

International Fiscal Association

2020

cahiers

de droit fiscal
international

VOLUME 105

**B: Exchange of
information: issues,
use and collaboration**



1938-2020

Summary and conclusions

In the past, a comprehensive legal and regulatory framework on exchange of information for tax purposes was established in Liechtenstein. Through the Liechtenstein Declaration of 12 March 2009 Liechtenstein has committed itself to the global standards for transparency and exchange of information in tax matters developed by the Organisation for Economic Cooperation and Development (OECD). Furthermore, with the Government Declaration of 14 November 2013 Liechtenstein committed itself as a so-called “early adopter” to the new standard of automatic exchange of financial account information (AEOI) under the Common Reporting Standard (CRS) of the OECD with a first exchange in September 2017.

Liechtenstein is member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (GFTEI) and also an active member on a rotation basis of the Peer Review Group, which is responsible for the supervision of the standards on exchange of information on request (EOIR) and AEOI. Like the other GFTEI members, Liechtenstein's EOIR framework and exchange practice is regularly assessed by the GFTEI, which in March 2019 re-confirmed Liechtenstein's “largely compliant” rating. Moreover, the assessment in the area of AEOI which is conducted in a staged approach has so far shown positive results.

Liechtenstein was one of the first non-OECD members to join the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) in 2016. Liechtenstein has implemented the BEPS minimum standards on tax transparency, covering BEPS Action 5 which requires compulsory spontaneous exchange of information on tax rulings (ETR) and BEPS Action 13 which foresees the automatic exchange of country-by-country (CbC) reports. The peer review conducted in both areas has not led to any recommendations for Liechtenstein, thereby confirming that Liechtenstein is meeting the standards on ETR and CbC.

Today, Liechtenstein offers a wide variety of bilateral and multilateral instruments which provide for a full range of mutual administrative assistance in tax matters, including exchange of information (EOI) on request as well as automatic and spontaneous EOI. While those instruments are fully functional, Liechtenstein ensures taxpayers' rights based on legislation of the European Union (EU) which is also applicable for Liechtenstein as a member of the European Economic Area (EEA) through appropriate procedural and confidentiality provisions.

This report provides a comprehensive overview of Liechtenstein's bilateral and multilateral EOI instruments and the related domestic framework. It also describes some of the challenges faced in EOI practice.

¹ Fiscal Authority of the Principality of Liechtenstein, Expert Automatic Exchange of Information.

1. Instruments and processes of international application

1.1. Introduction

With the Liechtenstein Declaration of 12 March 2009, the government of the Principality of Liechtenstein took a policy decision and committed itself to the global standards for transparency and exchange of information in tax matters as developed by the OECD.² Furthermore, with the Government Declaration of 14 November 2013, the strengthening of Liechtenstein's EOI framework as a political priority was reaffirmed and the AEOI was recognised as the future global standard.³ Conformity with international EOI standards is one of the key objectives of the Liechtenstein tax policy, as can be seen by a most recent statement of the Liechtenstein government.⁴

As a result of the political commitment, Liechtenstein proactively built EOI relationships around the world with several major economies using bilateral agreements including Double Taxation Conventions (DTCs), Tax Information Exchange Agreements (TIEAs), the Liechtenstein Disclosure Facility (LDF) with United Kingdom,⁵ the Tax Cooperation Agreement with Austria,⁶ the FATCA Agreement with the United States,⁷ the AEOI Agreement with the EU⁸ and the Competent Authority Agreement with the United States on the exchange of country-by-country reports (CAA-CbC-USA).⁹ Furthermore, Liechtenstein has also entered into multilateral instruments including the MAC,¹⁰ the MCAA-CRS¹¹ and the MCAA-CbC.¹² Based on the bilateral and multilateral EOI instruments, Liechtenstein provides

² Liechtenstein Declaration dated 12 March 2009, online available: www.oecd.org/countries/liechtenstein/42826280.pdf. Last accessed 1 October 2019.

³ Government Declaration dated 14 November 2013, online available: www.regierung.li/media/attachments/regierungserklaerung-nov13-eng_636254426136558755.pdf. Last accessed 1 October 2019.

⁴ Liechtenstein government, Financial centre strategy of the Government of the Principality of Liechtenstein, dated February 2019, online available: www.regierung.li/media/attachments/Financial-Centre-Strategy-for-Liechtenstein.pdf. Last accessed 1 October 2019.

⁵ 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, Legal Gazette 2010 No. 250.

⁶ Agreement of 29 January 2013 between the Principality of Liechtenstein and the Republic of Austria on the Cooperation in Tax Matters, Legal Gazette 2013 No. 432.

⁷ Agreement between the government of the Principality of Liechtenstein and the government of the United States of America to Improve International Tax Compliance and to Implement FATCA, Legal Gazette 2015 No. 5.

⁸ Agreement between the Principality of Liechtenstein and the European Union on the automatic exchange of financial account information to improve international tax compliance, Legal Gazette 2005 No. 111 in the version Legal Gazette 2015 No. 354.

⁹ Arrangement between the Competent Authority of the Principality of Liechtenstein and the Competent Authority of the United States of America on the Exchange of Country-by-Country Reports (CAA-CbC-USA), Legal Gazette 2018 No. 481.

¹⁰ Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol of 2010 (MAC), Legal Gazette 2016 No. 397.

¹¹ Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA-CRS), Legal Gazette 2016 No. 398.

¹² Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA-CbC), Legal Gazette 2016 No. 512.

for a comprehensive EOI framework covering over 100 jurisdictions for sending and receiving information regarding tax matters on request, automatically and spontaneously.

In relation to EOIR, Liechtenstein received in total 254 requests for information in the years 2016 to 2018.¹³ By responding to those requests, Liechtenstein helped foreign tax administrations in claiming their rightful tax. As no public information is available on requests for information sent by Liechtenstein to other jurisdictions, no conclusions can be drawn as to the importance of the EOI instruments for Liechtenstein tax purposes.

Regarding automatic EOI, Liechtenstein sent around 200,000 and received around 12,000 reports under the AEOI Agreement with the EU and the FATCA Agreement in the year 2017. Further exchanges were conducted in 2018 by sending approximately 315,000 and receiving around 31,000 reports whereby the 2018 exchange also covered signatories of the MAC/MCAA-CRS.¹⁴

In relation to tax transparency under the BEPS minimum standard, the first information on tax rulings was exchanged spontaneously in 2018, including past and future rulings. Furthermore, by the end of June 2018, Liechtenstein also conducted the first exchange of CbC reports covering 41 transmissions.¹⁵

These facts allow the conclusion that the progress Liechtenstein achieved in the last decade in the field of EOI not only shows a wide geographical expansion of its EOI network but also an increase in the types and volume of tax information which is shared with other jurisdictions. Liechtenstein thereby actively contributes to a world of tax transparency and tax cooperation to a wide extent.

Regarding costs of implementation, the Liechtenstein Fiscal Authority has established an International Division in 2010 which is responsible for tax information exchange. The EOI unit is adequately staffed and has so far been able to accomplish EOI in an effective manner.

