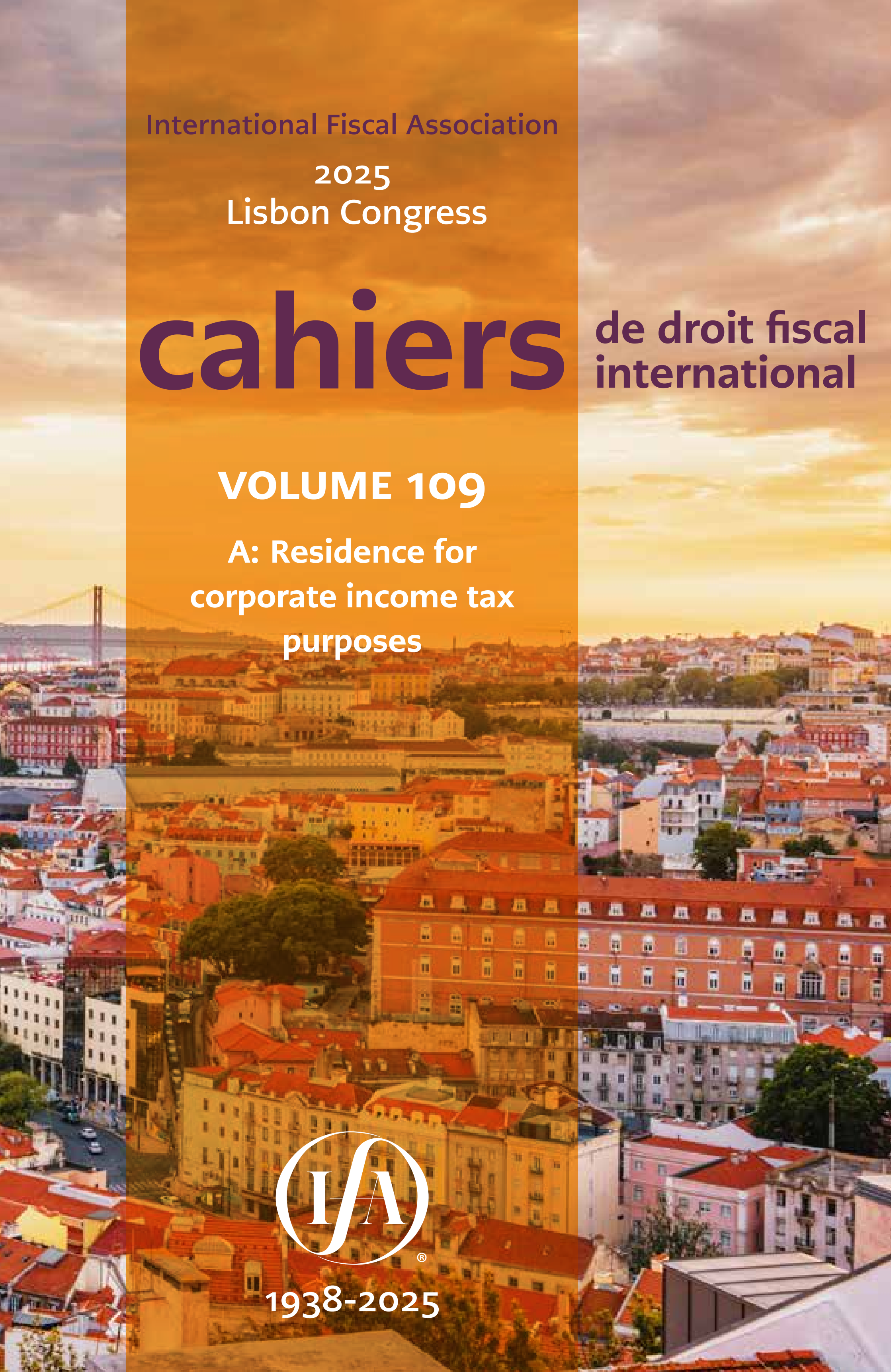

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A: Residence for corporate income tax purposes

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Summary and conclusions

According to article 44 (1) of the Liechtenstein Law on National and Municipal Taxes (Tax Act; SteG), legal entities are subject to unlimited corporate tax liability if their legal domicile or effective place of management is in Liechtenstein. Domicile, for legal entities, is the place determined by the law of incorporation, company contracts, and articles following the incorporation theory. The effective place of management is defined as the place where the centre of the undertaking's supreme management is located, i.e., where the strategic management decisions that are decisive for the specific undertaking are made. The report also highlights that the choice of a company to establish its domicile in Liechtenstein leads to unlimited tax liability, regardless of whether the place of effective management is in Liechtenstein or abroad. Legal entities that have neither their registered office nor the place of effective management in Liechtenstein may only become subject to limited tax liability on their domestic income (permanent establishment or real estate).

