corresponds to article 26 of the OECD model agreement of 2008. It includes exchange of information on request. This is not limited to the exchange of information for implementing the agreement but also includes the exchange of information that is foreseeably relevant for enforcing the domestic laws of the two contracting parties. The protocols of the DTAs with Hong Kong and Uruguay also put the requirements for the exchange of information in more specific terms. The specifications of a request and the reasons for refusal laid down in the protocols match the Liechtenstein practice for the conclusion of TIEAs.[18] Therefore, it can be said that a mini TIEA in the protocols to these two DTAs specifies the exchange of

10 *Abkommen vom 22. Juni 1995 zwischen dem Fürstentum Liechtenstein und der Schweizerischen Eidgenossenschaft über verschiedene Steuerfragen*, Liechtenstein Law Gazette No. 87/1997.

11 *Das Abkommen vom 26. August 2009 zwischen dem Fürstentum Liechtenstein und dem Grossherzogtum Luxemburg zur Vermeidung der Doppelbesteuerung und Verhinderung der Steuerhinterziehung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen*, Liechtenstein Law Gazette no. 434/2010.

12 *Abkommen vom 23. September 2009 zwischen dem Fürstentum Liechtenstein und der Republik San Marino zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen.*

13 *Abkommen vom 12. August 2010 zwischen der Regierung des Fürstentums Liechtenstein und der Regierung der Sonderverwaltungsregion Hongkong der Volksrepublik China zur Vermeidung der Doppelbesteuerung und Verhinderung der Steuerhinterziehung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen.*

14 *Das Abkommen vom 18. Oktober 2010 zwischen dem Fürstentum Liechtenstein und Uruguay zur Vermeidung der Doppelbesteuerung und Verhinderung der Steuerhinterziehung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen.*

15 *Das Abkommen vom 26. August 2009 zwischen dem Furstentum Liechtenstein und der Bundesrepublik Deutschland zur Vermeidung der Doppelbesteuerung und der Steuerverkürzung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen.*

16 Convention of 12 June 2012 between the United Kingdom of Great Britian and Northern Ireland and the Principality of Liechtenstein for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

17 *Abkommen vom 5. November 1969 zwischen dem Fürstentum Liechtenstein und der Republik Österreich zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen*, Liechtenstein Law Gazette No. 37/1970.

18 In detail see Hosp and Langer, *op. cit.*, p. 185.

information. The DTAs with Germany and the UK refer to the TIEAs entered into with these two countries earlier.

2.1.3.2. Assistance in the collection of taxes

The DTAs with Germany and the United Kingdom also include a provision on mutual assistance in the collection of taxes.

2.1.4. Schengen/Dublin

In this context, "Schengen" means the Schengen Agreement of 1985 and the convention implementing the Schengen Agreement of 1990. These are the result of the objective of the free movement of persons and create an area without borders. When the convention implementing the Schengen Agreement entered into force in 1995, the internal borders between the contracting parties could be dispensed with, and a single external border was created.

"Dublin" means the Dublin convention of 15 June 1990. This forms a separate legal basis for responsibility concerning asylum claims.

Liechtenstein was associated with Schengen and Dublin in the form of protocols to its association agreements with Switzerland. The association protocol to Schengen[19] includes the association of Liechtenstein to the so-called Schengen *acquis*, and the association protocol to Dublin[20] includes European cooperation in the field of asylum. According to the government's report and motion to the Liechtenstein Diet concerning the protocols for the association of Liechtenstein to the Schengen and Dublin systems, this form of association does not make the Liechtenstein position any different from that of the other associated states such as Norway, Iceland and Switzerland. The protocols also provide for the institutional and substantive equality of Liechtenstein with these states.

In the framework of its association with Schengen and Dublin, Liechtenstein undertakes to provide unlimited legal assistance in cases of tax fraud with direct and indirect taxes, but not with tax evasion. The definition of tax fraud and tax evasion follows the Liechtenstein rules because article 51 of the convention implementing the Schengen Agreement (possible refusal of requests for search and seizure) provides for the principle of double punishability.

In Liechtenstein, tax fraud is defined as tax evasion committed through the deliberate use of false, falsified, or substantively incorrect books of account or other documents.[21] The difference between tax evasion and tax fraud is therefore

[19] *Protokoll zwischen der Europäischen Union, der Europäischen Gemeinschaft, der Schweizerischen Eidgenossenschaft und dem Fürstentum Liechtenstein über den Beitritt des Fürstentums Liechtenstein zu dem Abkommen zwischen der Europäischen Union, der Europäischen Gemeinschaft und der Schweizerischen Eidgenossenschaft über die Assoziierung der Schweizerischen Eidgenossenschaft bei der Umsetzung, Anwendung und Entwicklung des Schengen-Besitzstands.*

[20] *Protokoll zwischen der Europäischen Gemeinschaft, der Schweizerischen Eidgenossenschaft und dem Fürstentum Liechtenstein über den Beitritt des Fürstentums Liechtenstein zu dem Abkommen zwischen der Europäischen Gemeinschaft und der Schweizerischen Eidgenossenschaft über die Kriterien und Verfahren zur Bestimmung des Zuständigen Staates für die Prüfung eines in einem Mitgliedsstaat oder in der Schweiz gestellten Asylantrags.*

[21] Art. 140 Liechtenstein Tax Act (LTA). See also in detail Hosp and Langer, *op. cit.*, p. 167.

that the latter is committed with qualified means, namely with documents that are false or have been falsified or that misrepresent essential facts or represent them incompletely.