1.2. Treaties

1.2.1. *Bilateral instruments*

Liechtenstein has a number of bilateral instruments which allow for EOI. This section focuses on the EOI based on DTCs and TIEAs. The DTCs and TIEAs of Liechtenstein primarily serve as a legal basis for the EOIR. Based on these bilateral tax treaties, it is also possible to implement the automatic exchange of information, which Liechtenstein has made use of in the TIEA between Liechtenstein and the United States for purposes of the FATCA Agreement. All other Liechtenstein TIEAs are limited to the EOIR. So far, Liechtenstein does not perform automatic exchange of information under a DTC. However, a number of Liechtenstein DTCs permit spontaneous exchange of information (SEOI) in tax matters.¹⁶

Liechtenstein's EOI instruments are in line with the OECD standard, which is reflected in

¹³ Liechtenstein government, Progress Report 2018, p. 69, online available: <https://www.llv.li/inhalt/118550/amtsstellen/rechenschaftsbericht-2018>. Last accessed 1 October 2019.

¹⁴ Liechtenstein government, Progress Report 2018, p. 69, online available: <https://www.llv.li/inhalt/118550/amtsstellen/rechenschaftsbericht-2018>. Last accessed 1 October 2019.

¹⁵ Liechtenstein government, Progress Report 2018, p. 62, online available: <https://www.llv.li/inhalt/118550/amtsstellen/rechenschaftsbericht-2018>. Last accessed 1 October 2019.

¹⁶ SEOI is permitted under the Liechtenstein DTC with Andorra, Austria, Czech Republic, Germany, Hungary, Iceland, Jersey, Lithuania, Luxembourg, Monaco, San Marino, Singapore, United Arab Emirates and the United Kingdom.

the OECD Model Tax Convention on Income and on Capital (DTC Model) and its commentary (DTC Model commentary) and in the Model Agreement on Exchange of Information on Tax Matters (TIEA Model) and its commentary (TIEA Model commentary).

As of 1 October 2019, Liechtenstein has signed DTCs with 20 jurisdictions, 19 of which are in force and applicable. The DTC with Lithuania has already been concluded but is not yet applicable. Liechtenstein is continuously extending its DTC network with various other treaties in preparation. Whereas the DTCs with Bahrain, Italy and the Netherlands have already been initialled, Liechtenstein has commenced negotiations with several other jurisdictions to establish a DTC. The current DTC contracting partners are Andorra, Austria, Czech Republic, Georgia, Germany, Guernsey, Hong Kong, Hungary, Iceland, Jersey, Lithuania, Luxembourg, Malta, Monaco, San Marino, Singapore, Switzerland, the United Arab Emirates, the United Kingdom and Uruguay.¹⁷

All DTCs concluded by Liechtenstein include the EOI clause consistent with the standard provision of article 26 of the DTC Model and its commentary in its most recent version at the time of signing the DTC. Liechtenstein signed its first DTC with Austria in November 1969 which originally did not provide for any EOI. As the Liechtenstein DTC with Austria did not fulfil the requirements of the current OECD standard, it was amended with effect as of 1 January 2014 and now includes the EOI provisions consistent with article 26 of the DTC Model. The next DTCs were signed with Luxembourg and San Marino in 2009 as well as with Hong Kong and Uruguay in 2010 followed by several other DTCs.

Since December 2008, Liechtenstein has signed 27 TIEAs, of which all are in force and applicable. The treaty texts of Liechtenstein's TIEAs are generally based on the TIEA Model and its commentary.

In accordance with the OECD standard, all of Liechtenstein's EOI agreements allow for the exchange of any information that is foreseeably relevant, thereby finding a balance in providing broad exchange of information without allowing fishing expeditions. Under the Liechtenstein DTCs, EOI applies to taxes of every kind and description and is not limited to the taxes to which the relevant DTC applies. One exemption is the DTC signed with Hong Kong which does not include indirect taxes within the scope of exchangeable information.¹⁸ All 47 of Liechtenstein's DTCs and TIEAs permit EOI regarding all taxpayers regardless of their residence in Liechtenstein or abroad.

Liechtenstein's EOI instruments allow for exchange of information in line with the confidentiality provisions of article 26(2) DTC Model and article 8 TIEA Model.

The wording of article 26(3) DTC Model and article 7 TIEA Model respectively is included in Liechtenstein's EOI agreements, prohibiting EOI which involves revealing a taxpayer's trade, business, industrial, commercial or professional secrets or that would be contrary to ordre public.

In line with article 26(4) DTC Model respectively article 5(2) TIEA Model, Liechtenstein gathers and exchanges information regardless whether Liechtenstein needs such information for its own tax purposes. This standard is incorporated in all of Liechtenstein's DTCs and TIEAs.

Liechtenstein mirrors article 26(5) DTC Model respectively article 5(4) TIEA Model in all of its DTCs and TIEAs ensuring that a request is not declined solely because the information

¹⁷ A list of all DTCs und TIEAs signed by Liechtenstein including the date of entry into force and applicability is online available: <https://www.llv.li/inhalt/11469/amtstellen/internationale-steuerabkommen>. Last accessed 1 October 2019.

¹⁸ Art. 25(1) of the DTC between Liechtenstein and Hong Kong limits the scope of exchangeable information to the taxes covered by art. 2 of the DTC.

is held by banks, other financial institutions, nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

It has to be mentioned that Liechtenstein entered into DTCs which include a clause for assistance in the recovery of taxes with Austria, Czech Republic, Germany, Iceland, Lithuania and the United Kingdom generally following the wording of article 27 DTC Model.

As all DTC and TIEA partners of Liechtenstein are also signatories to the MAC (except the United States), the OECD standard on EOI is also achieved through the MAC. Furthermore, the AEOL Agreement with the EU which was concluded in 2015 also provides for EOIR between Liechtenstein and all EU member states on a reciprocal basis. In the GFTEI Peer Review Report 2019, Liechtenstein received an overall rating of "largely compliant", proving that the EOIR is in accordance with OECD Standards.¹⁹

1.2.2. *Multilateral instruments*

In addition to bilateral instruments, Liechtenstein also adopted the multilateral approach as a basis for EOI by signing the MAC, the MCAA-CRS and the MCAA-CbC.

Since November 2013, Liechtenstein has been signatory to the MAC,²⁰ which entered into force in Liechtenstein on 1 December 2016 and is applicable as of 1 January 2017.²¹ The EOI under the MAC is generally possible for tax periods beginning on 1 January 2017. The MAC complements Liechtenstein's DTC and TIEA network by providing additional tools for a wide range of mutual administrative assistance in tax matters, including EOI on request,²² automatic²³ and spontaneous²⁴ EOI in line with the OECD standard. The MAC also enables Liechtenstein to conduct simultaneous tax examinations and tax examinations abroad.²⁵

The MAC expands Liechtenstein's EOI treaty network by adding a number of new treaty partners around the globe. Accordingly, Liechtenstein has EOI arrangements in line with the OECD standard with more than 100 partners which are signatories to the MAC. As all Liechtenstein DTC and TIEA partners are also signatories to the MAC (except the United States), the treaty partners are able to choose the instrument for their requests.