Residency for tax purposes is a fundamental concept for Liechtenstein. In Liechtenstein, the determination of residency is based on overall facts and circumstances aligned to the legal entity's activity and purpose.

The domestic rules as well as the treaty rules and their interpretation are closely aligned to the OECD MC article 4. The general tiebreaker rule is the place of effective management (with some exemptions). In particular, the tax treaty with Austria includes a special rule requiring an entity to have its corporate domicile and place of effective management in the same jurisdiction in order to qualify as tax resident for the tax treaty Liechtenstein-Austria.

The report takes into consideration practice experience resulting from advance tax rulings as well as tax assessment discussions. It is clear, that the focus is on the decision-making activity as the driver of the place of effective management. The increasing digitalization further emphasizes this element. The most important takeaway is that tax residency based on the place of effective management is assessed based on all specific facts and circumstances of the respective case and is thus highly case specific.

The lack of court cases confirms that there is no crisis on residency and, despite the fact that many foreign incorporated entities are tax resident in Liechtenstein due to their effective place of management in Liechtenstein, no double taxation typically results.

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1. Introduction

According to article 44(1) of the Liechtenstein Law on National and Municipal Taxes (Tax Act; SteG), legal persons are subject, along with their entire corporate income, to *unlimited* corporate tax liability if their legal domicile ("Sitz") *or* effective place of management ("Ort der tatsächlichen Verwaltung") is in Liechtenstein. In accordance with article 44(1)(a) SteG, corporate bodies (legal persons / entities) are in particular associations ("Verein"), companies limited by shares ("Aktiengesellschaft"), partnerships limited by shares ("Kommanditaktiengesellschaft"), companies limited by parts ("Anteilsgesellschaft"), limited liabilities companies ("Gesellschaft mit beschränkter Haftung"), cooperative societies ("Genossenschaft"), mutual insurance associations ("Versicherungsverein auf Gegenseitigkeit"), establishments ("Anstalt") and foundations ("Stiftung"). As per article 44(1)(b) also organisms for collective investments in transferable securities (UCITS) as referred to in the Law on UCITS, investment undertakings as per the Law on IUG and alternative investment funds as referred to in the Law of AIFM or comparable undertakings for collective investments set up under the law of another jurisdiction, except investment partnerships ("Anlage-Kommanditgesellschaft oder Anlage-Kommanditärengesellschaft") without legal personality or comparable undertakings for collective investments set up under the law of another jurisdiction qualify as corporate tax subject. Lastly as per article 44(1)(c) SteG also the trust enterprises with legal personality ("Trust reg. / Treuunternehmen mit Persönlichkeit")[2] are considered corporate tax subjects. Partnerships are not subject to the provision for corporate income tax and are taxed in a transparent manner. The above list is exemplary and the term legal entity in the tax law goes beyond the scope of legal entity in the private corporate law. Foreign legal entities are to be compared accordingly to whether they qualify as corporate tax subject.[3]

According to article 2(1)(e) SteG, "domicile" means, in the case of legal persons, the place determined by law, company contract, articles or the like. As per article 232(1) IPRG, Liechtenstein applies the concept of incorporation theory. Where no such legal domicile provision exists, the effective place of management is considered the domicile.[4] It, therefore, has to be noted that the choice of a company to establish its domicile in Liechtenstein leads to unlimited tax liability, regardless of whether the place of effective management is in Liechtenstein or abroad.[5]

The "effective place of management", according to article 2(1)(d) SteG, is defined as the place where the centre of the undertaking's supreme management is located, i.e. where the strategic management decisions that are decisive for the specific undertaking are made ("Mittelpunkt der unternehmerischen Oberleitung").[6] As Liechtenstein incorporated

[2] Liechtenstein Private Corporate Law (PGR), beside the standard transparent trust, also foresees a so-called trust reg (registered trust enterprise) as per art. 932a §§ 1 to 170 PGR resp. §§ 1 to 170 of TrUG, which allows many different uses. For further information see: https://www.liechtenstein-business.li/en/economic-area/Founding-a-company/Legal-forms/Registered-Trust-Enterprise-Trust-reg .

