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**A: Assessing BEPS:  
origins, standards,  
and responses**



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## Summary

As Liechtenstein is not an OECD country and was therefore not able to participate in the process of developing the final reports on the OECD/G20 base erosion and profit shifting (BEPS) project, a BEPS working group was established by the government, which closely followed and monitored the work of the OECD and thereby identified fields of action which required a domestic change of legislation. Since Liechtenstein strongly believes in the need for a “level playing field” among countries in BEPS matters, limiting BEPS through appropriate measures has been made a priority. In March 2016 Liechtenstein joined the inclusive framework for the implementation of the package of measures against BEPS as one of the first non-OECD countries and thereby officially committed to the BEPS outcome. From the five fields of action identified by the BEPS working group, four items have been implemented to date. The amendment of the Tax Act includes the introduction of the correspondence principle for dividends within corporate groups to avoid double non-taxation, the abolition of the intellectual property (IP) box regime (with grandfathering until 2020), the inclusion of a definition of what serves as a tax ruling as well as the introduction of standardized transfer pricing documentation requirements in accordance with BEPS Action 13. Furthermore, a new law regarding the introduction of country-by-country reporting (CbCR) was released. The changes will be effective as of 1 January 2017. In addition, Liechtenstein’s response to the action items which require mainly treaty-based measures was a change in its tax treaty policy, which can be observed in the latest treaties Liechtenstein has concluded. In order to fully implement the identified fields of action, a legal basis for the exchange of tax rulings is in preparation at the moment.

During the implementation of the BEPS-related rule changes, it became clear that an increase in tax disputes must be expected, especially when it comes to transfer pricing. In this respect, Liechtenstein’s taxpayers are facing the problem that Liechtenstein’s tax treaty network is still limited. Liechtenstein has concluded 17 tax treaties as of 5 December 2016 and, therefore, has currently a limited possibility for effective dispute resolution. Most of its current tax treaties are with European countries and its neighbours. Thus, the government of Liechtenstein is

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trying hard to expand its tax treaty network to cover the countries relevant for its companies and businesses. Furthermore, Liechtenstein strives to improve dispute resolution mechanisms as proposed in Action 14 and intends to continue to include arbitration clauses in its double tax treaties.

## 1. Overview

### 1.1. Priorities

Since Liechtenstein is not an OECD country, it has not participated in the working groups analysing BEPS and developing the final reports on the BEPS project. As the BEPS topic emerged, the government of Liechtenstein established a working group, in May 2014, which was headed by the fiscal authority and which closely followed and monitored the work of the OECD.<sup>1</sup> Thereby Liechtenstein made it a priority to limit BEPS through appropriate measures. In response to the invitation by the OECD to join the inclusive framework for the implementation of the package of measures against BEPS in March 2016, Liechtenstein joined the framework as one of the first non-OECD countries and thereby officially committed itself to the BEPS outcome. The inclusive framework gives interested countries and jurisdictions the opportunity to work with OECD and G20 members on developing standards on BEPS-related issues and reviewing and monitoring the implementation of the whole BEPS package.<sup>2</sup> Liechtenstein therefore became an associate in the BEPS project which means that representatives of the fiscal authority participate on an equal footing in the full range of the work done on the BEPS project by the Committee on Fiscal Affairs (CFA) and its subsidiary bodies.

In the process of analysing the BEPS project, the BEPS working group identified fields of action which were presented to the government in January 2015. The government agreed to the fields of action and mandated the fiscal authority to prepare a consultation report for the amendment of the Tax Act.<sup>3</sup> The consultation report on the amendment of the Tax Act was published in May 2016.<sup>4</sup> After having received comments on the consultation report in June 2016, the government approved the proposal for the amendments of the Tax Act in July 2016 and submitted the proposal to Parliament.<sup>5</sup> Parliament approved the amendments in November 2016.<sup>6</sup> The BEPS-related rule changes will be effective as of 1 January 2017. The following fields of action are dealt with:

<sup>1</sup> See press release concerning the establishment of the BEPS working group published on 9 May 2014 (accessible via <http://www.llv.li/#/41/medienmitteilungen>).

<sup>2</sup> See <http://www.oecd.org/tax/beps/beps-about.htm>.