Liechtenstein implemented the mandatory provisions of the MAC while making reservations and declarations relating to some optional provisions.²⁶ Liechtenstein restricts the material scope of the MAC in providing administrative assistance only with regard to the taxes covered in the Liechtenstein Tax Act,²⁷ which is the personal income tax, the corporate income tax, the real estate capital gains tax and the wealth tax. Therefore, value-added taxes

¹⁹ OECD (2019), Global Forum on Transparency and Exchange of Information for Tax Purposes: Liechtenstein 2019 (Second Round): Peer Review Report on the Exchange of Information on Request, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/299793c5-en>, para. 1.

²⁰ A full list of jurisdictions participating in the MAC is online available: www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf. Last accessed 1 October 2019.

²¹ According to art. 28(6) MAC, the provisions of the MAC shall apply with effect on or after 1 January following the year of the entering into force of the MAC.

²² Art. 5 MAC.

²³ Art. 6 MAC.

²⁴ Art. 7 MAC.

²⁵ Arts. 8 and 9 MAC.

²⁶ Art. 30 MAC.

²⁷ Law of 23 September 2010 on National and Municipal Taxes (Tax Act), Legal Gazette 2010 No. 340.

or social security contributions fall outside the scope of the MAC.²⁸ However, certain bilateral agreements provide for a broader scope of taxes covered.²⁹ Liechtenstein excludes from the scope of the MAC also the administrative assistance in the recovery of tax claims or fines. Furthermore, Liechtenstein reserved the right to provide administrative assistance in the service of documents. However, for tax periods covered by the MAC, foreign tax authorities may deliver their documents directly (e.g. by mail) to Liechtenstein recipients. Generally, Liechtenstein provides administrative assistance for taxable periods starting on or after 1 January 2017. Nevertheless, in the case of deliberately committed tax offences which are liable to criminal sanctions, administrative assistance can also be provided retroactively for three years before the MAC entered into force (that is for the taxable periods beginning on or after 1 January 2013).³⁰ Liechtenstein further declared that the affected persons are generally notified by the Fiscal Authority before any EOI. This is based on legislation of the EU in the field of data protection law which is also applicable in the EEA.³¹

Based on article 6 of the MAC, Liechtenstein introduced a multilateral framework for automatic exchange of information by signing the MCAA-CRS in October 2014 and the MCAA-CbC in January 2016. The MCAA-CRS entered into force in Liechtenstein on 1 December 2016 and is applicable as of 1 January 2017. The MCAA-CRS represents together with the MAC the multilateral legal basis for AEOL in accordance with the CRS developed by the OECD. The MCAA-CbC is in force and applicable in Liechtenstein as of 1 January 2017 and serves together with the MAC as the multilateral legal basis for automatic exchange of CbC reports.

1.3. Regional regulatory framework

Regarding the regional regulatory framework relevant for EOI purposes, Liechtenstein as a member state of the EEA is subject to certain legislation on the European level. Liechtenstein has implemented the 4th EU Anti-Money Laundering Directive (2015/849) which fully takes into account the 2012 Recommendations of the Financial Action Task Force (FATF), including those related to the identification and verification of the ultimate beneficial owners. The definition of beneficial ownership was brought in line with the FATF 2012 Recommendations in 2015 along with the introduction of the AEOL. The International Monetary Fund together with the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) regularly assesses the regime of Liechtenstein on anti-money laundering (AML) and combating the financing of terrorism (CFT) regarding the compliance with the FATF Recommendations. In the most recent assessment, the Liechtenstein AML/CFT framework was overall rated positively with "compliant" or "largely compliant".³²

²⁸ Liechtenstein government, Report and Motion on the MAC and the MCAA-CRS, No. 64/2016, p. 27 et sq.

²⁹ For example, the Liechtenstein TIEAs with Andorra, Canada, People's Rep. of China, Germany or Italy include value-added taxes as well.

³⁰ Liechtenstein government, Report and Motion on the MAC and the MCAA-CRS, No. 64/2016, p. 53 et sq.

³¹ The Liechtenstein reservations and declarations to the MAC are available on the website of the European Council: www.coe.int/en/web/conventions/full-list/-/conventions/treaty/127/declarations. Last accessed 1 October 2019.

³² Moneyval Mutual Evaluation Report on the Fourth Assessment Visit in Liechtenstein 2014, online available: <https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680716b84>. Last accessed 1 October 2019.

Furthermore, as part of the implementation of the 4th EU Anti-Money Laundering Directive, the Law on the Register of Beneficial Owners of Domestic Legal Entities³³ entered into force in Liechtenstein on 1 August 2019. Persons subject to due diligence pursuant to article 3 of the Due Diligence Act³⁴ or the executive body of Liechtenstein legal entities are obliged to collect and provide information about the beneficial owners of Liechtenstein legal entities to the Ministry of Justice of the Principality of Liechtenstein.³⁵

In addition, Liechtenstein also took part in the process of the EU on the Code of Conduct on Business Taxation. On 2 October 2018, the Council of the EU held that Liechtenstein is compliant with all the tax good governance principles identified at the EU level, especially with regard to tax transparency and the implementation of anti-BEPS measures. As a consequence, Liechtenstein was removed from Annex II of the Councils' conclusions of December 2017.³⁶

1.4. BEPS related measures

In 2016, Liechtenstein joined the Inclusive Framework on BEPS developed by the OECD/G20 as one of the first countries not being member of the OECD. Thereby Liechtenstein declared its commitment to support the results of the BEPS project. The enrolment in the Inclusive Framework membership implied the obligation to implement the four minimum standards under the BEPS package, two of which are in relation to tax transparency, BEPS Action 5³⁷ and Action 13.³⁸ Action 5 deals with combating harmful tax practices and requires compulsory spontaneous exchange of information on tax rulings. Action 13 aims to increase tax transparency through transfer pricing documentation standards, including the use and exchange of CbC reports.

As a member of the Inclusive Framework, Liechtenstein has implemented those BEPS minimum standards and is actively engaged in the work at the level of the Inclusive Framework and its subsidiary bodies and ad hoc groups on an equal footing with OECD members.

1.4.1. *Spontaneous exchange of information on tax rulings (Action 5)*

In Liechtenstein, the SEOI is carried out in two forms: the spontaneous exchange of foreseeably relevant information and the spontaneous exchange of information on tax rulings (ETR). For both forms of SEOI, article 7 of the MAC constitutes the international legal basis. In addition,

³³ Law of 6 December 2018 on the Register of Beneficial Owners of Domestic Legal Entities, Legal Gazette 2019 No. 8.

³⁴ Law of 11 December 2008 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Act), Legal Gazette 2009 No. 47.

³⁵ The Register of Beneficial Owners is maintained by the Liechtenstein Department of Justice: <https://www.llv.li/inhalt/118560/amtstellen/verzeichnis-wirtschaftlicher-eigentumer-vwe>. Last accessed 1 October 2019.

