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B: Good faith in domestic  
and international tax law



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## Summary and conclusions

In Liechtenstein, the principle of good faith is indeed practiced, although its definition is missing in the legal tax documents. Already when looking at procedural law, it becomes clear how much importance is attached to good faith in society. Taxpayers and tax authorities have certain rights, but also obligations that they are obliged to fulfill. To establish the correct circumstances for tax assessment, taxpayers are required to cooperate. However, they also have the right to appeal an incorrect assessment or to submit evidence for the tax assessment during the tax assessment procedure.

In general, such bilateral cooperation is highly valued in Liechtenstein. Taxpayers may rely on the statements made by the authorities when making arrangements. If a responsible authority provides information on a precise factual situation in relation to a specific case, this information is deemed to be binding. By submitting a written tax ruling, taxpayers can obtain tax certainty in advance. The explicit circumstances of the case, including the names of the individuals and corporations involved, are disclosed to the tax authority, as well as the taxpayer's interpretation of the tax law. The tax authority can then confirm or reject the ruling on the basis of internal guidelines. In this way, tax certainty can be provided in advance and future disputes can be avoided.

Taxpayers' trust also rests on the prohibition of inconsistent behavior and the prohibition of official abuse of rights. Thus, tax authorities are allowed to change their opinion on a certain issue only with a reasonable justification. Taxpayers need to be informed about the change. With regard to the prohibition of abuse of rights, it is stipulated that changes in the law are subject to certain restrictions, such as a reasonable advance notice period or transitional provisions. The amendments to the law are only prospectively effective.

These practices reflect that in Liechtenstein, taxpayers or their representatives and the tax authorities cooperate strongly. They respect each other and address tax uncertainties in advance. This results in fewer disputes. This has been a long-established practice, which is of great importance and benefit to both tax authorities and taxpayers. Nevertheless, when disputes do arise, an out-of-court approach is taken initially. This practice is being pursued at an international level as well: Liechtenstein prefers bilateral agreements or settlements. Thus, Liechtenstein has also decided to implement the Common Reporting Standards for automatic exchange of tax information as well as the County-by-Country Reports of Multinational Enterprises.

Liechtenstein respects international tax treaties and negotiates and interprets them in good faith and in line with the OECD Commentary. No court cases or situations of treaty dodging or misinterpretation have been identified by the author to date whether based

<sup>1</sup> Partner, International Tax PricewaterhouseCoopers Switzerland and Liechtenstein.

on bilateral treaty, the MLI or information exchange. Liechtenstein's static interpretation of its treaties in line with the OECD Commentary and developments has proven to reflect its focus on international compliant interpretation.

## **Part One: Introduction and defining the principle of good faith**

### **1.1. General overview Liechtenstein**

The Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. On the basis of constitutional monarchy, the authority of the prince is limited and the power is with the parliament based on the Liechtenstein constitution. Liechtenstein is a civil law country with source of law in the Liechtenstein constitution. As Liechtenstein is a very small country, its legal system and organization has been built on elements sourcing mainly from Austrian, German and Swiss law. Accordingly, where relevant, respective reciprocity is applied for interpretation accordingly by courts and administrations where appropriate.

For international (tax) treaties (double tax treaties as well as information exchange treaties, MLI, etc.), Liechtenstein follows a monistic approach so that international tax treaties do not need to be translated into national law. However, a negotiated tax treaty with another state only takes legal effect once ratified by the parliament (Landtag) and signed by the prince.<sup>2</sup> As such, treaties have primacy over existing domestic legislation.

#### *EEA agreement*

As Liechtenstein is a member of the European Economic Area (EEA) but not a European Union (EU) member state (EEA member since 1 May 1995), certain areas of EU law are directly binding integrated law and Liechtenstein is obliged to continuously incorporate such EEA / EU law into Liechtenstein law. This, beside others, covers legislative areas of free movement of goods, people, services and capital (including e.g., anti-money laundering, MIFID, etc.). The EEA membership does not cover all legislative areas and in particular there is, beside other, no custom union, no common trade or tax politique and no currency union. This means that in the field of taxation, EU tax directives are not binding for Liechtenstein and hence tax matters are in the sole authority of Liechtenstein.<sup>3</sup> Accordingly, EU tax directives are not automatically applicable and binding for Liechtenstein unless the Liechtenstein parliament unilaterally passes identical or similar tax law following its democratic law-making process.<sup>4</sup>

#### *Swiss custom union*

Liechtenstein entered into a custom union with Switzerland in 1923. Accordingly, the Swiss franc is the currency of Liechtenstein as per the currency agreement signed in 1980 and it is controlled by the Swiss National Bank. The custom union also defines that, beside others,

<sup>2</sup> See also Irene Salvi, *Reconstructing the treaty network*, Cahiers de droit fiscal international, volume 105, 2020.