2.1.5. Practical experience: cooperation between Liechtenstein and other jurisdictions

Up to now, on the one hand, Liechtenstein has received about 50 requests from foreign tax authorities. Most requests came from France, Germany, the Netherlands, and the USA. Furthermore Liechtenstein has received one group request from the USA based on the amended US Administrative Assistance Act. On the other hand the Liechtenstein tax administration itself has not requested information about Liechtenstein tax subjects from the other contracting parties.

2.1.6. Further developments: bilateral agreements

The Principality of Liechtenstein is not only negotiating TIEAs and DTAs with other states, but is also working at exploring the possibility of so-called *Abgeltungssteuerabkommen* (withholding tax agreements) with Austria, Germany and other countries as well as concluding further tax agreements similar to the LDF with the United Kingdom.

2.1.7. Further developments: multilateral agreements

Since 7 November 2006, the Principality of Liechtenstein has been negotiating an anti-fraud agreement with the European Union. It is the objective of this agreement[22] to extend official and legal assistance between the European Union and its Member States on the one hand and the Principality of Liechtenstein on the other in order to fight fraud and other unlawful activities and to ensure administrative cooperation between the contracting parties through the exchange of information that is foreseeably relevant for determining, assessing, enforcing or collecting taxes falling under this agreement.

Administrative cooperation includes the exchange of information probably essential for the application and enforcement of the respective domestic laws concerning direct and indirect taxes. This also includes information probably essential for determining and assessing as well as collecting and enforcing these taxes or for measures of investigation or prosecution in matters of taxation.

For example, while the TIEA between Germany and Liechtenstein includes a final list of the types of taxes falling under the agreement, the EU agreement provides for the full inclusion of direct and indirect taxes. In article 2 paragraph 4(c) of this agreement, "indirect taxes" are defined as indirect taxes of any type and description levied at the time when the agreement is executed, including customs duties, value added tax, special sales taxes and sales taxes. Article 2 paragraph 4(e) defines "direct taxes" as direct taxes of any type and description levied by the con-

[22] Cooperation Agreement between the European Union and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests and to ensure exchange of information on tax matters.

tracting parties or the territorial authorities or municipalities of the contracting parties or on their behalf at the time when the agreement is executed, regardless of the manner of levying, including income, gains, and property tax, taxes on net assets, inheritance, estate and gift tax. Also, this agreement applies to all taxes of the same or essentially similar type levied in addition to or instead of the existing taxes after the execution of the agreement.

Article 26 of the EU agreement codifies cases in which legal assistance is granted under this agreement. This is important in particular because legal assistance obliges the contracting parties to carry out a more extensive exchange of information. Legal assistance is granted:

- in proceedings for acts which under the domestic laws of one or both of the contracting parties may be punished as a violation of administrative rules by authorities whose decision may be appealed to a court that also has jurisdiction for criminal matters;
- in civil cases connected with a criminal charge as long as the criminal court has not yet finally decided on the criminal charge;
- in proceedings for acts or offences that might cause liability by a legal entity of the requesting contracting party.

In addition, legal assistance is granted for the purposes of investigations and proceedings to seize and declare forfeit the proceeds from these offences and the means used to commit them.

2.2. Domestic law

To transpose these agreements into domestic law, the Liechtenstein government issued an OECD conformity transformation law on 30 March 2010.[23] The Liechtenstein Diet passed this law, the LIAATM,[24] after the bill's second reading on 30 June 2010. The LIAATM regulates the general implementation of the Liechtenstein TIEAs and Liechtenstein DTAs. It should be noted, however, that the LIAATM does not apply to the TIEA with the USA because as a result of its earlier date, the latter agreement has its own Act for implementation.[25] Also, the LIAATM only applies with regard to DTAs where these include provisions to prevent tax evasion.[26] Due to the singular character of the agreement entered into with the United Kingdom[27] on 11 August 2009, a separate Act was issued for the implementation of that agreement.[28]

Without such an agreement or an agreement with the EU or its Member States, an exchange of information in tax matters is not permitted.

23 Government of the Principality of Liechtenstein, *Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein zum Steueramtshilfegesetz* No. 29/2010.

24 Law of 30 June 2010 on LIAATM, Liechtenstein Law Gazette No. 246/2010.

25 Law of 16 September 2009 on Administrative Assistance in Tax Matters with the United States of America (US Administrative Assistance Act), Liechtenstein Law Gazette No. 303/2009.

26 Government of the Principality of Liechtenstein, *op. cit.*, p. 10.

27 In detail see Hosp and Langer, *op. cit.*, p. 239.

28 Law of 30 June 2010 on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Ireland (UK TIEA Act), Liechtenstein Law Gazette No. 248/2010.