³⁶ Council of the EU press release dated 2 October 2018, online available: www.consilium.europa.eu/en/press/press-releases/2018/10/02/taxation-liechtenstein-and-peru-meet-commitments-palau-removed-from-list-of-uncooperative-jurisdictions/. Last accessed 1 October 2019.

³⁷ OECD (2015), Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241190-en>.

³⁸ OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241480-en>.

Liechtenstein has concluded a number of DTCs, which also allow for SEOI according to the OECD standard.³⁹ The Liechtenstein TIEAs do not permit SEOI as the TIEAs were initially designed for EOIR purposes only. The following discussion focuses on the ETR, which was established within the scope of the BEPS package.

In line with the transparency framework of BEPS Action 5, Liechtenstein spontaneously exchanges information on tax rulings issued by the Fiscal Authority. The first information on tax rulings was exchanged spontaneously in 2018. Since 2018, the exchanges have taken place on a regular basis, i.e. as quickly as possible and no later than three months after the issuance date of the tax ruling. Generally, the exchange is carried out in a two-step process. First, the information set out in the template in Annex C of the OECD's Final Report to BEPS Action 5 is transmitted to the receiving country. In a second step, a copy of the tax ruling will be sent to the receiving country on request.⁴⁰ It seems that, contrary to the case in other countries, the issuance of tax rulings is not a common practice in Liechtenstein. Since 2012, the Fiscal Authority has issued fewer than 40 tax rulings in scope.⁴¹

In the year 2018, Liechtenstein's framework on ETR was assessed by the Forum on Harmful Tax Practices (FHTP) as a subsidiary body of the Inclusive Framework. The OECD confirmed that the requirements of the BEPS Action 5 minimum standard on ETR are satisfied. Consequently, no recommendations were made for Liechtenstein.⁴²

1.4.2. Country-by-Country Reports (Action 13)

Following the BEPS Action 13 minimum standard, Liechtenstein introduced CbC reporting, requiring Liechtenstein reporting entities of a multinational enterprise group with consolidated group revenue of at least EUR 750 million (CHF 900 million) to transmit a CbC report to the Fiscal Authority of Liechtenstein, which exchanges the CbC report with the competent authority of partner jurisdictions. As the Liechtenstein CbC reporting is designed on a reciprocal basis, Liechtenstein also receives CbC reports from abroad.

By the end of June 2018, Liechtenstein accomplished the first automatic exchanges of CbC reports relating to reporting fiscal year 2016 on the basis of article 6 of the MAC and the MCAA-CbC. As the MAC was not applicable in Liechtenstein with respect to the reporting fiscal year 2016, Liechtenstein has lodged a unilateral declaration and introduced a voluntary filing in order to exchange CbC reports relating to the fiscal year 2016. As only a few Liechtenstein enterprises are affected by CbC reporting (due to the threshold of EUR 750 million), Liechtenstein only conducted 41 transmissions of CbC reports in 2018.⁴³

³⁹ SEOI is permitted under the Liechtenstein DTC with Andorra, Austria, Czech Republic, Germany, Hungary, Iceland, Jersey, Lithuania, Luxembourg, Monaco, San Marino, Singapore, United Arab Emirates and United Kingdom. In contrast, the protocol provisions of the Liechtenstein DTCs with Georgia, Guernsey, Hong Kong, Malta, Switzerland and Uruguay foresee only EOIR, thereby excluding spontaneous exchange of information.

⁴⁰ Fiscal Authority, Merkblatt betreffend verbindliche Auskünfte und Zusagen (Steuervorbescheide), dated January 2018, online available: <https://www.llv.li/online-schalter>. Last accessed 1 October 2019.

⁴¹ Cf. OECD (2018), Harmful Tax Practices – 2017 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264309586-en>, p. 277.

⁴² OECD (2018), Harmful Tax Practices – 2017 Peer Review Reports on the Exchange of Information on Tax Rulings, op. cit., p. 277 et seq.

⁴³ Liechtenstein Government, Progress Report 2018, p. 62, online available: <https://www.llv.li/inhalt/118550/amtsstellen/rechenschaftsbericht-2018>. Last accessed 1 October 2019.

As of 1 October 2019, there are in total 74 partner jurisdictions⁴⁴ with which Liechtenstein agreed to automatically exchange CbC reports, all under the MAC and the MCAA-CbC (except the United States). In order to implement the CbC reporting with the United States, Liechtenstein signed the CAA-CbC-USA which is applicable for reporting fiscal years as of 1 January 2019.

Liechtenstein's compliance with the Action 13 minimum standard was confirmed by the OECD in the course of the first peer review⁴⁵ and the second peer review,⁴⁶ which focused on Liechtenstein's legal and administrative framework, the exchange of information aspects, as well as the confidentiality and appropriate use conditions regarding CbC reporting. The Peer Review Reports show that no recommendations have been made to Liechtenstein.

1.5. Global Forum related measures

Since 2009, Liechtenstein has been a member of the GFTEI, which is responsible for the supervision of the effective implementation of the international standards of transparency and exchange of information for tax purposes. Within the scope of the GFTEI, Liechtenstein introduced the two globally agreed standards, one of which is EOIR and the other is AEOI.

As a member of the GFTEI, Liechtenstein actively participates on a rotation basis in the Peer Review Group, which is responsible for reviewing the compliance of the EOIR framework with international standards. In June 2018, Liechtenstein hosted the 29th Meeting of the Peer Review Group in Vaduz. As of 2019, Liechtenstein is part of the Steering Group which coordinates the (future) activities of the GFTEI.⁴⁷

1.5.1. Exchange of Information on Request

Liechtenstein provides for the exchange of foreseeably relevant information concerning an individual taxpayer or a group of taxpayers on request, thereby following the OECD standard. Article 5 of the MAC, the AEOI Agreement with the EU as well as the EOI clauses in Liechtenstein's DTCs and TIEAs serve as the relevant international legal basis for EOIR.

In the last three years, Liechtenstein received 84 individual requests in 2016,⁴⁸ 88 in 2017 and 82 in 2018.⁴⁹

The GFTEI has assessed Liechtenstein's EOIR framework since 2010. In the first round of

⁴⁴ See art. 2 in connection with the Annex of the CbC-Ordinance.

⁴⁵ OECD (2018), Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1): Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264300057-en>, p. 436 et seq.

⁴⁶ OECD (2019), Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 2): Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/f9bf1157-en>.

⁴⁷ Liechtenstein government press release dated 15. June 2018, "OECD Global Forum meets in Liechtenstein", www.regierung.li/en/press-releases/203980. Last accessed 1 October 2019.

⁴⁸ Liechtenstein government, Progress Report 2016, p. 76, online available: <https://www.llv.li/inhalt/117850/amtsstellen/archiv-2016>. Last accessed 1 October 2019.