<sup>3</sup> See also Matthias Langer, *Das Liechtensteinische Steuerrecht*, Springer Gabler 2019, ch. 4.3.

<sup>4</sup> See Matthias Langer, *Das Liechtensteinische Steuerrecht*, Springer Gabler 2019, ch. 4.3.5.2.

two Swiss tax legislations immediately apply also in Liechtenstein. These include the Swiss Stamp Duty Law and the Swiss VAT code including respective ordinances.

The principle of good faith (“Treu und Glauben” und “Guter Glaube”) is a fundamental principle in Liechtenstein applicable on any dealings. It is defined as the obligation for correct, considerate and trustworthy behavior in legal dealings between individuals and public authorities.

Even though there is no direct public law source, the principle of good faith is applied as an over-arching principle finding its legal basis in the equality principle as per article 31 paragraph 1 of the constitution, the abuse prohibition (Willkürverbot), the constitutional fairness rule and as general rule of law. The legislative, Liechtenstein courts as well as administrative practice and behavior as well as professional lectures leave no doubt that the principal of good faith is a comprehensively applicable and fundamental right. The function of the principle of good faith has the meaning of a constitutional right where it protects an individual against the state while it is based on the general rule of law where it forms a behavioral duty of an individual against the state.<sup>5</sup>

In the Liechtenstein private law, the principle of good faith is provided in articles 2 and 3 of the personal and company law (PGR).

#### PGR article 2: Acting in Good Faith

1. Everyone shall act in good faith in the exercise of rights and in the performance of duties.
2. The obvious abuse of rights does not find legal protection.

#### PGR article 3: Good Faith

1. Where the law has attached a legal effect to good faith of a person, its existence is to be presumed.
2. Anyone who could not have acted in good faith when giving the attention that may be demanded under the circumstances is not entitled to invoke good faith.

The functionality is reflected as (i) confidentiality protection “Vertrauensschutz”, (ii) prohibition of abuse of rights “Verbot behördlichen Rechtsmissbrauch” and (iii) limitation of the legislative to change the applicable law at any time.<sup>6</sup>

Confidentiality protection is a constitutional right that protects an individual seeking advice from government (including tax administration). Accordingly, even a wrong advice given by a governmental body may be binding for a respective case if the following criteria are cumulatively met:<sup>7</sup>

- Confidentiality basis: The correct and responsible (competent) government body, on a request related to a specific case, has given an information or advice;
- Good faith: The individual is in good faith (the error or wrong answer of the government body was not recognizable using all diligence considering the experience and knowledge of the individual or its advisor);

<sup>5</sup> See also Andreas Kley, Hugo Vogt (2012): Rechtsgleichheit und Grundsatz von Treu und Glauben, in Grundrechtspraxis in Liechtenstein, vol. 52, S. 291-300.

<sup>6</sup> Andreas Kley, Hugo Vogt (2012): Rechtsgleichheit und Grundsatz von Treu und Glauben, in Grundrechtspraxis in Liechtenstein, vol. 52, S. 293.

<sup>7</sup> See also Andreas Kley, Hugo Vogt (2012): Rechtsgleichheit und Grundsatz von Treu und Glauben, in Grundrechtspraxis in Liechtenstein, vol. 52, S. 294ff.

- Confidentiality action: The individual has taken irrevocable (not easy to cancel) dispositions on the basis of the received advice;
- Balancing interest: There is no predominant public interest to be protected.

### 1.2. Good faith under a different name

The principle of good faith is recognized as outlined above, partially under the term of good faith but also embedded into the respective constitutional rights. While good faith is the core principle, in practice it comes in many facets so that terms of loyal conduct or cooperation, legitimate expectations, fair play and good governance and administration may be equivalent terms that all build on the overall behavior of good faith. This is also manifested in the vision and governance of the administration as published by the Ministry of General Government Affairs and Finance, stating that “The Ministry for General Government Affairs and Finance aims to pursue an active and transparent public information policy. All information is provided according to the fundamental principles of timeliness, appropriateness and balance.”<sup>8</sup>