3. Extent and forms of the exchange of information

3.1. Extent

As has already been stated in section 2, the TIEAs and DTAs entered into since 2008 meet the OECD standards in terms of the international exchange of information. Normally both direct and indirect taxes fall into the scope of application of tax information exchange. Exceptions to this are, for example, the TIEAs with Monaco, the Netherlands, St Kitts and Nevis, and St Vincent and the Grenadines. These agreements only include direct taxes.

3.2. Forms

3.2.1. Traditional

Article 2 LIAATM lays down the subject and the scope of application of the law.[29] Basically, it regulates international administrative assistance in matters of taxation if there is no legal regulation to the contrary. In this, article 2 paragraph 1 LIAATM explicitly specifies that administrative assistance only includes the exchange of information on request. This means that an automatic or spontaneous exchange of information – as is for example provided in the commentary on article 26 of the OECD model agreement[30] – is expressly excluded. While Liechtenstein agreement policy only provides for an international exchange of information on request, the US Administrative Assistance Act also permits the submission of so-called group requests for a limited period of 12 months.

Furthermore, the Principality of Liechtenstein – just like Switzerland – considers the payment of a withholding tax to be an equivalent measure to the automatic exchange of information. This is demonstrated firstly by the EU Savings Tax Agreement (see below section 3.2.3.1. on the EU Savings Tax Agreement) and secondly by efforts to enter into withholding tax agreements with Germany and Austria.

3.2.2. Joint audits and multinational audits

The Liechtenstein TIEAs also provide for the option and regulate the principles of cross-border cooperation of tax authorities. This also includes the sending of officers for tax inspections and audits.

For example, article 6 paragraph 1 of the TIEA between Germany and Liechtenstein provides that the requested party may permit the requesting party to enter the requested party's territory and interrogate individuals and examine documents if the persons affected agree in writing. In this, the officers of the requesting party do not have their own powers of investigation, i.e. they must not threaten or carry out coercive measures.

[29] For a detailed analysis of the Administrative Assistance Act see Hosp and Langer, "Das liechtensteinische Steueramtshilfegesetz: Umsetzung und praktische Anwendung", *IStR* 2010, 905.

[30] OECD commentary to art. 26, para. 9.

For the tax subject, the inclusion of foreign officers has the advantage that critical points can be clarified directly. This simplifies time- and cost-intensive cross-border investigation proceedings.

In addition, article 6 paragraph 2 of the TIEA provides for the option that officers of the requesting party take part in domestic tax inspections. Here, too, the decision on whether officers of the requesting parties are admitted rests with the requested party exclusively. This is once again an optional power that is normally only exercised where participation is in the best interests of the requested party, such as where the officers of the requesting parties can contribute to resolving a domestic tax case. The requested party remains in charge of the proceedings at all times.

However, up to the time when this report was prepared, no multinational audits with Liechtenstein participation have taken place.

3.2.3. The use of intermediaries (especially in the financial sector)

3.2.3.1. EU Savings Tax Agreement

On 7 December 2004, the Principality of Liechtenstein entered into an agreement with the European Community on rules equivalent to those of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (EU Savings Tax Agreement). The Liechtenstein Diet agreed to the EU Savings Tax Agreement on 21 April 2005, so that the agreement could enter into force on 1 July 2005 together with the EU Savings Tax Directive.

The EU Savings Tax Agreement was transposed into Liechtenstein law by way of the *Zinsbesteuerungsgesetz* (Interest Taxation Act) and the Ordinance of 28 June 2005 on the Interest on Outstanding EU Withholding Tax (*Zinsbesteuerungsverordnung*, Interest Taxation Ordinance). The Interest Taxation Act is mainly about regulating the withholding tax on interest payments, the voluntary disclosure of interest payments, the fines for violations of these provisions, and the implementation of the exchange of information between the Principality of Liechtenstein and the Member States of the European Union in the event of tax fraud in terms of article 10 paragraph 1 of the EU Savings Tax Agreement.

Article 1 of the EU Savings Tax Agreement provides for the withholding of an amount from interest payments of Liechtenstein paying agents to individuals resident in the EU (beneficial owner of interest). Pursuant to article 6 paragraph 2 Interest Taxation Act, the paying agent may correct the unlawful withholding of taxes within five years if it is ensured that neither crediting nor reimbursement has been or will be claimed for the interest payment in question in the country of residence of the person receiving the interest.

Pursuant to article 7 Interest Taxation Act, the paying agent must transfer the withheld amounts to the tax administration until 31 March of the year following the interest payment. When making the transfer, the paying agents state how the amounts must be assigned to the Member States of the European Union. Withheld amounts transferred after 31 March of the year following the interest payment are subject to default interest – without a reminder – from 1 April until the date of receipt. According to article 1 of the Interest Taxation Ordinance, the interest rate is 5 per cent per year.

To avoid withholding tax, there is the option of voluntary disclosure. The beneficial owner may expressly authorise the paying agent to report the interest payment to the proper authority of the country of residence. Pursuant to article 2 of the EU–Liechtenstein Savings Tax Agreement, the beneficial owner may in the alternative also inform the proper tax authority of the interest income himself (so-called certification proceedings). In that case, he receives a certificate on the basis of which the Liechtenstein paying agent is released from retaining the withholding tax.