⁴⁹ Liechtenstein government, Progress Report 2018, p. 69, online available: <https://www.llv.li/inhalt/118550/amtsstellen/rechenschaftsbericht-2018>. Last accessed 1 October 2019.

the peer review, which was undertaken in two phases (Phase 1⁵⁰ and Phase 2⁵¹), Liechtenstein received an overall rating of “largely compliant” proving the legal and regulatory compliance and the effectiveness of its EOIR framework. In the second round of the peer review, the GFTEI again confirmed that Liechtenstein is “largely compliant” with the OECD standard.⁵² Other countries like Austria, Germany or the United States have achieved the same rating.⁵³ Nevertheless, Liechtenstein received a few recommendations for improvement. Noteworthy deficiencies in the implementation of EOIR in practice were identified with respect to the application of the foreseeable relevance standard and the concept of *ordre public*, which should be monitored by Liechtenstein.⁵⁴

1.5.2. *Automatic Exchange of Financial Account Information*

The supervision of the AEOI standard also falls within the responsibility of the GFTEI. Liechtenstein automatically exchanges financial account information of non-residents with its partner jurisdictions in accordance with the CRS, which is the global standard for AEOI. Liechtenstein financial institutions (e.g. banks, insurance companies or investment entities) are required to annually report financial account information (e.g. the bank account balance, the value of an insurance contract or the total value of the assets held by an investment entity, as well as interest, dividends or distributions) of each account holder which is a reportable person to the Fiscal Authority, which then forwards this information to the competent authority of the partner jurisdictions. The current AEOI network of Liechtenstein covers 108 partner jurisdictions and is continuously expanding.⁵⁵

Jurisdictions may establish an AEOI relationship either on a bilateral or multilateral basis. For the AEOI based on a DTC or TIEA, it is required to sign an additional bilateral Competent Authority Agreement (CAA) which sets out the operational details of the exchange with the other jurisdiction having a DTC or TIEA in place.⁵⁶ So far, Liechtenstein did not agree on a bilateral CAA to realise the AEOI under a DTC or TIEA. In general, the AEOI is conducted by Liechtenstein on the basis of article 6 of the MAC and the MCAA-CRS. Liechtenstein has also concluded the AEOI Agreement with the EU in October 2015, which has been in force and applicable since 1 January 2016 in accordance with the “early adopters” timeline. The AEOI

⁵⁰ OECD (2011), Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Liechtenstein 2011: Phase 1: Legal and Regulatory Framework, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/9789264117860-en>.

⁵¹ OECD (2015), Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Liechtenstein 2015: Phase 2: Implementation of the Standard in Practice, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/9789264245082-en>.

⁵² OECD (2019), GFTEI: Liechtenstein 2019 (Second Round), op. cit., para. 1.

⁵³ The GFTEI overall rating of the EOIR framework is online available: www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/. Last accessed 1. October 2019.

⁵⁴ OECD (2019), GFTEI: Liechtenstein 2019 (Second Round), op. cit., para. 272 et sqq and para. 349 et sqq.

⁵⁵ See art. 2 in connection with Annex 1 of the AEOI Ordinance; Liechtenstein Government, Report and Motion on the notification of partner jurisdictions pursuant to Section 7(1)(f) MCAA-CRS, No. 95/2019.

⁵⁶ See para. 9. DTC Model Commentary on art. 26(1) DTC Model.

Agreement with the EU replaced the EU Savings Tax Agreement⁵⁷ which was effective in Liechtenstein from 2005 to 2015.

As an early adopter⁵⁸ to implement the global AEOI standard, Liechtenstein successfully exchanged financial account information with the EU member states in September 2017. Further exchanges were conducted in 2018 and 2019 with EU member states and several signatories to the MAC and the MCAA-CRS.

The GFTEI completed the assessment of Liechtenstein's domestic legal AEOI framework in 2017 and made some recommendations for Liechtenstein. The recommendations concerned the definition of active NFE, investment entity, undocumented accounts, the voluntary classification as a financial institution and the AEOI due diligence procedures for new accounts. Liechtenstein addressed these recommendations in the course of an amendment of the AEOI Act with effect as of 1 January 2019.⁵⁹

1.6. Financial information

Liechtenstein signed an agreement with the United States to improve international tax compliance and to implement the Foreign Account Tax Compliance Act in May 2014 (FATCA Agreement). As the FATCA Agreement is based on the Model 1 Intergovernmental Agreement (IGA), Liechtenstein financial institutions report US person's financial account information to the Fiscal Authority of Liechtenstein which then forwards the data to the Internal Revenue Service (IRS). The first exchanges started in September 2015 concerning data which related to the reporting period 2014. Since then, exchanges have taken place automatically on an annual basis.

1.7. Administrative cooperation

Liechtenstein's EOI instruments provide for further techniques to collaborate in tax matters, such as simultaneous tax examinations or tax examinations abroad.

Article 8 of the MAC as well as Liechtenstein's tax treaties⁶⁰ allow the possibility for Liechtenstein and other states to simultaneously carry out tax examinations of taxpayers' affairs, each on its own territory, with a view to exchange any relevant information obtained. In practice, Liechtenstein has not yet participated in such simultaneous tax examinations.

Based on Liechtenstein's TIEAs and DTCs⁶¹ as well as the MAC, foreign tax authorities can request to enter Liechtenstein for an onsite interview of taxpayers, for an examination of records or to be present at tax audits in Liechtenstein. However, under the Liechtenstein domestic law such requests relating to tax examinations in Liechtenstein may only

⁵⁷ Agreement between the European Community and the Principality of Liechtenstein providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.

⁵⁸ The joint statement of the early adopter to the AEOI standard of October 2014 is online available: www.oecd.org/tax/exchange-of-tax-information/AEOI-early-adopters-statement.pdf. Last accessed 1 October 2019.

⁵⁹ Liechtenstein government, Report and Motion on the amendment of the AEOI Act, No. 59/2018.

⁶⁰ As the legal basis for simultaneous tax examinations is not explicitly mentioned in Liechtenstein's DTCs, it could however be derived from para. 9.1. DTC Model Commentary on art. 26(1) DTC Model.

⁶¹ Para. 9.1. DTC Model Commentary on art. 26(1) DTC Model.

be permitted under certain conditions: The presence of a foreign state's tax official in Liechtenstein has to be necessary for the proper execution of the request and it requires the written consent of the involved taxpayer as well as the authorisation of the Liechtenstein Ministry for General Government Affairs and Finance.⁶² As declared by Liechtenstein in its reservation to the MAC, requests under article 9 of the MAC relating to tax examinations abroad will in general not be accepted. Consequently, such tax examinations have not taken place in Liechtenstein so far.