## Part Two: Good faith in domestic tax law

### 2.1. General overview

The Liechtenstein tax law and in particular the fundamental principles, rights and responsibilities of the taxpayers, the tax declaration and assessment procedures as well as the relationship between the taxpayer and tax administration is of a cooperative nature and based on the principle of good faith. The Liechtenstein domestic tax law is short and to the point with the most relevant source being the Tax Code as per the “Gesetz über die Landes- und Gemeindesteuern” (SteG with 160 articles) and its ordinance (SteV with 51 articles) as well as the VAT Code (MWSTG) and its ordinance (MWSTV). This is supported only by some information leaflets, directives and practice guidance published by the Liechtenstein tax administration<sup>9</sup> and certain court cases. Given the limited administrative directives and case law, gaps in interpretation are generally dealt with in individual information requests, tax rulings or as part of the tax assessment procedure.

The Liechtenstein tax law has a clear legal basis in article 93 SteG instructing the tax administration to collaborate with the taxpayer. Further, articles 93a SteG and 38a SteV as well as in article 56 of the VAT code (MWSTG) rule the legally binding information requests for tax matters and accordingly manifest the principle of good faith directly in the tax code. This is further detailed in the tax ruling leaflet<sup>10</sup> published by the tax authorities.

Due to the custom union between Liechtenstein and Switzerland, the VAT code of

<sup>8</sup> <https://www.regierung.li/ministries/ministry-of-general-government-affairs-and-finance/> as well as <https://www.regierung.li/ministries/ministry-of-general-government-affairs-and-finance/integrated-financial-centre-strategy/>

<sup>9</sup> Tax administration online shop: <https://www.llv.li/onlineschalter?departmentName=Steuerverwaltung>

<sup>10</sup> Merkblatt betreffend verbindliche Auskünfte und Zusagen (Steuervorbescheide) dated January 2018 (<https://www.llv.li/files/onlineschalter/Dokument-2876.pdf>)

Switzerland and the Swiss stamp duty law (stamp duty on the issuance of equity, transfer of taxable securities and insurance premiums) also applies in Liechtenstein. While for VAT and on the basis of the custom union agreement, Liechtenstein has introduced an identical national Liechtenstein VAT code, the Swiss stamp duty law monistically<sup>11</sup> applies (the Swiss stamp duty code is directly binding in Liechtenstein and the Swiss federal tax authorities are responsible to assess and collect such stamp duty tax also for Liechtenstein). Accordingly, the Swiss<sup>12</sup> rules and interpretation also have an impact and one can find similarities and some interpretation references.

## 2.2. Good faith in the enactment of law

On the basis of article 93a of the constitution, any introduction or increase of direct or indirect tax or other fiscal levy is only permitted by approval of Parliament. As such the parliamentary process is public, transparent and takes a certain time, tax law changes are pre-announced and known while being designed or consulted. Further, article 67 of the constitution states that a new law, unless the law itself includes a specific enactment date, can only become enacted and effective within eight days after publication in the legal register. Accordingly, Parliament has the constitutional right to change a tax law at any time, however, within the principle of legality, proportionality and prohibition of inconsistent behavior such change either needs to be pre-announced or has to foresee a transition period. Liechtenstein has a history where amendments to tax law are made exclusively on a prospective basis and the adjusted law is effective no earlier than for the next fiscal year. As an exception, it may be valid sooner if it is in favor of taxpayers.<sup>13</sup>

The most recent example are new anti-abuse rules in terms of the applicability of the general corporate income tax exemption on participation income. Changes to the tax act entered into force on 13 July 2018, but as such rules are a significant change in the tax concept, apply for the first time to the tax assessment of the year 2019 and only to participations established or acquired after 1 January 2019. A three-year transition period applies to structures established before then. This allows taxpayers to have the required time to take actions in good faith and adapt to the new law as it might be required.

The equality principle is a constitutional right also applicable in tax that safeguards the principal of equal (identical situations are to be treated the same) and unequal treatment (non-identical situations are to be treated differently). In addition, the prohibition of contradictory behavior is another constitutional based rule of law that binds an individual and the government for correct, considerate and trusted behavior. Accordingly, there are no specific tax clauses as acting in good faith is directly based on the various constitutional rights.

Even though the Liechtenstein tax code is short, it is to the point and covers all relevant topics. While there is certainly room for interpretation, most articles are conceptually very specific so that their meaning and application are clear. As part of the parliamentary legislative process, new law and tax law is debated and discussed in Parliament. For that purpose, the background paper, the analysis as well as the interpretation and purpose

<sup>11</sup> This being an exemption to the generally dualistic system in Liechtenstein.