According to article 7 paragraph 2, an authorisation remains valid until an express revocation by the beneficial owner or his successor is received by the paying agent. The revocation is only valid if the beneficial owner or his successor ensures to the paying agent the retaining of taxes that are owed instead of the disclosure report.

3.2.3.2. QI/FATCA

The Liechtenstein banks have been integrated into the QI system since 1 January 2001. The regular term of a QI agreement is six years. According to the Liechtenstein Bankers' Association, the Liechtenstein banks integrated into the QI system received an extension of the QI status until 31 December 2008.[31] The USA made an extension of the QI status beyond that time contingent on the execution of a TIEA between Liechtenstein and the USA. Since that agreement was executed on 8 December 2008 and entered into force on 4 December 2009, the QI status of the Liechtenstein banks was once again extended by the regular term of six years.

The disadvantages of the QI system became apparent not only in the *UBS* case; they also show if one looks at the scope of application of the QI system. A US tax subject who did not invest in US securities was not recorded by the QI system.

For this reason, a bill was brought before the US Congress in autumn of 2009 that had the objective of capturing if possible all foreign assets of US persons. Fittingly, the Act was called Foreign Accounts Tax Compliance Act (FATCA). FATCA was passed by Congress as early as 17 March 2010 in connection with the Hiring Incentives to Restore Employment Act[32] – or Jobs Bill – and was signed by President Barack Obama on 18 March 2010.

In accordance with the QI system, the USA once again uses the approach of essentially forcing foreign financial intermediaries to cooperate with the IRS if they wish to remain competitive. In this case, this is achieved through the introduction of a 30 per cent tax at source on payments to foreign financial intermediaries who do not cooperate with the IRS.

Currently, the international community is discussing two different models to implement FATCA. On the one hand is model I, which is based on an agreement between the governments of France, Italy, Spain, Germany and the UK and the government of the USA to improve international tax compliance and to implement FATCA, and on the other hand is the so-called model II from Switzerland. Up to now, Liechtenstein has not decided how it wants to implement FATCA.

[31] Liechtenstein Bankers' Association, *Annual Report 2009*, p. 6.

[32] Hiring Incentives to Restore Employment (HIRE) Act of 2010, Pub.L. 111-147, 124 Stat. 71, enacted June 2010, 03.

3.2.3.3. Agreement between Liechtenstein and the United Kingdom on cooperation in tax matters

On 11 August 2009, the governments of the United Kingdom of Great Britain and Northern Ireland and of the Principality of Liechtenstein entered into an agreement that is probably unique worldwide in this form; it lays down not only the exchange of information in tax matters but also the opportunity to regularise tax offences of British customers of the Liechtenstein financial centre (LDF). One of the main objectives of the two states with this agreement has been stated unequivocally: as from 31 March 2015 at the latest, there should be no persons who are taxable in the UK and maintain a connection to Liechtenstein but are not UK tax compliant.

The agreement between the United Kingdom and Liechtenstein on cooperation in matters of taxation consists of three parts in total:

- the Joint Declaration, JD;[33]
- the memorandum of understanding (MoU);[34]
- the TIEA.[35]

With the rules laid down in the MoU, both the Principality of Liechtenstein and the United Kingdom essentially pursue the objective of giving British customers of the Liechtenstein financial centre who in the past have not met their obligations to report, disclose, and tell the truth concerning their assets in Liechtenstein or in Liechtenstein structures (foundations, trusts etc.) the opportunity to put their tax affairs on the right footing through a special procedure.

Pursuant to article 8 UK TIEA Act in connection with article 8 UK TIEA Ordinance,[36] a Liechtenstein financial intermediary is obliged to identify the relevant persons to whom he renders relevant services. This identification must be made within 30 days from the start of a new business relation.

After the financial intermediary has identified a person, he must inform that person within three months from identification that he knows or has reason to assume that the person is a relevant person. The reasons for this assumption must be suitably explained. Within 18 months from that written notice, the relevant person must then either convince the financial intermediary that he (the customer) is not a relevant person or present to the financial intermediary within 30 days from receipt a registration certificate and a disclosure certificate from the competent authority of the United Kingdom.

Instead of using the registration or disclosure certificate, proof that the person concerned is not a UK tax subject or is UK tax compliant may also be provided to the financial intermediary through suitable written confirmations, forms, or statements. Article 4 paragraph 1 UK TIEA Ordinance lists the following forms or statements as admissible proof:

[33] Joint Declaration of 11 August 2009, second Joint Declaration of 10 November 2010 and third Joint Declaration of 11 June 2012.

[34] Memorandum of Understanding between the Government of the Principality of Liechtenstein and Her Majesty's Revenue and Customs (HMRC) of the United Kingdom of Great Britain and Northern Ireland relating to cooperation in tax matters.

[35] Agreement between the Government of the Principality of Liechtenstein and the Government of the United Kingdom of Great Britain and Northern Ireland on tax information exchange.

[36] UK TIEA Ordinance of 31 August 2010, Liechtenstein Law Gazette No. 254/2010.