<sup>3</sup> See press release concerning the commitment to the BEPS outcome, the mandate to prepare a consultation report as well as the identified fields of action published on 4 March 2014 (accessible via <http://www.llv.li/#/41/medienmitteilungen>, an English version is accessible via <http://www.regierung.li/news1.aspx?lang=en&id=105961&nid=7292>).

<sup>4</sup> *Vernehmlassungsbericht* BNR 2016/625.

<sup>5</sup> *Bericht und Antrag* 91/2016.

<sup>6</sup> <http://www.landtag.li/beschluesse.aspx?nid=4072&year=2016&id=116970#116970>.

- the introduction of the correspondence principle for dividends within corporate groups to avoid double non-taxation (Action 2);
- abolition of the IP box regime with grandfathering until 2020 (Action 5);
- introduction of compulsory spontaneous exchange of information on rulings (Action 5);
- introduction of standardized transfer pricing documentation requirements (Action 13);
- introduction of CbCR for multinational enterprises with an annual consolidated group revenue equal to or exceeding CHF 900 million (Action 13).

For the introduction of CbCR, a separate law had to be introduced. The consultation report for the introduction of CbCR was published in July 2016.<sup>7</sup> After receiving the comments on the consultation report in July and at the beginning of August 2016, the government approved the introduction of the CbCR in August 2016 and submitted the proposal to Parliament for approval.<sup>8</sup> Parliament approved the amendments in November 2016.<sup>9</sup> The law on CbCR will be effective as of 1 January 2017.

Furthermore, in the field of tax treaty policy, treaty-based measures can be observed by looking at the latest tax treaties concluded by Liechtenstein. The treaties with Hungary, the Czech Republic, Andorra, the United Arab Emirates and Switzerland were negotiated during the consultation process of the BEPS project. At the time of negotiation of those treaties, the results of the discussion drafts of the BEPS project were being considered. Therefore, all of these treaties contain a general anti-abuse rule which is similar to the final principal purpose test suggested by BEPS Action 6. Furthermore, the preambles of the treaties with Hungary, Andorra and the Czech Republic contain language similar to that suggested by the final BEPS Action 6 report. The treaty with Iceland was concluded after the release of the final reports on the BEPS project and includes clauses suggested by BEPS Actions 2, 6, 7 and 14.

To implement the new BEPS standard, Liechtenstein will have to amend existing double tax treaties. Liechtenstein is part of the ad hoc group for the development of a multilateral instrument to modify bilateral tax treaties (Action 15).<sup>10</sup> On 24 November 2016, the ad hoc group adopted the text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting along with an explanatory statement. A first high-level signing ceremony will take place in the week beginning 5 June 2017.<sup>11</sup>

## 1.2. Participation

Liechtenstein as a non-OECD country was not able to participate in the process of developing the final reports on the BEPS project.

<sup>7</sup> Vernehmlassungsbericht LNR 2016/908.

<sup>8</sup> Bericht und Antrag 99/2016.

<sup>9</sup> See <http://www.landtag.li/beschluesse.aspx?nid=4072&year=2016&id=116970#116970>.

<sup>10</sup> See <http://www.oecd.org/tax/treaties/multilateral-instrument-for-beps-tax-treaty-measures-the-ad-hoc-group.htm>.

<sup>11</sup> See <http://www.oecd.org/tax/countries-adopt-multilateral-convention-to-close-tax-treaty-loopholes-and-improve-functioning-of-international-tax-system.htm>.

However, the government of Liechtenstein established a working group in May 2014 which was headed by the fiscal authority and which closely followed and monitored the work of the OECD. Apart from officials from the fiscal authority, the working group consists of representatives from the main business sectors as well as university scholars. The objective of the group is to monitor BEPS outcomes, to present suggestions for action to the government and to communicate and discuss related issues with tax experts, foreign authorities as well as other market participants. The working group established cooperation to exchange views and to create a high level of BEPS knowhow with two important universities. In the process of analysing the BEPS project, the working group identified fields of action which were presented to the government in January 2015.<sup>12</sup>

Liechtenstein joined, as one of the first non-OECD countries, the inclusive framework for the implementation of the measures against BEPS in March 2016. The inclusive framework gives interested countries and jurisdictions the opportunity to work with OECD and G20 members on developing standards on BEPS-related issues and reviewing and monitoring the implementation of the whole BEPS package.<sup>13</sup> Liechtenstein therefore became an associate in the BEPS project which means that representatives of the fiscal authority participate on an equal footing in the full range of the work done on the BEPS project by the CFA and its subsidiary bodies.