<sup>12</sup> See Switzerland branch report.

<sup>13</sup> Andreas Kley, Hugo Vogt (2012): Rechtsgleichheit und Grundsatz von Treu und Glauben, in Grundrechtspraxis in Liechtenstein, vol. 52, p. 291-300.

guidance are publicly available in the so called “Bericht and Antrag” documentation. Where deemed necessary, the Liechtenstein tax administration issued additional practice guidelines, information leaflets or calculation / declaration templates. In addition, the below mentioned tax ruling or binding information request is frequently used to clarify whether a certain rule or its interpretation applies to a specific case. The author assesses the clarity of the legislation as generally high in combination with the collaborative approach offered by the tax authorities.

### 2.3. Good faith in the administration of the tax system

#### *Good faith in the relationship between taxpayer and tax authorities*

In Liechtenstein, taxpayers can count on the protection of legitimate expectations, on the prohibition of contradictory behavior and on the prohibition of abuse of rights by the tax authorities.<sup>14</sup>

Article 93 SteG demands that the tax administration, together with the taxpayer, has to assess the factual and legal circumstances to ensure complete and correct taxation. Article 94 paragraphs 1 and 2 SteG demands from the taxpayer to file the tax return truthfully and complete and in case the return was inadequately filed or missing, the tax administration grants an appropriate period for the taxpayer to complete the missing pieces.

The tax code foresees different rights and duties to foster collaboration and transparency. Accordingly:

- Taxpayers have the right to see all filed information and for other information or documents in the file of the tax administration, there is a right of access once the investigation of the facts is completed by the tax administration, provided there are no public or private interests against it (article 88 SteG).
- Documents of evidence provided by the taxpayer are to be accepted provided they are relevant to assessing the facts (article 89 SteG).
- Taxpayers have the duty to do all reasonable effort to allow a complete and correct tax assessment and are accordingly obliged to provide oral or written information, support documents, vouchers or other documents relevant to the tax assessment. The client attorney privilege as well as other professional secrecy are to be adhered to (article 97 SteG).
- Also, third parties such as employers, pension funds, insurances, corporates in relation to board fees have an obligation to issue attestations on certain positions as per article 99 SteG, whereas the tax authorities can request such attestations directly from a third party if the taxpayer does not provide it. The list of such permitted attestations is however limited to specific cases such as employment income, board fees, and payments to beneficiaries.

As part of the ordinary tax assessment process as per article 101 SteG, the tax code demands collaboration. Lastly, article 103 SteG defines that those deviating assessments in comparison to the filed tax return must be highlighted by the tax administration. Accordingly, the tax procedural rules demand for collaboration and transparency of

<sup>14</sup> Andreas Kley, Hugo Vogt (2012): Rechtsgleichheit und Grundsatz von Treu und Glauben, in Grundrechtspraxis in Liechtenstein, vol. 52, p. 291-300.

taxpayer and tax administration on the outlined constitutional principles and rules of law and in particular the principle of good faith.

A tax assessment that has been finally assessed in the ordinary procedure can, under very distinct circumstances only, be re-opened, either by the tax administration (supplementary tax – *Nachsteuer* – article 120 SteG) or by the taxpayer (Revision – article 123 SteG). The supplementary tax is in favor of the tax administration as increasing the tax due and is only permitted in case new facts or evidence become available, that were not known to the tax administration at the time of assessment. Has the taxpayer however declared all aspects correctly in the tax return and is it a matter of valuation of certain positions, no such correction on an already final assessment can be claimed even if the valuation was too low. Article 120 paragraph 2 explicitly protects a taxpayer in good faith from such supplementary tax assessment. Only the supplementary tax due (including interest) can be levied but no penalties, provided the taxpayer acted in good faith.

Penalties as per the tax punitive rules occur where the taxpayer acted with negligence or willfully ignored procedural duties, endangered a tax assessment, or committed tax avoidance or tax fraud.

#### *Good faith with respect to information requests and tax rulings*

Apart from the tax code, there are not many published administrative directives nor detailed commentaries that provide clarity on how tax provisions are to be interpreted. Therefore, a trustworthy, qualitative and service oriented exchange of information is of crucial importance in Liechtenstein. Taxpayers can contact the tax administration in advance to obtain legal certainty. This principle, even though adhered to in the past based on the tax ruling leaflet, has in the meantime been embedded into the tax legislation in article 93a SteG per 1 January 2017. Binding tax rulings can be filed in any tax matters, including but not limited to the domestic tax code, the double taxation agreements (DTAs), as well as questions on the attribution of profits to permanent establishments (PE) and on transfer pricing. Therefore, there is no procedural difference between a ruling and an advance pricing agreement (APA).