1.8. Other issues

In January 2013, Liechtenstein and Austria entered into a Tax Cooperation Agreement⁶³ with effect as of 1 January 2014. The Tax Cooperation Law⁶⁴ constitutes the domestic legal basis for that agreement. Based on Part 2 of the Tax Cooperation Agreement, Liechtenstein paying agents (e.g. banks or fiduciaries) had to disclose financial assets of Austrian taxpayers held or administered by them (inter alia the identity of the Austrian taxpayer and the account balance). Alternatively, the taxpayer could choose a one-off payment in order to achieve a retrospective taxation of possible undeclared assets. With respect to financial assets of Austrian taxpayers held or administered by Liechtenstein paying agents beginning on 1 January 2014, Liechtenstein paying agents are required to levy a tax corresponding to the Austrian tax rate or opt for the voluntary disclosure of the taxpayer's financial data (Part 3 and Part 4 of the Tax Cooperation Agreement). These tools for tax cooperation are handled via the Fiscal Authority. Despite the applicability of the AEOI Agreement with the EU, the Tax Cooperation Agreement with Austria still remains in force in the version of the amending protocol. Under certain circumstances, financial accounts of Austrian taxpayers identified within the context of the AEOI due diligence procedures can be treated as excluded accounts under the AEOI framework and consequently be handled under the Tax Cooperation Agreement which is much more designed in accordance with Austrian domestic tax law.⁶⁵ The Tax Cooperation Agreement provides effective and efficient tools for cooperation in tax matters. As laid down in part 5 of the Tax Cooperation Agreement, tax inspections are conducted to verify whether the Liechtenstein paying agents fulfil their obligations arising out of the agreement. Moreover, the Liechtenstein Fiscal Authority has to inform the Austrian Tax Authority in a summary report on the results and key findings of the tax inspections.⁶⁶

In order to implement CbC reporting with the United States, the TIEA between Liechtenstein and the United States, which has been applicable since 1 January 2009, was extended with the amending protocol signed in May 2014 by including article 5A covering the automatic exchange of information. On the basis of article 5A of the TIEA between Liechtenstein and the United States, the CbC reporting was implemented by concluding the competent authority agreement (CAA-CbC-USA) which has been applicable since 1 January

⁶² Art. 17 EOI Act.

⁶³ Agreement of 29 January 2013 between the Principality of Liechtenstein and the Republic of Austria on the Cooperation in Tax Matters, Legal Gazette 2013 No. 432.

⁶⁴ Law of 8 November 2013 to the Agreement between Liechtenstein and Austria on the Cooperation in Tax Matters, Legal Gazette 2013 No. 434.

⁶⁵ Fiscal Authority, Guidance on the Automatic Exchange of Information in Tax Matters between the Principality of Liechtenstein and partner jurisdictions (AEOI Guidance), Version: 21 December 2018, para. 316 et seq.

⁶⁶ Art. 41(4) Tax Cooperation Agreement between Liechtenstein and Austria.

2019. Under the CAA-CbC-USA, the first automatic exchange of CbC reports will be conducted in the year 2021, covering CbC reports relating to the reporting fiscal year 2019.⁶⁷ The treaty text is largely based on the OECD CAA on the exchange of CbC reports on the basis of a TIEA (TIEA CAA); however, it also takes into account the special features of the US tax law.

In addition, the Liechtenstein Disclosure Facility (LDF) with the United Kingdom provided for a special disclosure mechanism for UK residents. However, since the LDF ended on 31 December 2015,⁶⁸ it will not be further discussed in this report.

2. Incorporation of the instruments and processes into domestic legislation

2.1. Domestic adoption

2.1.1. *Exchange of information on request*

The TIEAs with the United States and with the United Kingdom were the first TIEAs concluded by Liechtenstein. In order to implement those agreements into domestic law, Liechtenstein passed separate implementing legislation.⁶⁹ In order not to have separate laws for each TIEA in the future, Liechtenstein implemented the EOI Act⁷⁰ as the domestic legal basis for EOIR with all other partner jurisdictions in 2010. The EOI Act is based on the implementing laws for the TIEA USA and the TIEA UK. Therefore, the internal procedure for handling EOI requests is very similar.

After the Fiscal Authority has received a request for information from a requesting state, it first has to determine whether the request is permitted or whether there are grounds for refusal, e.g. if the requested year is not covered by the TIEA.⁷¹ In determining whether a request is admissible, Liechtenstein's EOI Act requires that a request must be framed with the "greatest degree of specificity possible"⁷² and must specify, inter alia, "the identity of the individual taxpayer".⁷³ In the past, Liechtenstein apparently rejected some requests which did not provide for names or addresses considering that it might be a fishing expedition.⁷⁴ However, according to the GFTEI Peer Review Report 2019⁷⁵, Liechtenstein changed its practice and allows also requests where a taxpayer can be determined based on another criterion, like

⁶⁷ S. 3 of the CAA-CbC-USA.

⁶⁸ Liechtenstein government press release dated 9 July 2015, "Liechtenstein and HM Revenue and Customs (UK) publish Fifth Joint Declaration", www.regierung.li/ministerien/ministerium-fuer-praesidiales-und-finanzen/entwicklung-intern-steuerabkommen/vereinigtes-koenigreich/. Last accessed 1 October 2019.

⁶⁹ Law of 16 September 2009 on Administrative Assistance in Tax Matters with the United States of America (US EOI Act), Legal Gazette 2009 No. 303; Law of 30 June 2010 on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Island (UK EOI Act), Legal Gazette 2010 No. 248; Ordinance of 31 August 2010 on Administrative Assistance in Tax Matters with the United Kingdom, Legal Gazette 2010 No. 254.

⁷⁰ Law of 30 June 2010 on International Administrative Assistance in Tax Matters (EOI Act), Legal Gazette 2010 No. 246.

⁷¹ Art. 9 EOI Act.

⁷² Art. 7(2) EOI Act.

⁷³ Art. 7(2)(a) EOI Act.

⁷⁴ OECD (2015), GFTEI: Liechtenstein 2015 (Phase 2), op. cit., para. 321 and 334 et seqq.

⁷⁵ OECD (2019), GFTEI: Liechtenstein 2019 (Second Round), op. cit., para. 272 et seqq.

the tax identification number. With this change in practice, Liechtenstein recognised that the foreseeable relevance criterion does not necessarily mean that the taxpayer must be identified by name.

As of 2016 and based on the Update of the DTC Model Commentary of 2012, Liechtenstein also allows so-called group requests. Therefore, where a request relates to a group of taxpayers not individually identified, this does not automatically lead to a refusal of the request. According to article 7(3) of the EOI Act, Liechtenstein accepts group requests if the requesting state provides a detailed description of the group, the behaviour pattern and the facts which have led to the request, as well as an explanation of the applicable law and why the taxpayers in the group have infringed that law. It is further required to indicate why the requested information is foreseeably relevant for determining the compliance by the taxpayers in the group and to give an explanation of how the request complies with the legal and regulatory requirements and administrative practice of the requesting state. The requirements for group requests are to be interpreted in line with paragraph 5.2. of the DTC Model Commentary of 2017.⁷⁶ According to article 31a of the EOI Act, group requests are generally permitted for tax years starting on or after 1 January 2016.

If a request is permissible, the Fiscal Authority gathers the information from the information holder, usually a bank, an insurance company or a service provider. During the internal procedure, the taxpayer is also informed about the request and the information to be sent. This is based on EU legislation in relation to data protection laws. In certain circumstances a procedure without prior notification of the taxpayer is possible, e.g. if the information of the taxpayer would undermine the foreign investigation or in case of urgency.⁷⁷ After the Fiscal Authority receives the information, the Fiscal Authority issues a decree. If no appeal is raised and the decree becomes legally binding, the information is sent to the requesting competent authority.