- a written confirmation, either in the original or in the form of an officially or notarially certified copy, from a legal, tax, or accountancy consultant who is duly qualified in the UK and is a member of the Law Society, the Institute of Chartered Accountants in England and Wales, or a similar professional association in the UK certifying that:
  - the relevant person concerned is tax compliant in the UK with regard to the relevant property; or
  - the relevant person concerned has submitted a disclosure notice concerning the relevant property in the framework of a disclosure facility from the competent tax authority of the United Kingdom;
- a form in a manner approved by HMRC on which the relevant person is identified and which proves that the relevant person has discharged his tax liabilities with regard to the relevant property in the UK;
- an officially or notarially certified copy of all or part of the tax return submitted by the person in question to HMRC, if the submitted copy shows that the relevant property in question has been declared to HMRC; or
- a written form of waiver and identification of the person in question authorising the financial intermediary to forward the waiver to HMRC and to provide HMRC later with a copy of the tax information that is probably relevant for the tax obligations of the person with regard to the relevant property.

Furthermore, the financial intermediary has to inform the relevant person that he must discontinue his services within six months from expiry of the above-mentioned 18-month verification term if no application to carry out the audit procedure has been submitted.

If a Liechtenstein financial intermediary has to discontinue a business relation as a result of the provisions of the MoU, this may constitute a breach of trust, a major breach of contract, or a thwarting of contract performance. To find a solution to this lose–lose situation of the financial intermediary, the MoU and in accordance with it the UK TIEA Act provide for the installation of an examining committee. This examining committee has to find a compromise after weighing the interests of all participants.

In return for these undertakings and extensive concessions by the Principality of Liechtenstein, HMRC has created the opportunity of disclosure specifically for British customers of the Liechtenstein financial centre under the LDF. At the end of the day, tax subjects who opt for voluntary disclosure have to pay the outstanding taxes for the previous ten years (specifically, from March 1999) in contrast to the normal term of twenty years. In the event of an innocent error, the term is reduced to six tax years. Taxpayers will have the unique opportunity to pay their liability through a simplified single composite rate on their income at a rate of 40 per cent. This alternative is an important component of the LDF because it offers tax subjects the opportunity to use a single average tax rate that will replace all UK taxes, including social security contributions, UK income, inheritance, corporate, capital gains, stamp duty and value added tax. This not only simplifies the procedure of voluntary disclosure but may also lead to substantial tax savings, in particular where companies, foundations and other legal entities are involved. The fine is 10 per cent of the tax due. In the MoU, the British financial authorities also declare their willingness to consider offers for the assessment of taxes on an estimated basis and to approve respites and payment by instalments.

In the event of complete, correct, and voluntary disclosure, no criminal investigation will be initiated, and the British authorities are not allowed – as they are in other cases – to publish the names and details of individuals and companies. The latter measure permits HMRC to publish names and details of tax offenders who have deliberately evaded more than £25,000 in taxes.

3.3. Collaboration between authorities (including transmission of documents to third parties)

3.3.1. Sharing information within domestic authorities

According to article 22 paragraph 1 LIAATM, information received by the requesting authority may only be disclosed to those persons – including supervisory authorities and courts – within the territory of the requesting state that handle assessment, collection, enforcement, prosecution and complaints in connection with the taxes mentioned in the request.

3.3.2. Use of the shared information in open court

According to article 22 paragraph 3 LIAATM, the information exchanged may be announced in public court proceedings or in court decisions.

3.3.3. Prohibition of forwarding the information to a third country

Article 23 LIAATM states that information must not be forwarded to any third country. The tax administration is also obliged to inform the competent authority of the requesting state accordingly.

3.4. Identification of the taxpayer and the holder of the information

Pursuant to article 7 paragraph 2 LIAATM, a request for administrative assistance must include the following information:

(a) the identity of the individual tax subject whose defence under tax law or criminal tax law is affected;
(b) the time period concerning which the information is requested;
(c) the type of the information requested and the form in which the competent foreign authority wishes to receive that information;
(d) the case under the tax laws of the competent foreign authority with regard to which the information is requested;
(e) the reasons for assuming that the requested information is probably relevant for the application and enforcement of the taxes of the competent foreign authority with regard to the person designated pursuant to item (a);
(f) the reasons for assuming that the requested information is available from the tax administration or is held or under the control of a person within the Principality of Liechtenstein;
(g) as far as is known, the names and addresses of the persons who are assumed to hold or control the requested information;

(h) a statement that the competent foreign authority would be able to obtain and provide the requested information if the tax administration issued a comparable request (reciprocity); and
(i) a statement that the competent foreign authority has exhausted all adequate means available on its territory to obtain the information, with the exception of those that would be connected with excessive difficulties (subsidiarity).

These requirements are meant to prevent so-called "fishing expeditions", i.e. non-specific searches for incriminating information. At the same time, these requirements must not be interpreted in such a way that the effective exchange of information is prevented.[37] The aspects argued most vigorously in practice are items (a) and (g).