Article 93a SteG uses the terms “binding advice / information and commitment”. The ruling leaflet clarifies that both are tax rulings according to article 3 paragraph 1 lit h of the international administrative assistance in tax matters law (SteAHG). Important is the differentiation of binding and non-binding rulings. Non-binding is general legal information or advice with no reference to a specific case as well as oral advice even if in relation to a specific case. Only written tax rulings are of a binding nature. Tax assessments as per the ordinary tax procedures are not qualified as binding information for the future.<sup>15</sup>

Tax rulings may be requested by individuals, legal entities, partnerships, trusts and any other person having a legitimate interest in the tax outcome of taxable events. In the request for a ruling, the taxpayer must state all relevant facts and legal questions of the case, including the names of the taxpayers and affected persons to whom the ruling would apply, and the taxpayer’s own legal opinion with a inferred approach to resolving the question. The tax authority should then confirm whether they agree with the opinion. If the tax authority does not approve the solution, the ruling is rejected. Administrative costs for obtaining a ruling are up to 2,000 Swiss francs. The validity of rulings is usually limited to a period of five to ten years. However, if the circumstances of the case or the legal basis (enacted new

<sup>15</sup> See BuA 2016/91\_page 42 – 50.



tax law) change, the binding assurance of the tax authority automatically ends. Rulings are not published, as the solution approach is only valid for the specifically stated facts and should not be recognized in a general way.<sup>16</sup> Tax rulings are however subject to automatic information exchange depending on the topics covered.

The ruling leaflet<sup>17</sup> does not oblige the tax administration to investigate facts presented as it is the taxpayers' obligation to include a comprehensive and complete description of the facts. The tax administration will only request additional information if the facts are unclear or misleading. Accordingly, the bindingness of a tax ruling is implicitly based on the principle of good faith. If the taxpayer did not act in good faith and the facts are wrong, a binding tax ruling becomes invalid. In addition, the tax ruling leaflet does not protect wrong advice and if a tax ruling granted is wrong, it can be revoked, but only with prospective future effect. Tax rulings are valid if the underlying facts presented in the ruling do not change and if the applicable tax law does not change.

Such tax rulings or binding information requests are very frequently used by taxpayers to obtain advance clarity. Liechtenstein has passed the law for spontaneous information exchange on tax matters (AIA law) effective as per 1 January 2016. Accordingly, tax rulings as defined for spontaneous information exchange are shared with other tax authorities.

### *Good faith during tax audit activities*

Tax audits are executed as integrated part of the ordinary tax assessment procedure described above and adhere to the same principles outlined in this report. Accordingly, the taxpayer files the tax return and the tax authorities performs the tax audit for income and net wealth as part of the ordinary tax assessment procedure following the above principles resulting in a final tax assessment.

### *Good faith regarding correction of errors and mistakes*

The correction of calculation or typing errors in legally binding assessed tax years is permitted as per article 125 SteG if identified and requested within five years upon the receipt of the tax assessment. Such adjustment is done upon request of the taxpayer or ex officio by the government body making the mistake.

### *Good faith regarding extra-statutory guidance*

The tax administration maintains an online shop where extra-statutory guidance including interpretation notes or safe harbor rules are published. Provided the individual fact pattern is covered by such guideline, a taxpayer should be able to rely on good faith for a tax position taken on the basis of such guidance. The most commonly used guidance for example is the published safe harbor interest rates on loans.<sup>18</sup>

<sup>16</sup> Hernández Daniel Fuentes and Vallada Felipe Pinto (2016): Liechtenstein branch report, Dispute resolution procedures in international tax matters, Cahiers de droit fiscal international, vol. 101a, p. 383.

<sup>17</sup> See ruling leaflet s. 3 para. 4 (p. 2).

<sup>18</sup> Merkblatt betreffend Zinssätze 2022 für die Berechnung geldwerter Leistungen.