In addition, Liechtenstein is part of the ad hoc group of the OECD to develop a multilateral instrument to modify bilateral tax treaties. Action 15 of the BEPS project analyses the possibility of developing a multilateral instrument for introducing treaty-based BEPS measures by amending bilateral treaties. Based on Action 15 an ad hoc group for developing a multilateral instrument was created in February 2015. Since Liechtenstein is part of this group, it actively participated in the negotiations on this instrument. Liechtenstein is also a member of the sub-group on arbitration which was established to include a mandatory binding arbitration provision into the bilateral treaties of interested countries by using the multilateral instrument.

Furthermore, Liechtenstein is part of the forum on tax administration concerning the improvement of mutual agreement procedures (FTA MAP forum) as well as of the ad hoc group dealing with the CbCR.

### 1.3. Domestic context

There are no measures which provide for tax relief for foreign investment promotion in Liechtenstein. Since Liechtenstein is part of the European Economic Area, its legal framework has to be in compliance with European standards. In 2010, the Tax Act was comprehensively overhauled. The goal of the tax reform was to align the corporate income tax system with international developments as well as European standards. For that purpose, some parts of the Income Tax Act were assessed and approved by the EFTA Surveillance Authority (ESA).<sup>14</sup> Hence, there are no provisions which grant state aid or ring-fencing.

<sup>12</sup> See note 3.

<sup>13</sup> See note 2.

<sup>14</sup> *Bericht und Antrag* 48/2010.



To the knowledge of the reporter, no foreign investment promotion measures not consistent with the BEPS project have been identified or discussed.

The BEPS working group has – according to the knowledge of the reporter – not identified other key areas of context that may affect the implementation of BEPS in Liechtenstein.

#### 1.4. Taxpayers' rights and risks

Since Liechtenstein is a small country with a small domestic market, the majority of corporate taxpayers conduct cross-border business, i.e. even small and middle-sized companies have business relations with other countries. Therefore, it is highly likely that a large portion of Liechtenstein's corporate taxpayers will, at one level or another, be affected by one or another amendment to the Tax Act.

Furthermore, the amendments to the Tax Act will also affect Liechtenstein multinational companies, especially in the area of CbCR.

The business community had the opportunity to participate in the discussions of the BEPS working group through representatives of the business sector. As a consequence, a high level of acceptance has been achieved among taxpayers.

Liechtenstein is a constitutional, hereditary monarchy on a democratic and parliamentary basis. While the state can implement tax reforms at any time, the legislator is not able to amend a law retrospectively if the amendment would change the legal outcome of facts or circumstances which have already been realized at the moment of the change of law.<sup>15</sup> According to the settled case law of the Constitutional Court, the protection of reliance on existing law results from the constitutional right of the principle of equality as laid down in article 31 of the Constitution.<sup>16</sup> Therefore, the government was not able to introduce CbCR with regard to the reporting period 2016. The first reporting period will be the tax year 2017, with the first data exchange in 2019. Article 29 of the law on CbCR, however, provides for voluntary filing with respect to the reporting period 2016. Please refer to section 2.3.3 below for further detail.

The report on Action 14 recognizes that BEPS measures may lead to a certain level of uncertainty and that they could also, without any action being taken, increase double taxation and MAP disputes in the short term. As OECD countries recognize that double taxation, as an obstacle to cross-border trade, has to be avoided, they committed to a minimum standard concerning treaty-related disputes.<sup>17</sup> Action 14 and the commitment to make dispute resolution more effective seems essential since the final reports leave room for different ways of interpretation and implementation of the suggested measures. All of Liechtenstein's tax treaties include an article which provides for the opportunity to initiate an MAP. Furthermore, the majority of Liechtenstein's treaties include an arbitration clause. Liechtenstein's taxpayers, however, are facing the problem that Liechtenstein's treaty network is still limited. Liechtenstein has concluded 17 tax treaties as of 5

<sup>15</sup> StGH 1996/35, LES 1998, 132; StGH 1998/47, LES 2001, 73; StGH 2013/42 see also Andreas Kley and Hugo Vogt, "Rechtsgleichheit und Grundsatz von Treu und Glauben", in Andreas Kley and Klaus A. Vallender (eds.), *Grundrechtspraxis in Liechtenstein*, LPS Bd. 52, Schaan 2012, p. 299.