Basically, one can assume that disclosing the identity of the tax subject must involve stating the subject's name (item (a)). However, the protocols of most Liechtenstein TIEAs include a provision comparable to item 2 of the protocol to the TIEA with Germany. Therein it is noted that it is not necessary to state the tax subject's name to determine the tax subject's identity if that identity can be ascertained from other indicators. An example for identifying the tax subject without stating the subject's name is given in the model commentary on the model agreement for the exchange of information in tax matters: if an account number is available, this suffices to identify an account holder if the account is not a joint account.[38] However, the practical significance of this example will probably be quite low, since this is only one element of the requirements to be cumulatively met by a request for information.

The requesting authority through suitable statements must prove the fulfilment of the conditions of reciprocity and subsidiarity. It is the opinion of the Liechtenstein government that according to the principle of trust in international law, it must be assumed as a matter of principle that these statements are accurate.[39] According to the practice of the State Court on the Mutual Legal Assistance Act, this does not apply where the requesting state acts in obvious misuse of rights. The principle of trust is recognised in the field of administrative assistance both internationally and in Liechtenstein. There is no reason to mistrust states from the outset to which one has offered to enter into an agreement. However, should the tax administration learn of circumstances – such as through a submission with grounds from an affected party – that indicate a misuse of rights, it will have to consult the requesting authority, and if the suspicion is confirmed, it will have to deny the request.

37 Government of the Principality of Liechtenstein, *op. cit.*, p. 16.
38 OECD, Agreement on exchange of information on tax matters, para. 58.
39 Government of the Principality of Liechtenstein, *op. cit.*, p. 17.

4. Limits

4.1. Right to privacy

4.1.1. Bank secrecy

In the Principality of Liechtenstein, bank secrecy is regulated in the Banking Act. It states that the members of the board of a bank, its employees, and third parties who act for the bank are sworn to secrecy about client information.[40] Bank secrecy covers all client information, regardless of whether this information was made accessible to the bank representatives in written or oral form. Furthermore, bank secrecy applies indefinitely. A violation of bank secrecy provisions is punishable by imprisonment of up to one year or by a fine up to 360 daily rates.[41] Bank secrecy does not prevail over disclosure obligations before criminal courts and supervisory authorities.[42] The reason for this is that the right to refuse testimony before a criminal court laid down in article 107 of the Liechtenstein Code of Criminal Procedure does not include persons subject to bank secrecy in terms of article 14 Banking Act.[43]

4.1.2. Lawyers' legal professional privilege

In addition to bank secrecy, there are two more major secrecy provisions which could limit the tax authorities' right to collect data. These are the secrecy obligations in the Act on Lawyers and in the Act on Fiduciaries. The secrecy obligations in the Act on Lawyers[44] and the Act on Fiduciaries[45] state that professionals are under an obligation of secrecy. That obligation covers all information on matters entrusted to professionals by their clients as well as other information concerning their duties, which they learned during their professional activities, as long as the disclosure of such information is not in the best interests of their clients. The secrecy provisions cover all information, written as well as oral, which the professionals receive from their clients. The obligation of secrecy is unlimited in time. In addition, both the Act on Lawyers and the Act on Fiduciaries contain a prohibition of circumvention in that the statutory obligation of secrecy cannot be circumvented by government measures, particularly through e.g. the examination of assistants of the lawyer or the fiduciary.

The secrecy obligations of the lawyer and the fiduciary remain in force *vis-à-vis* the tax administration. The legal options of the tax administration for accessing the documents subject to secrecy are limited to information connected with the regular business transactions of the holder of the confidential information. In this case, the holder of the information has the right to render personal data subject to

40 Art. 14 para. 1 Banking Act.
41 Art. 63 para. 1 Banking Act.
42 Art. 14 para. 2 Banking Act.
43 Art. 107 para. 1 Code of Criminal Procedure.
44 Art. 15 para. 1 Act on Lawyers.
45 Art. 11 para. 1 Act on Fiduciaries.

professional secrecy unrecognisable on the relevant documents or replace them by codes.[46]

According to the wording of the law, both lawyers and fiduciaries have the right to confidentiality in court and other official proceedings in accordance with the procedural regulations. While a lawyer's right to confidentiality is explicitly stated in the Code of Criminal Procedure, a fiduciary's right to confidentiality is not.[47] The legislature has explicitly excluded fiduciaries from the right to refuse testimony of article 107 Code of Criminal Procedure.[48] As a result, only the secrecy obligation of a lawyer can be maintained in the course of criminal proceedings – such as in the previously discussed example of tax fraud. It should be mentioned at this point that the obligation of confidentiality of a lawyer only applies in connection with the legal work mentioned in article 7 of the Act on Lawyers and not in connection with activities such as asset management or fiduciary activities.[49]

Similar to bank secrecy, which has been discussed above, neither the Act on Lawyers nor the Act on Fiduciaries provides an option to the client to release the professionals from their secrecy obligations.

Violations of the secrecy obligations by lawyers or fiduciaries are disciplinary offences and will be punished by the Administrative High Court. Penalties range from fines to being banned from the profession.

In summary, it can be stated that due to the rules on professional secrecy, neither lawyers nor fiduciaries can be forced by the tax administration to disclose client information about domestic tax matters. Thus, failure to comply with such a request from the tax administration for the disclosure of client information is not punishable in the Principality of Liechtenstein.