## Part Three: Good faith in international tax law

### 3.1. General overview

The principle of good faith is equally applied in the interpretation and application of double tax treaties in Liechtenstein. The interpretation of tax treaties is as for any other international treaty based on respective international provisions including the Vienna Convention, UN Charter and OECD principles. Liechtenstein has 21 DTAs (double taxation agreements) and 34 tax agreements regarding the exchange of information.<sup>19</sup> The aim of Liechtenstein is, to constantly expand the treaty network. Upon negotiation of treaties, they are ratified by Parliament and signed by the prince in order to become effective. Once ratified by both parties and in effect, treaties are directly applicable (monistic approach).

Liechtenstein was an early adapter and has committed to implement the Common Reporting Standard (CRS) for the automatic exchange of tax information. The country belongs to the group of early adopters, which led in 2017 to the first automatic information exchanges for the year 2016. The Liechtenstein Parliament passed the law on the automatic exchange of information (AIA law) in 2015. The AIA law corresponds mainly with the OECD CRS and introduced a uniform standard for exchanging tax information with tax authorities of other countries. According to the legally effective information sheet on binding information and commitments (advance tax rulings), Liechtenstein has also committed itself to the spontaneous exchange of information regarding binding information (Advance Tax Rulings). The legal basis is included in the law for international administrative support in tax matters.<sup>20</sup> Liechtenstein favors an open exchange and tries to avoid conflict situations by clarifying issues in advance.

In addition, the Liechtenstein Parliament has passed the Law on the International Automatic Exchange of Country-by-Country Reports of Multinational Enterprises (CbC Reporting Law). The CbC Reporting Law entered into force on 1 January 2017. CbC reporting applies to Liechtenstein group holding companies with consolidated sales of at least CHF 900 million.<sup>21</sup>

Liechtenstein has also signed the Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting (MLI) and respective minimum standards became effective 1 January 2020.<sup>22</sup>

In line with the Liechtenstein Declaration published in March 2009,<sup>23</sup> Liechtenstein's attitude is constantly and clearly focused on the exchange of information as well as cross border cooperation. Such attitude is executed by the Liechtenstein tax authorities for both domestic and international tax law and its interpretation where the principal of good faith is consequently adhered to in the tax practice.

<sup>19</sup> <https://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf> (last accessed 20 July 2022).

<sup>20</sup> LGBl-Nr 2010.246 (<https://www.gesetze.li/konso/2010246000>).

<sup>21</sup> PwC Worldwide Tax summaries Liechtenstein (last accessed 23 July 2021).

<sup>22</sup> See Cahier de droits fiscal, volume 105, IFA 2020, Liechtenstein branch report by Irene Salvi.

<sup>23</sup> <https://www.regierung.li/ministries/ministry-of-general-government-affairs-and-finance/integrated-financial-centre-strategy/>

### 3.2. Good faith in treaty interpretation

The interpretation of tax treaties follows the Commentary to the OECD Model Convention for the interpretation of tax treaties as well as the newly available guidance in relation to MLI, CRS, information exchange, etc. The international treaties are interpreted in line with the Vienna Convention rules. The reporter assesses that the interpretation of tax treaties is stable, static and continuously using the well established guidelines in domestic and international tax law.

BEPS 2015 Action 14 Report contains nations' commitment to apply a minimum standard to guarantee that treaty-related disputes are resolved timely. The Liechtenstein tax treaties all include provisions on mutual agreement procedures following the OECD Model Convention Rules. A fact sheet has been published by the Liechtenstein tax authorities in 2017 outlining the principles and procedures relating to a MAP.<sup>24</sup>

A MAP profile is agreed to be published by all members of the inclusive framework on BEPS. The MAP profile provides statistics and useful information, increasing transparency across jurisdictions. The last available Liechtenstein MAP profile is from 2020.<sup>25</sup> Liechtenstein had, at the beginning of 2020, a total number of 19 cases with four cases relating to transfer pricing. The majority of these cases are with the neighboring country Austria. For all transfer pricing cases to date, an agreement was found fully eliminating double taxation; for the others, 90% were withdrawn by taxpayers, while in 10% of the cases no agreement was found. As at the end of 2020, the total MAP cases was nine pending (thereof three relating to transfer pricing). The average time taken in months for post 2015 cases from start to end is 16.76 months or 1.4 years. The fact that 90% of the cases started in 2016, were withdrawn by taxpayers with no final agreement, hints that to reach a resolution time is key. While the MAP statistics are now published, resolutions reached or reasons for non-agreements in specific MAP cases are not publicly available.