<sup>16</sup> Art. 31(1) LV.

<sup>17</sup> Explanatory Statement, Final reports, OECD, October 2015.

December 2016, and has, therefore, currently a limited possibility for effective dispute resolution. Thus, the government of Liechtenstein is trying hard to expand its tax treaty network.<sup>18</sup>

In January 2016, the Liechtenstein fiscal authority signed the multilateral competent authority agreement on the exchange of CbCR (CbC MCAA).<sup>19</sup> For transfer pricing cases which could indirectly result from the exchange of CbCR, the CbC MCAA offers the possibility for a consultation between the competent authorities involved (see section 6 paragraph 1). However, the CbC MCAA does not oblige the competent authorities to reach a conclusion or to submit the case to arbitration as suggested in the OECD model tax convention (article 25). Please refer to section 2.3.3 for further detail.

## 2. Responses to BEPS measures

### 2.1. Responses to mainly domestic action items (Actions 2–5)

#### 2.1.1. *Identification of priorities*

Please refer to section 1.3 for the identification of priorities as well as for the question of which BEPS action items were considered important.

In Liechtenstein, stakeholders are involved in legislative changes through working groups, which has also been the reason for the establishment of a BEPS working group by the government in May 2014. Please refer to section 1.2 for further information on the BEPS working group and to section 1.1 concerning the implementation steps.

The action items identified by the working group were slightly modified during the implementation process of the BEPS-related rule changes, resulting in the fields of action mentioned in section 1.1.

Prior to the BEPS process, Liechtenstein's Tax Act was identifiably compliant. Please refer to section 1.3 for further information.

For the implementation of BEPS-related rule changes, the Tax Act was amended (for the process please refer to section 1.1). Therein, the principle of correspondence was introduced, the IP box regime was abolished and a definition of tax rulings was included. The government and Parliament approved the amendments (for further details please refer to section 1.1). The proposed BEPS-related rule changes will be effective as of 1 January 2017.

The amendments to the Tax Act reflect the identified fields of action mentioned in section 1.1.

The exchange of tax rulings requires an amendment of the Law on Administrative Assistance in Tax Matters or the introduction of a separate law. The legal basis for the exchange of tax rulings (Action 5) is currently in preparation. With

<sup>18</sup> See <http://www.regierung.li/ministerien/ministerium-fuer-praesidiales-und-finanzen/entwicklung-intern-steuerabkommen/monaco/>.

<sup>19</sup> See the related press release published on 29 January 2016 (accessible via <http://www.llv.li/#/41/medienmitteilungen>).

this amendment all identified fields of action will be implemented, which reflects Liechtenstein's priority to limit BEPS through appropriate measures.

### 2.1.2. OECD participation

Since Liechtenstein is not an OECD country, it was not able to participate in the working groups analysing BEPS and developing the final reports on the BEPS project. Please refer to section 1.2 for further information with regard to the BEPS working group.

### 2.1.3. Public consultation

Liechtenstein government officials regularly attend conferences concerning BEPS related issues. The two major organizers of such conferences are the IFA branch Liechtenstein and the University of Liechtenstein. Officials from the Liechtenstein fiscal authority work closely with both organizations. The Liechtenstein fiscal authority is represented on the board of the IFA branch Liechtenstein and is involved in the organization of events. Government officials regularly act as speakers or participate in panel discussions regarding BEPS-related rule changes.<sup>20</sup>

Furthermore, the Prime Minister spoke at an event organized by the University of Liechtenstein in March 2016 and thereby underlined Liechtenstein's commitment to the BEPS project as well as the importance of a "level playing field" among countries.<sup>21</sup>

The audience at the conferences is usually broadly diversified: university scholars, government officials, lawyers, accountants, tax advisors, tax representatives of industrial companies, banks and trust and service providers, etc.

In the course of conferences, government officials underlined Liechtenstein's commitment to the BEPS project as well as the importance of a "level playing field" among countries.