But please be aware that in cross-border cases the LIAATM empowers the tax administration to request information which is protected by bank secrecy or lawyers' legal professional privilege.

4.1.3. Data protection

Article 83 LTA (Liechtenstein Tax Act) lays down official secrecy (also called tax secrecy) in domestic law. According to that provision, persons entrusted with or consulted in enforcing the Tax Act must maintain secrecy on the tax subject's private and business matters that have become known to them in the course of their official duties, and also on the negotiations within the tax authorities; they must deny third parties permission to inspect official files. However, pursuant to article 83 paragraph 2 LTA, official secrecy may be broken in the context of administrative assistance (article 84 LTA) or the obligation to report (article 85 LTA).

The confidentiality provisions ensure the preservation of official secrecy in terms of the international protection of information in TIEAs. For example, article 8 paragraph 1 of the TIEA with Germany states that the information provided and received by the competent authorities of the contracting parties shall be treated confidentially. Thus, it is not only the information received that is protected but also

46 Art. 97 para. 3 LTA.
47 Art. 107 para. 1 Code of Criminal Procedure.
48 StGH 1998/39, head note 1.
49 *Ibid.*

the information given. Both contracting parties are obliged to keep the requested information confidential.

4.2. Domestic law and administrative practice

If the request is found to be admissible, the tax administration informs the holder of the information of the fact that the request has been received and of the information requested therein, and – if the tax administration does not already know or hold the information requested – it asks the holder of the information to provide it to the tax administration within 14 days. In justified cases, this term can be reasonably extended. A decision denying an application for an extension or concerning the duration of a granted time limit is informal in nature and cannot be appealed.

Article 12 paragraph 1 LIAATM is in line with the Liechtenstein agreement practice over the last three years that legal provisions on professional or business secrecy offer no protection from the obligation to provide the tax administration with the requested information. Therefore, a request cannot be denied for the reason alone that banking or fiduciary secrecy is concerned. An exception to the principle that confidential information must be disclosed applies only in those cases where a lawyer has received information in the course of giving legal advice or for the purpose of using it in pending or prospective proceedings, or where a commercial, business, trade, industrial secret or a business procedure would have to be disclosed. Information must not be considered to be subject to secrecy just because banks, other financial institutions or staff acting as representatives or fiduciaries hold it.

The tax administration also orders the holder of information to inform any affected parties resident or domiciled abroad about the fact that the request has been received, about the information requested, and about the domestic proceedings initiated in the meantime, and to inform such affected parties that they have the right to take part in the domestic proceedings and (if applicable) to appoint a party authorised to accept service.

Basically, the entitled parties' rights of participation laid down in article 24 LIAATM also include the inspection of files if no superior interests stand against this. Within the framework of the rights of participation, an entitled person may also submit private experts' opinions; if these are plausible and well founded, this may lead to inquiries by the Liechtenstein tax administration to the requesting authority as to the request's significance in terms of taxation.

But please be aware that this general rule has significant exceptions: it is laid down in article 24 paragraph 2 LIAATM that the entitled person will not be informed about the request if the requesting authority has asked that the request remains confidential. This confidentiality will be requested in particular where several requests are made to several states, which are to be carried out simultaneously without warning the suspects.[50] In these cases, however, an affected party resident or domiciled abroad must be informed at the time of the final order at the latest.

[50] Government of the Principality of Liechtenstein, *op. cit.*, p. 28.

The amount of requested information to be provided by the Liechtenstein tax administration to the foreign authority is laid down in article 13 LIAATM. This includes e.g. information held by banks, other financial institutions, or persons – including authorised parties and trustees – acting as agents or in a fiduciary capacity. In addition, the foreign authority may request information concerning the ownership situation of legal subjects, including information on all persons in a chain of owners. With partnerships, information on the identities of the members of the partnership must be provided. With trusts, information concerning the settlors, trustees and beneficiaries must be provided; with foundations, information concerning the founders, members of the foundation board and beneficiaries must be disclosed.

If the holder of the information does not provide the requested information voluntarily within the set time limit, the tax administration is authorised to order coercive measures. Efficient administrative assistance would be impossible without this power of the tax administration laid down in article 14 LIAATM. The term "coercive measure" is defined in article 15 LIAATM. This includes searches of premises and persons, coercive measures and penalties against witnesses, and the seizure of items. However, for such an order to be effective, it must be approved by an order of a judge (sitting alone) of the Administrative High Court. The judge must in particular examine whether the requirements for imposing coercive measures are met and whether the coercive measures ordered are adequate in terms of the principle of proportionality.

4.3. Commercial industrial business secrets

Pursuant to article 12 paragraph 3 LIAATM, commercial, industrial, trade and business secrets are protected from disclosure, bearing in mind that information is not considered as warranting protection just because it is held by banks, other financial institutions, or persons acting as representatives or in a fiduciary capacity.

This means that TIEAs prevail over domestic laws in this respect. For example, messages between a client and a lawyer are privileged only where and to the extent that the lawyer acts in this capacity. If, however, the lawyer also acts as a trustee, the information in connection with his activities as a trustee is not protected by the professional secrecy of lawyers.