According to the GFTEI Peer Review Report 2015, Liechtenstein rejected some requests based solely on stolen data in the past. According to article 8(2) of the EOI Act, requests based on information obtained through judicially punishable acts have to be declined. In the GFTEI Peer Review Report 2015, it was recommended that Liechtenstein should modify its practice in relation to information based solely on stolen data.⁷⁸ According to the GFTEI Peer Review Report 2019, Liechtenstein is in the process of monitoring this issue in practice.⁷⁹

2.1.2. *Spontaneous exchange of information*

Liechtenstein introduced the SEOI by an amendment of the EOI Act which entered into force on 1 January 2018.⁸⁰ Furthermore, on the basis of article 29a(3) and article 30 of the EOI Act, the EOI Ordinance was introduced as of 1 January 2018 which sets out the details for the spontaneous exchange of information on tax rulings (ETR).

⁷⁶ Liechtenstein Government, Report and Motion on the EOI Act, No. 72/2015, p. 14 et sqq.

⁷⁷ Art. 28a et sqq EOI Act.

⁷⁸ OECD (2015), GFTEI: Liechtenstein 2015 (Phase 2), op. cit., para. 415 et sqq. and 429.

⁷⁹ OECD (2019), GFTEI: Liechtenstein 2019 (Second Round), op. cit., para. 272 et sqq and para. 343 et sqq.

⁸⁰ Art. 29a et sqq EOI Act.

According to article 93a of the Tax Act in connection with article 38a of the Tax Ordinance,⁸¹ it is possible to request from the Fiscal Authority a binding statement concerning the tax treatment of a precisely defined tax issue not yet realised or a binding commitment relating to a previously realised tax issue, both of which are regarded as tax rulings under article 3(1) (h) of the EOI Act. Information on tax rulings issued since 1 January 2012 (and still in effect on 1 January 2017) as well as on new tax rulings issued after 1 January 2017 falling in one of the five categories of article 29a(2) EOI Act are exchanged with the foreign tax authority spontaneously. In line with BEPS Action 5, article 29a(2) EOI Act covers tax rulings related to preferential regimes, transfer pricing, tax profit reductions, permanent establishments or related parties.

The SEOI is not restricted to ETR. Liechtenstein may, in accordance with the criteria of article 7 in connection with article 4(1) of the MAC, also disclose information to foreign tax authorities which might be of interest to them.⁸²

As under the EOIR procedure, in general the Fiscal Authority has to notify the entitled persons before conducting the spontaneous exchange of information. This is again based on the data protection law of the EU which is also applicable within the EEA.⁸³ If no objection is raised, the information is then sent to the partner jurisdictions concerned.

2.1.3. *Automatic exchange of information of financial account information*

Liechtenstein has put in place the domestic legislation to implement the OECD Common Reporting Standard on AEOI as of 1 January 2016. The primary and secondary legislation consists of the AEOI Act⁸⁴ and the AEOI Ordinance.⁸⁵ Furthermore, the Fiscal Authority has issued a comprehensive guidance on AEOI⁸⁶ which is updated on a regular basis and provides assistance in the interpretation of the national and international legal framework on AEOI including practical examples. The domestic legal basis for implementing the FATCA Agreement with the United States is the FATCA Act.⁸⁷

The AEOI Act as well as the FATCA Act contains detailed provisions on the obligations of the reporting financial institutions. Furthermore, both laws contain several provisions on the supervision of the financial institutions as well as a comprehensive compliance framework.

⁸¹ Ordinance of 21 December 2010 on National and Municipal Taxes (Tax Ordinance), Legal Gazette 2010 No. 437.

⁸² Art. 29a(1) EOI Act.

⁸³ Art. 29b in connection with art. 24 EOI Act.

⁸⁴ Law of 5 November 2015 on International Automatic Exchange of Information in Tax Matters (AEOI Act), Legal Gazette 2015 No. 355.

⁸⁵ Ordinance of 15 December 2015 on the International Automatic Exchange of Information in Tax Matters (AEOI Ordinance), Legal Gazette 2015 No. 358.

⁸⁶ Fiscal Authority, Guidance on the Automatic Exchange of Information in Tax Matters between the Principality of Liechtenstein and partner jurisdictions (AEOI Guidance), Version: 21 December 2018, online available: <https://www.llv.li/inhalt/117382/amtstellen/aia>. Last accessed 1 October 2019.

⁸⁷ Law of 4 December 2014 on the implementation of the FATCA Agreement between the Principality of Liechtenstein and the United States of America (FATCA Act), Legal Gazette 2015 No. 7.

2.1.4. Country-by-Country Reporting

The domestic legal framework to automatically exchange CbC reports consists of the CbC Act⁸⁸ and the CbC Ordinance⁸⁹ which both entered into force on 1 January 2017. The Fiscal Authority did not issue any additional guidance on CbC reporting, however, in practice the guidance published by the OECD is applied.

Liechtenstein has introduced the primary filing obligation for the ultimate parent entity (UPE)⁹⁰ and the surrogate parent entity (SPE)⁹¹ of an MNE group as well as the secondary filing mechanism upon request of the Fiscal Authority for constituent entities of an MNE group (so-called local filing).⁹² According to article 5 of the CbC Act, constituent entities resident in Liechtenstein of an UPE resident abroad which are not SPEs are required upon request of the Fiscal Authority to file the CbC report of the MNE group if the UPE of the MNE Group is not required to file a CbC report in its jurisdiction of residence or the jurisdiction of residence of the UPE is not a partner jurisdiction or there has been a systemic failure of the partner jurisdiction in which the UPE is resident.

In the course of the public consultation process in 2016, it was indicated that the majority of countries have also implemented a secondary filing obligation, which may affect constituent entities of a Liechtenstein UPE based abroad. The administrative costs of Liechtenstein UPEs would increase, if the CbC reports have to be filed in another jurisdiction (especially in order to cover the reporting fiscal year 2016).⁹³ To avoid a “gap year” which could lead to filing a CbC report in another jurisdiction, article 29 of the CbC Act provides for voluntary filing of CbC reports concerning the reporting fiscal year 2016 even though CbCR was introduced as of reporting fiscal year 2017. In practice, Liechtenstein UPEs widely used the possibility of voluntary filing of CbC reports relating to the reporting fiscal year 2016. Those reports were first exchanged with the relevant partner jurisdiction in 2018.

2.2. Tax administration authority

In order to implement the instruments for tax transparency, the Fiscal Authority was given the right to process the information and exchange it with other jurisdictions. However, the implementing laws are also considering and protecting the taxpayer's fundamental rights which are based on EU legislation.

Based on the domestic AEOI, FATCA and CbC procedural provisions, the Fiscal Authority is in a position to request all information which is necessary for the implementation of the relevant legislation.⁹⁴ The Fiscal Authority has the right to conduct inspections and to get

⁸⁸ Law of 4 November 2016 on the International Automatic Exchange of Country-by-Country Reports of Multinational Enterprise Groups (CbC Act), Legal Gazette 2016 No. 502.