Liechtenstein's government is transparent with regard to its policy on the BEPS project. In the government press release concerning the announcement that Liechtenstein joined the inclusive framework, the government also communicated the identified fields of action (see section 1.1) and gave information about the fact that it had mandated the fiscal authority to prepare a consultation report on the adaptation of the Tax Act on these items.

Stakeholders who represent the private sector participated on a regular basis in discussions concerning the BEPS-related rule changes. The discussions were mirrored in the comments filed by the stakeholders during the public consultation concerning the amendment of the Tax Act.

The two major organizers for BEPS conferences are the IFA branch Liechtenstein and the University of Liechtenstein.

<sup>20</sup> For example: Universität Liechtenstein, *Liechtensteinische Steuerfachtagung* 2016; Universität Liechtenstein, *Steuerforum Liechtenstein* 2016; IFA Liechtenstein branch, *Internationale Entwicklungen im Steuerrecht, Fachsymposium* 2015; IFA Liechtenstein branch, *Fachsymposium zum Thema BEPS* 2016.

<sup>21</sup> Universität Liechtenstein, *Liechtensteinische Steuerfachtagung* 2016.



Other than the legal analyses filed by stakeholders during the public consultation, to the reporter's knowledge, no significant legal or empirical analyses were published by stakeholders representing the private sector. Articles relating to the effect of BEPS-related rule changes in Liechtenstein were published in newsletters from time to time.

During the discussions and in comments filed by the stakeholders during the public consultation, an amendment to the IP box regime to take into account the outcomes of BEPS Action 5 was demanded, rather than an abolition of the regime as a whole.

In the course of the consultation process, there have also been discussions concerning the introduction of the correspondence principle. The consultation report originally suggested implementing the correspondence principle for dividends in general. Stakeholders, however, argued that the correspondence principle should not be introduced with regard to dividends without significant participation as it would be very difficult to prove that the dividend was not deductible in the source country. In response to the stakeholders' argumentation, the proposal for the amendment of the Tax Act was changed and the correspondence principle is now introduced for dividends by reason of a participation of at least 25 per cent of the voting power or capital interest.<sup>22</sup>

The business community also had the opportunity to participate in the discussions of the BEPS working group. As a consequence, a high level of acceptance has been achieved among taxpayers.

#### *2.1.4. Post-BEPS processes and early assessments of progress to date*

Please refer to section 1.2 concerning the process of studying and interpreting the BEPS Action Plan as well as of identifying the fields of action regarding BEPS-related rule changes. For the implementation of BEPS-related rule changes the Tax Act was amended (for the process please refer to section 1.1).

Various stakeholders were involved in the domestic implementation of the Action Plan through the BEPS working group. Furthermore, stakeholders had the opportunity to comment on the BEPS-related rule changes during the public consultation.

For the process regarding the amendment of the Tax Act please refer to section 1.1. The exchange of tax rulings requires an amendment of the Law on Administrative Assistance in Tax Matters or the introduction of a separate law. The legal basis for the exchange of tax rulings (Action 5) is currently in preparation.

It is not expected that the BEPS-related rule changes will be subject to judicial review or alternative dispute resolution processes.

Liechtenstein, as a non-OECD country, was not able to participate in the BEPS work before the establishment of the inclusive framework. Therefore, Liechtenstein needed time to analyse the BEPS initiative, to identify the fields of action and to gain the technical knowledge to make political decisions. Hence, during the BEPS consultation process, no BEPS-related rule changes were made.

<sup>22</sup> See note 4.

In the proposal to amend the Tax Act, the government analysed the consequences of the amendment. Therein, it is expressed that the BEPS project resulted in the initiation of tax reforms around the world, leading to stricter tax legislation. In addition to that, countries have increased their number of tax inspectors and specialists in transfer pricing to apply the BEPS-related rule changes in practice. As a consequence, the costs of reviews and audits will increase. Certainly, an increase in country related disputes is expected, leading to a higher demand for human resources.<sup>23</sup>

The most impact on the industry is expected to result from the legal uncertainty as well as from the risks of audits concerning transfer pricing issues.