With respect to good faith in a MAP procedure, the Liechtenstein MAP fact sheet and guidelines explicitly confirm in section 3.1.6 that a MAP can also be initiated "in cases where double taxation results from an adjustment made by a taxpayer himself in good faith to a previously submitted tax return, when the adjustment made related to the attribution of permanent establishment profits or transfer pricing". The author interprets this as a clear acknowledgment of the principal of good faith to be binding on all levels.

A MAP procedure is legally binding and as per SteG article 124, it is an explicit legal basis to open and adjust an otherwise final tax assessment.

The country adopted part of its tax laws from neighboring countries Switzerland and Austria and interpretation in practice is in line with respective practices. The Liechtenstein absence of unilateral withholding taxes on payments for dividends, capital gains, licenses and royalties paid to other countries reduces international disputes and limits most disputes to transfer pricing, residence, permanent establishment and information exchange. At the court of justice of the European Union, there are neither past cases nor open cases for Liechtenstein regarding bilateral conventions for the avoidance of double taxation.<sup>26</sup>

Searching for the keyword good faith ("Treu und Glaube") in the section of the

<sup>24</sup> <https://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf>

<sup>25</sup> <https://www.oecd.org/tax/dispute/2020-map-statistics-liechtenstein.pdf> (last accessed 21 July 2022).

<sup>26</sup> <https://curia.europa.eu> (last accessed 21 July 2022).

Liechtenstein court decisions<sup>27</sup> about tax law, only 49 court cases<sup>28</sup> are found. Of these none are found relevant for the purpose of this report in relation to tax or treaties. Moreover, in the OECD Report on Treaty Shopping (2022), documenting the prevention of tax treaty abuse (BEPS Action 6), it is concluded that “no jurisdiction has raised any concerns about their agreements with Liechtenstein”.<sup>29</sup> The author interprets the lack of MAP and domestic court cases as proof that the principle of good faith is actually executed in the daily dealings of the tax authorities and tax payers accordingly.

### 3.3. Potential treaty breaches of good faith

There is a higher risk of abuse of good faith when the state is in a position of power to influence the negotiation, observation and interpretation of its treaties.<sup>30</sup> This situation could happen to the state with the strongest economy in an international treaty. Liechtenstein had a 6.43 billion USD GDP in 2019; this is a small economy when compared with the GDP of its neighboring countries such as Switzerland with 731 billion (2019) and Austria with 445 billion (2019).<sup>31</sup> Despite Liechtenstein’s small economy size the number of international treaties with other jurisdictions is increasing and Liechtenstein has a clear intention to expand the treaty network. For Liechtenstein, a breach of the principle of good faith in the interpretation of an international treaty or using domestic law to override it would damage both its image and reputation, with uncertain consequences.

Article 3(2) of the OECD Model Tax Convention provides a potential situation, in which the principle of good faith could be exploited maliciously. This article allows the domestic state law to prevail in case there is not a defined term of the convention.<sup>32</sup> The same concern is also stated in the OECD Commentary, declaring unlawful the practice to amend in retrospect the substance of the convention through domestic law.<sup>33</sup> These practices are neither observed in Liechtenstein domestic tax law, nor in court cases, at the time of writing this report.

Good faith in the international exchange of information is described by article 26 of the OECD Model. In some cases, the treaty might allow the right to refuse information exchanges. The refusal reason must be solid and well argued. In the past, the Liechtenstein tax authority has refused to exchange information requested by another state. For example, the Liechtenstein tax authority declined a few requests which were solely based on stolen data. This was supported by article 8(2) of the EOI Act stipulating that requests based on information obtained through judicially punishable acts must be declined. In contrast, the exchange of information treaties does not contain a provision stipulating that a request

<sup>27</sup> <https://www.gerichtsentscheidungen.li/>

<sup>28</sup> [https://www.gerichtsentscheidungen.li/default.aspx?z=NROI5riOwKsjbR-4kjFOv2icYcshqgkMzmkus6cFS7rMXZP\\_qELUY6GBHBYDfNcDug1](https://www.gerichtsentscheidungen.li/default.aspx?z=NROI5riOwKsjbR-4kjFOv2icYcshqgkMzmkus6cFS7rMXZP_qELUY6GBHBYDfNcDug1) (last accessed 21 July 2022)

<sup>29</sup> <https://www.oecd-ilibrary.org/docserver/25c8a1c3-en.pdf?expires=1659513283&id=id&accname=guest&checksum=85211964C54C509242494CB3AAF16AO3> (last accessed 03 August 2022).

<sup>30</sup> BTR (2003): The principle of good faith for the application and interpretation of double taxation Conventions, p. 173.