⁸⁹ Ordinance of 20 December 2016 on the International Automatic Exchange of Country-by-Country Reports of Multinational Enterprise Groups (CbC Ordinance), Legal Gazette 2016 No. 510.

⁹⁰ Art. 3 CbC Act.

⁹¹ Art. 4 CbC Act.

⁹² Art. 5 CbC Act.

⁹³ Liechtenstein government, Report and Motion on the MCAA-CbC, the CbC Act and the amendment of the Tax Act, No. 99/2016, p. 11 et seq.

⁹⁴ Art. 20 AEOI Act, art. 10 FATCA Act or art. 14 CbC Act.

unrestricted access to relevant documents⁹⁵ as well as a right to request the restoration of lawful conditions.⁹⁶ Moreover, the Fiscal Authority is empowered to impose sanctions in case of non-compliance.⁹⁷ In EOIR cases, where the information holder does not provide the Fiscal Authority with the requested information, the Fiscal Authority, if necessary, could order coercive measures such as house or personal searches or confiscations.⁹⁸

While exercising its power, the Fiscal Authority takes into account the procedural rights of the affected persons to the extent provided under data protection law. Under article 10 AEOI Act and article 5a FATCA Act, reporting Liechtenstein financial institutions are obliged to inform the reportable persons about certain facts relating to the automatic exchange of the information. The reportable persons may exercise their rights, which especially include the rights set out in the Liechtenstein data protection legislation and the right for correction or deletion of any incorrect information.⁹⁹

Regarding EOIR, pursuant to article 10 EOI Act, the Fiscal Authority generally has to notify the entitled persons (persons affected by the request and information holder) about the receipt of the request and the information requested in it. The entitled persons have the right to participate in the procedure by e.g. inspecting the files. However, in exceptional cases the affected persons shall be notified only after the information has been transmitted to the requesting state, i.e. if the requesting state asks for secrecy and provides evidence that the notification would impede the success of the foreign investigation procedure or in case of urgency.¹⁰⁰

2.3. Institutional framework

In general, the Fiscal Authority of Liechtenstein is the competent authority under the applicable EOI legislation.¹⁰¹ Within the Fiscal Authority, the International Division has the overall responsibility for EOI. According to the GFTEI Peer Review Report 2019, the Fiscal Authority is adequately staffed considering the number of requests dealt with by the team of the International Division.¹⁰²

2.4. Confidentiality and data protection

All of Liechtenstein's EOI instruments include confidentiality provisions limiting the disclosure and use of information provided and received by the Fiscal Authority in the course of EOI procedures. In line with the OECD standard (especially article 26(2) DTC Model or article 22 of the MAC), the exchanged information must be treated as confidential in the same manner as information obtained under domestic law. The exchanged information may be disclosed only to persons or authorities (including courts and administrative bodies)

⁹⁵ Art. 21 AEOI Act, art. 11 FATCA Act or art. 15 CbC Act.

⁹⁶ Art. 22 AEOI Act, art. 12 FATCA Act or art. 16 CbC Act.

⁹⁷ Art. 28 et sqq AEOI Act, art. 17 et sq FATCA Act or art. 20 et sqq CbC Act.

⁹⁸ Art. 14 et sq EOI Act.

⁹⁹ Art. 12 et sq AEOI Act and art. 7a et sq FATCA Act.

¹⁰⁰ Art. 28a et sq EOI Act.

¹⁰¹ Art. 4(1) EOI Act, art. 2(4) AEOI Act, art. 2(4) FATCA Act, art. 2(2) CbC Act, art. 2(3) Tax Cooperation Law.

¹⁰² OECD (2019), GFTEI: Liechtenstein 2019 (Second Round), op. cit., para. 370.

concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the contracting party. The exchanged information shall be used by such persons only for such purposes. With regard to automatic exchange which is usually done in an electronic manner, Liechtenstein only exchanges information with its exchange partners if they meet the necessary confidentiality, data protection and security requirements.¹⁰³

From a domestic perspective, the confidentiality of tax information is preserved by a wide range of domestic provisions, including article 83 Tax Act, article 310 Criminal Code¹⁰⁴ or article 41 Data Protection Act.¹⁰⁵ Further domestic confidentiality provisions are laid down in article 22 EOI Act, article 15 et sqq AEOI Act, article 8a et sqq FATCA Act or article 9 et sqq CbC Act. Moreover, Liechtenstein has implemented the European standard on data protection in its domestic law.

Article 83 of the Tax Act defines the official secrecy obliging persons entrusted with the execution of the Tax Act (or consulted for that purpose) to maintain secrecy concerning the taxpayer's professional and private circumstances of which they gain knowledge in the course of their official activities and to maintain secrecy concerning deliberations with the Fiscal Authority. They also shall deny third parties' access to official records. All staff members of the Fiscal Authority and especially persons in charge of EOI are subject to sanctions under article 310 of the Liechtenstein Criminal Code in the case they violate their duty to keep official secrets confidential. Under article 42 of the Liechtenstein Data Protection Act, the deliberate and unauthorised disclosure of confidential personal data is punishable by up to one year of imprisonment or with a fine.

The confidentiality of taxpayer's information is in general protected at the level of the financial intermediary professional secrecy provisions, which basically state that professionals are under an obligation to keep client information secret. A breach of these provisions (especially data theft) is a criminal act in Liechtenstein. However, when it comes to EOI purposes, these domestic confidentiality provisions do not apply. Therefore, they do not constitute an obstacle for the Fiscal Authority to obtain and exchange information under the EOI instruments.

Newer Liechtenstein DTCs also include the last sentence of article 26(2) DTC Model extending the use of received information for other than tax purposes provided this is permitted under the laws of both states and authorised by the competent authority of the supplying state. Furthermore, article 22(4) of the MAC and article 6(5) of the AEOI Agreement with the EU contain the same wording. The AEOI Act¹⁰⁶ and FATCA Act¹⁰⁷ foresee the possibility for the use of information for other than tax purposes; however, the authorisation of the Fiscal Authority is required in any case. In contrast, the EOI Act which applies for EOIR and SEOI does not provide for such possibility.

Regarding CbCR, the use of information contained in the CbC reports is restricted to assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis and not for other purposes.¹⁰⁸

¹⁰³ Art. 7(2) AEOI Agreement with the EU, sec. 7(3) MCAA-CRS, sec. 8(5) MCAA-CbC.

¹⁰⁴ Criminal Code of 24 June 1987, Legal Gazette 1988 No. 37.

¹⁰⁵ Data Protection Act of 4 October 2018, Legal Gazette 2018 No. 272.

¹⁰⁶ Art. 15(3) AEOI Act.

¹⁰⁷ Art. 8a(3) FATCA Act.

¹⁰⁸ Art. 9(2) CbC Act.

3. Impacts of digitalisation on the established frameworks

The EOI framework of Liechtenstein currently does not contain specific provisions regarding digital assets. So far, the Fiscal Authority has also not issued any guidance or legislation with respect to the treatment of cryptocurrencies or crypto assets for EOI purposes. Where possible, it is expected that the existing EOI provisions would also apply with regard to digital assets, e.g. in case of a request for information.



International Fiscal Association