## **2.2. Responses to mainly treaty-based action items (Actions 6 and 7)**

### *2.2.1. Identification of priorities*

Liechtenstein's response to the action items which require mainly treaty-based measures was a change of its tax treaty policy, which can be observed in the most recent treaties Liechtenstein has concluded. The treaties with Hungary, the Czech Republic, Andorra, the United Arab Emirates and Switzerland were negotiated during the consultation process of the BEPS project. At the time of negotiation of those treaties, the results of the discussion drafts of the BEPS project were being considered. Therefore, all of these treaties contain a general anti-abuse rule which is similar to the final principal purpose test suggested by BEPS Action 6. Furthermore, the preambles of the treaties with Hungary, Andorra and the Czech Republic contain language similar to that suggested by the final BEPS Action 6 report. The treaty with Iceland was concluded after the release of the final reports on the BEPS project and includes clauses which were suggested by BEPS Actions 2, 6, 7 and 14.

The BEPS working group also studied the action items relating to treaty-based measures (please refer to section 1.2 for further information with regards to the BEPS working group).

The treaty between Liechtenstein and Iceland can be identified as being in compliance with the BEPS outcomes.

Apart from the treaties mentioned above, no regulations or guidance was published on treaty-based action items.

### *2.2.2. OECD participation*

Since Liechtenstein is not an OECD country, it was not able to participate in the working groups analysing BEPS and developing the final reports on the BEPS project. Please refer to section 1.2 for further information with regards to the BEPS working group.

### *2.2.3. Public consultation*

Discussions about treaty-based action items were organized in the same way as those for domestic action items. Please refer to section 2.1.3.

<sup>23</sup> See note 5.

The provisions included in Liechtenstein's latest treaties were discussed at various conferences. In particular, the meaning of the anti-abuse rules was elaborated. General anti-abuse rules were compared to specific anti-abuse rules such as the limitation on benefits clause. The compatibility of limitation on benefits clauses with the European Economic Area Agreement was also discussed several times. Some participants expressed their concern in this regard. Further to this, the influence of other action items which require mainly treaty-based measures was discussed. Participants expressed the importance of improving dispute resolution mechanisms and the inclusion of arbitration clauses in double tax treaties.

### *2.2.4. Post-BEPS processes and early assessments of progress to date*

Please refer to section 1.2 concerning the process of studying and interpreting the BEPS Action Plan.

Various stakeholders were involved in the domestic implementation of the BEPS Action Plan through the BEPS working group.

Liechtenstein is part of the ad hoc group for the development of a multilateral instrument to modify bilateral tax treaties. To date, analyses are being made concerning the decision of the signature of this instrument. The treaties with Hungary, the Czech Republic, Andorra, the United Arab Emirates, Switzerland and Iceland can be seen as an identifiable outcome for treaty-based action items. Please refer to section 2.2.1 for further information.

It is not expected that the treaty-based measures will be subject to judicial review or alternative dispute resolution processes.

Please refer to section 2.2.1 for treaty-based measures taken during the BEPS consultation process.

It is expected that the fiscal authority will have a high administrative burden with regard to the implementation of treaty-based BEPS measures as treaties which are not compliant with the minimum standard of the BEPS project will have to be amended either through the multilateral instrument or by renegotiations.

It is expected that the possibility to file a request for the initiation of an MAP either in the state of residence or the state of source will have the most impact on the industry concerning the implementation of treaty-based BEPS measures. This BEPS-related rule change correlates with Action 14.

## **2.3. Responses to mainly transfer pricing measures (Actions 8–10 and 13)**

### *2.3.1. Identification of priorities*

Liechtenstein's response to the action items which require mainly transfer pricing measures was an amendment of the Tax Act resulting in the introduction of standardized transfer pricing documentation requirements (Action 13)<sup>24</sup> as well as the

<sup>24</sup> See note 5.

introduction of CbCR for multinational enterprises with an annual consolidated group revenue equal to or exceeding CHF 900 million (Action 13).<sup>25</sup>

The BEPS working group also studied the action items relating to transfer pricing measures (please refer to section 1.2 for further information with regards to the BEPS working group).

It can be assumed that laws or regulations, where the BEPS working group did not identify fields of action and therefore no changes were made, are compliant with the BEPS project.

The introduction of standardized transfer pricing documentation requirements required an amendment of the Tax Act. For the introduction of CbCR, a separate law had to be introduced. Please refer to section 1.1 for further information about the legislative process.

Those changes indicate that Action 13 had been identified as important by the BEPS working group.