<sup>31</sup> The World Bank database, GDP in USD 2019 (last accessed on 20 July 2022).

<sup>32</sup> BTR (2003): The principle of good faith for the application and interpretation of double taxation Conventions, p. 185.

<sup>33</sup> OECD Commentary on art 3, para. 13 (added in 1992).

must be declined if it is based on stolen data. Consequently, from the perspective of the requesting state, this might be interpreted as Liechtenstein tends to prioritize its domestic position over its international legal obligations which might indicate a breach of the good faith principle in this case. However, in the reporter's view, it seems that Liechtenstein does not follow this interpretation anymore. In May 2019, the highest court of Liechtenstein authorized the exchange of information regarding a request from France which originated from stolen bank data (StGH 2019/027). Also, since the entry into force of the first exchange of information agreements in tax matters in Liechtenstein, court decisions have been issued to enforce compliance with these exchange of information requests.

*As a consequence, the interpretation of OECD guidelines for treaties, along with the prioritization of public order and public interest, shall take precedence* (StGH 2020/106). The reporter is also not aware that any refusal of exchange of information has ever resulted in a breach of good faith from the perspective of a requesting state, as different court decisions confirm the exchange of information to requesting states (StGH 2019/005, StGH 2019/113, StGH 2020/017, StGH 2020/014). Furthermore, the peer review of the Automatic Exchange of Financial Account Information conducted by the OECD in 2021 highlights that the Liechtenstein's legal framework is in place and fully compliant.<sup>34</sup>

Another aspect of the exchange of information is the absence of a time limit in OECD article 26 to provide the required information. Good faith plays an important role in assessing other parties needs and providing the data in respect of time. An exception is given by article 26(2) b), stating that no obligation to exchange data arises when such data is not available.

The reporter is not aware of situations where domestic tax law results in treaty overrides. Also, Liechtenstein's tax law changes to date have not dodged tax treaties, nor overridden the international view of tax treaties, MAP procedures or information exchange cases which could lead to the breach of good faith in treaty application and interpretation.

## **Part Four: Remedies for a breach of good faith between contracting states**

Based on the facts presented in this report, no potential breach of good faith in an international and national setting was identified for Liechtenstein. The author is not aware of remedies invoked by Liechtenstein such as expert opinion, official protest, suspending or termination of treaty nor litigation to the International Court of Justice. As outlined above, there are few MAP procedures in progress but as the statistic shows, it is a limited number only, mainly dealing with specific transactions rather than remedies for a breach of good faith.

The Liechtenstein tax law is characterized by a very competent and citizen-friendly administration. Taxpayers themselves or their advisors and administration meet with respect and both sides always seek dialogue with each other to prevent or resolve disputes for the interpretation of domestic and international tax matters. This represents a long-

<sup>34</sup> [https://read.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2021\\_c7259553-en#page2](https://read.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2021_c7259553-en#page2) (last accessed 3 August 2022).

established practice that is of great importance and benefit to both the tax authorities and taxpayers.

However, if conflicts arise, an attempt will first be made to resolve them out of court. The taxpayer may file an objection to the tax authority within 30 days of being served with official orders. This must be submitted in writing and include evidence. The objection is associated with costs and risks, which the taxpayer must bear if the application is not approved in its entirety. Appeals against decisions of the Tax Administration may be filed with the National Tax Commission within 30 days from the date of notification of the decision. Thereafter, judicial actions must be pursued.

The principle of good faith is not only practiced, but also reflected in Liechtenstein legislation. To obtain correct and fair taxation, legally binding assessments can even be changed retrospectively. There is the possibility of retrospective correction on the part of the tax authorities and on the part of the taxpayer. The post-tax procedure deals with the correction in favor of tax authorities. If certain facts or evidence were unknown at the time of the assessment, an after-tax payment, including interest, must be made. The after-tax procedure can be initiated up to five years after the assessed tax year. On the other hand, the revision procedure enables the correction in favor of taxpayers. If significant facts or evidence are newly discovered, or if the tax authority has disregarded them, or if other procedural principles have been violated, revision proceedings may be initiated. This should not be attributed to the taxpayer's lack of due diligence. The proceedings must be instituted within 90 days of discovery of the reason for the appeal, but at the latest within ten years of delivery of the decree.<sup>35</sup>

<sup>35</sup> Langer Matthias (2019): Das liechtensteinische Steuerrecht, Grundlagen und Regelungen inklusive Besteuerung von Blockchain- und FinTech-Unternehmen, p. 191-194.



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