4.4. Public policy (*ordre public*)

Pursuant to article 8 paragraph 1 LIAATM, a foreign request for information must be denied if it is contrary to the *ordre public*. In international law, *ordre public* means the reservation that a rule does not apply where applying it would violate essential domestic legal principles. This serves to protect the principles of a domestic legal system. It is the Liechtenstein understanding that this applies in particular to requests in proceedings initiated by the requesting state as a result of information acquired by an act that is a punishable offence in Liechtenstein. The theft of bank data and the purchase of such stolen data is a particularly noteworthy example in this context.

4.5. Procedural guarantees and administrative principles

Article 26 LIAATM states the options to appeal of entitled parties in the course of the administrative assistance proceedings. For example, article 21 LIAATM states that final orders may be appealed to the Administrative High Court within a term of 14 days. It is only in the course of this appeal against the final order that entitled parties may deny that the requirements for the admissibility of the request are met and may have that admissibility verified.

4.5.1. Entitled person

Therefore, the term "entitled person" is pivotal for using all legal remedies possible, which is why it is defined in the Administrative Assistance Act. Pursuant to article 3 paragraph 1 LIAATM, the following persons are "entitled parties":

- the holder of the information, i.e. the person holding information that is the subject of the request; typically, this will be the bank and/or the trustee in Liechtenstein;
- the customer of a holder of information: for example the Liechtenstein foundation as a customer of the bank;
- a person whose defence under tax law or criminal tax law is affected by the request; or
- a person personally and directly affected by the request: should the assumptions of the foreign authorities be incorrect and the information not concern the tax subject in the requesting state but a totally unconcerned third party, this unconcerned third party must have the opportunity to defend himself against the disclosure of the information concerning him.

Entitled parties may participate in the proceedings directly and safeguard their rights as far as this is necessary for safeguarding interests warranting protection. On this basis, parties such as the bank (being the holder of the information) have a right to appeal. It is the constant practice of the State Court that a *de facto* interest suffices to have a right of appeal. In practice, this is interpreted very generously.[51]

4.5.2. Procedure

To make use of the appeal procedure under these rules, the final order must be appealed by complaint to the Administrative High Court within 14 days from service. During the appeal proceedings, the entitled person is given the opportunity to explain its point of view. This also includes the submission of a private expert's opinion.

Decisions of the Administrative High Court may be appealed by individual complaint to the State Court within 14 days. Amendments to the Act Concerning the State Court of 27 November 2003 (*Gesetz über den Staatsgerichtshof*, StGHG) were required to speed up this additional option for appeal. First, the time limit for complaints was reduced to 14 days; secondly, it was laid down that the suspensive effect coming with such complaints would not apply unless the presiding judge

[51] Hosp, "Liechtenstein setzt den Internationalen Steuerinformationsaustausch um – Wie wird in der Praxis vorgegangen werden", *ZfS* 2010, 61.

issued an order granting such effect (article 52 paragraph 3 StGHG). If suspensive effect is granted in time, that order will lapse within four weeks. This term can be extended once by another 14 days. If the State Court considers the constitutional rights of the complaining party to have been violated, it is up to the State Court to prevent the lapsing of suspensive effect by deciding on the complaint within the legal time limit. These measures ensure a quick and efficient chain of appeals, so that the maximum duration of proceedings for official assistance should be no more than between four and a maximum of six months.

4.6. Excursus: infringements

If despite all the limitations stated above, the Liechtenstein tax administration forwards information to a foreign state unlawfully, article 3 paragraph 1 of the *Gesetz über die Amtshaftung* (AHG, Act on Official Liability) might lead to liability of the tax administration. This provision states that the public institution is liable for any damage unlawfully caused to a third party by a person acting as the institution's agent in the exercise of his official duties. The terms "agent", "public institution", and "official duties" are defined in article 2 paragraphs 1 to 3 AHG. The claim can only be directed against the public institution – the acting agent is not directly liable to the third party (cf. article 3 paragraph 2 AHG). As far as an official of the Tax Administration violates tax secrecy in an unlawful way (as a result of article 3 paragraph 5 AHG, this is legally assumed for the benefit of the claimant if the elements of the offence are met), this may well result in a monetary claim for compensation. As to such claim, article 3 paragraph 4 AHG refers to liability in tort under civil law.

However, note the citizen's privilege of article 5 paragraph 2 AHG, according to which a foreigner only has a claim if there is either a treaty or mutuality with his home country. But this provision is not only questionable in terms of EEA law in view of article 4 of the Treaty on the European Economic Area (which prohibits discrimination); the Liechtenstein Supreme Court has also decided that it does not apply as far as claims for compensation are the direct result of fundamental rights which – such as individual freedom – are guaranteed without reservation and without differentiating between the persons enjoying them.[52] The period of limitation is three years and starts on the day on which the injured party received knowledge of the damage, but no less than a year after a violating decision or order has become final.[53]

[52] Supreme Court of 1 October 2008, CO.2006.2, LES 2009, 150.
[53] Art. 9 para. 1 AHG.