### *2.3.2. OECD participation*

Since Liechtenstein is not an OECD country, it was not able to participate in the working groups analysing BEPS and developing the final reports on the BEPS project. Please refer to section 1.2 for further information with regards to the BEPS working group.

### *2.3.3. Public consultation*

Discussions about action items which require mainly transfer pricing measures were organized in the same way as those for domestic action items. Please refer to section 2.1.3.

The tone of discourse of participants coming from the private sector was critical to the BEPS-related rule changes. During the consultation process as well as during conferences, the Chamber of Industry and Commerce and the Liechtenstein Banking Association claimed that they expect an increase of transfer pricing disputes due to the introduction of CbCR. They further argued that due to the fact that Liechtenstein's treaty network is still limited, effective dispute resolution and its implementation (corresponding adjustments) is difficult.<sup>26</sup>

In January 2016, the Liechtenstein fiscal authority signed the CbC MCAA.<sup>27</sup> For transfer pricing cases which could indirectly result from the exchange of CbCR, the CbC MCAA offers the possibility of a consultation between the competent authorities involved (see section 6 paragraph 1). However, the CbC MCAA does not oblige the competent authorities to reach a conclusion or to submit the case to an arbitration as suggested in the OECD model tax convention (article 25).

Stakeholders claimed that in cases where no double tax treaty is in place, the Liechtenstein fiscal authority is not obliged to make corresponding adjustments

<sup>25</sup> See note 8.

<sup>26</sup> See note 8.

<sup>27</sup> See note 19.

even if it reached an agreement with the competent authority of the other state based on section 6 of the CbC MCAA. It has been demanded that domestic legislation for the implementation of the outcome of consultations (corresponding adjustments) between two or more competent authorities should be introduced to reduce the risk of double taxation in this respect. In response to that claim, article 124 of the Tax Act has been amended in the course of the implementation of CbCR. This article now provides for the legal framework for corresponding adjustments in cases where the fiscal authority was able to reach consensus with the other competent authority based on section 6 of the CbC MCAA.

Action 13 provides for an implementation package within which model legislation for CbCR is included. The model legislation introduced the concept of a secondary reporting mechanism with respect to CbCR. The secondary reporting mechanism is applicable in cases where a country fails to receive information regarding a particular multinational company through exchange of information from another country. According to the Chamber of Industry and Commerce the majority of countries have implemented such a secondary reporting mechanism into their domestic law. The Chamber of Industry and Commerce argued that a secondary filing is administratively highly cumbersome. Due to the fact that the CbCR legislation varies from country to country, a company headquartered in Liechtenstein would have to align its CbCR to the foreign requirements if a foreign country did not receive the CbCR through an exchange mechanism. The Chamber of Industry and Commerce as well as the Liechtenstein Banking Association explained that multinationals headquartered in Liechtenstein prefer to file their CbCR in Liechtenstein. In order to be able to file CbCR in Liechtenstein, the Chamber of Industry and Commerce as well as the Liechtenstein Banking Association supported a fast implementation of CbCR.

Since it was not possible to introduce CbCR for the reporting period 2016 for reasons described in section 1.4, it was demanded by the Chamber of Industry and Commerce that CbCR should be made available on a voluntary basis for the reporting period 2016. Article 29 of the law on CbCR therefore provides for voluntary filing with respect to the reporting period 2016.<sup>28</sup>

#### *2.3.4. Post-BEPS processes and early assessments of progress to date*

Please refer to section 1.2 concerning the process of studying and interpreting the BEPS Action Plan as well as of identifying the fields of action regarding BEPS-related rule changes. For the implementation of BEPS-related rule changes, the Tax Act was amended and a separate law for CbCR was introduced (for the process please refer to section 1.1).

Since members of the Chamber of Industry and Commerce as well as the Liechtenstein Banking Association will be affected by the BEPS-related rule changes concerning transfer pricing measures, those parties gave the most input in the consultation process. Both parties were represented in the BEPS working group.

In the submitted proposal for the amendments of the Tax Act it was announced that further regulations or guidelines will be published with regard to

<sup>28</sup> See note 19.



the standardized transfer pricing documentation requirements.<sup>29</sup> Further to that, a regulation will have to be published which, *inter alia*, will have to list the countries with which Liechtenstein plans to exchange CbCR.<sup>30</sup>

It is not expected that the BEPS-related rule changes will be subject to judicial review or alternative dispute resolution processes.

Please refer to section 2.1.4.

Both legislative changes will create a high administrative burden for large companies and will therefore have a major impact on Liechtenstein's industry. The introduction of the standardized documentation requirements will be applicable for large companies defined in paragraph 2 of article 1064 of the Liechtenstein company law. A company will be regarded as large if it exceeds two of the following thresholds: balance sheet totals above CHF 25.9 million, net sales above CHF 51.8 million and an average number of 250 employees during the fiscal year. CbCR will be applicable for companies with a consolidated turnover of equal to or above CHF 900 million.

Please refer to the paragraph above for the question of which change has had the most impact on the industry. The introduction of both legislative changes correlates with Action 13.

### 3. Conclusion

It can be concluded that the implementation process of BEPS-related rule changes is well advanced in Liechtenstein. From the five fields of action identified by the BEPS working group which required a domestic change of legislation, four items have been implemented to date. The amendment of the Tax Act includes the introduction of the correspondence principle for dividends within corporate groups to avoid double non-taxation (Action 2), the abolition of IP box regime with grandfathering until 2020 (Action 5), the inclusion of a definition of what serves as a tax ruling (Action 5) as well as the introduction of standardized transfer pricing documentation requirements in accordance with BEPS Action 13. The amendment of the Tax Act will be effective as of 1 January 2017. For the introduction of CbCR a separate law had to be introduced. The law on CbCR will be effective as of 1 January 2017.

The legal basis for the exchange of tax rulings (Action 5) is currently in preparation. With this amendment all identified fields of action will be implemented which reflects Liechtenstein's priority to limit BEPS through appropriate measures.

Liechtenstein's response to the action items which require mainly treaty-based measures was the change of its tax treaty policy, which can be observed in the latest treaties Liechtenstein has concluded. The treaties with Hungary, the Czech Republic, Andorra, the United Arab Emirates and Switzerland were negotiated during the consultation process of the BEPS project. At the time of negotiation of those treaties, the results of the discussion drafts of the BEPS project were considered. Therefore, all of these treaties contain a general anti-abuse rule which is

<sup>29</sup> See note 5.

<sup>30</sup> See note 8.

similar to the final principal purpose test suggested by BEPS Action 6. Furthermore, the preambles of the treaties with Hungary, Andorra and the Czech Republic contain language similar to that suggested by the final BEPS Action 6 report. The treaty with Iceland was concluded after the release of the final reports on the BEPS project and includes clauses which were suggested by BEPS Actions 2, 6, 7 and 14.

To implement the new BEPS standard, Liechtenstein will have to amend existing double tax treaties. Liechtenstein is therefore part of the ad hoc group for the development of a multilateral instrument to modify bilateral tax treaties (Action 15).

Liechtenstein strongly encourages the need for a “level playing field” among countries in BEPS matters. International cooperation seems essential to approach this target and it seems that with the inclusive framework for the implementation of the BEPS project a suitable forum has been established by the OECD. Liechtenstein anticipates that further developments in this field will take place at the level of the inclusive framework and seeks to play an active role in further implementing and developing standards against BEPS.

The government analysed the outcomes of the BEPS project and of the BEPS-related rule changes in its proposal to amend the Tax Act. Therein, it is expressed that the BEPS project resulted in the initiation of tax reforms around the world, leading to stricter tax legislation. In addition to that, countries have increased the number of tax inspectors and specialists in transfer pricing to apply the BEPS-related rule changes in practice. As a consequence, the costs of reviews and audits will increase. Certainly, an increase in country related disputes is expected, leading to a higher demand for human resources. In this respect Liechtenstein’s taxpayers are facing the problem that Liechtenstein’s treaty network is still limited. Liechtenstein has concluded 17 tax treaties as of 5 December 2016, and, therefore, has currently a limited possibility for effective dispute resolution. Most of its current tax treaties are with European countries and its neighbours. Thus, the government of Liechtenstein is making great efforts to expand its tax treaty network to cover the countries relevant for its companies and businesses. Furthermore, Liechtenstein is striving to improve dispute resolution mechanisms as proposed in Action 14 and intends to continue to include arbitration clauses in its double tax treaties.

According to the reporter’s knowledge, no points other than the issues already addressed by the BEPS project were brought up by individuals in Liechtenstein.



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