[3] See also 2014 Congress in Mumbai, IFA Cahiers Vol. 99B *Qualification of taxable entities and treaty protection, Liechtenstein report*, Bernhard Canete on the qualification of legal entities for corporate tax.

[4] See BuA 48/2010, p. 61 and p. 62 and art. 113 PGR (Liechtenstein Law on Persons and Companies); Hosp and Langer, *Steuerstandort Liechtenstein* (2011), p. 85.

[5] See Matthias Langer, Das liechtensteinische Steuerrecht, Springer Gabler 2019, ch. 4.8.1.1.1.

[6] See Matthias Langer, Das liechtensteinische Steuerrecht, Springer Gabler 2019, ch. 4.8.1.1.1; BuA 83/2010, p. 77 *and* BuA 48/2010, p. 61.

legal entities are per se tax resident in Liechtenstein, the concept of effective place of management is relevant to prove (if questioned by another jurisdiction) whether or not the Liechtenstein entity is actually tax resident in another jurisdiction, while for non-Liechtenstein incorporated legal entities, the concept of effective management is relevant to assess whether such entity should actually be tax resident in Liechtenstein. Legal entities that have neither their registered office nor their place of effective management in Liechtenstein are only subject to *limited* tax liability on their domestic income (e.g. Liechtenstein permanent establishment, real estate, etc).

The concept of effective management for foreign incorporated entities is highly relevant in the Liechtenstein tax practice as in particular many foreign corporate entities are often managed by Liechtenstein fiduciaries as part of a Liechtenstein managed private investment structure (foundation or establishment).

While many structures are Liechtenstein tax resident due to the effective place of management in Liechtenstein, there is no actual Liechtenstein court decision or MAP on such topic. Cases to assess the effective place of management are typically discussed as part of an upfront tax ruling to clarify the situation or as part of the tax assessment procedure.

2. The concept of residency

2.1. At the domestic level

2.1.1. Criteria used to define residency of legal entities

The effective place of management according to article 2(1)(d) SteG is defined as the place where the centre of the undertaking's supreme management is located, i.e. where the strategic management decisions that are decisive for the specific undertaking are made ("Mittelpunkt der unternehmerischen Oberleitung").[7]

As part of the parliamentary discussion, the Liechtenstein government explained that the centre of undertaking's supreme management is the place where the strategic decisions are performed. The Liechtenstein government clarified that an enterprise's supreme management centre is where *strategic decisions are made*. The location where these decisions have impact ("Ort des Wirksamwerdens") or are executed ("Umsetzung der Entscheidung") is irrelevant.[8] These strategic decisions must significantly impact the company. A one-time vote or limited decision-making power within clearly predefined boundaries is generally not enough.[9] For instance, the decision between different investment objects within a clearly predefined investment strategy is not a strategic key decision.[10] As an example, a non-Liechtenstein incorporated foundation has very clear instructions given by the founder

7 See Matthias Langer, Das liechtensteinische Steuerrecht, Springer Gabler 2019, ch. 4.8.1.1.1; BuA 83/2010, p. 77 *and* BuA 48/2010, p. 61.

8 See Roger Frick, in: Bulletin no. 27 (November 2014) of Allgemeines Treuunternehmen and Matthias Langer, Das liechtensteinische Steuerrecht, pp. 129 *et seq*.

9 See Matthias Langer, Das liechtensteinische Steuerrecht, Springer Gabler 2019, ch. 4.8.1.1.1; as well as BuA 48/2010, p. 61 *et seq*.

10 See Matthias Langer, Das liechtensteinische Steuerrecht, Springer Gabler 2019, ch. 4.8.1.1.1; as well as BuA 48/2010, p. 61 and 62; BuA 83/2010, 11 *et seq*.

on how to invest the assets and the discretion of the foundation board is very limited. As such, the limited decision made by a Liechtenstein-based board member to select between two possible investments should not draw the foreign foundation to become a Liechtenstein tax resident entity. The same holds true for Liechtenstein service providers such as banks or asset managers consulting and investing assets upon instruction to not attract an effective place of management.

There is one Swiss Federal Court decision which rules a case where a Liechtenstein incorporated legal entity's place of effective management was in Switzerland and thus subject to unlimited taxation in Switzerland and not Liechtenstein resident. This was due to the fact that the company in Liechtenstein only had one small office. Also, the manager described his business activities as almost exclusively being conducted outside the office (via email). Consequently, the entire business activity was conducted from the manager's residence in Switzerland. Furthermore, the documentation provided by the managing director did not substantiate a regular presence in Liechtenstein. Consequently, the business connections in Liechtenstein were deemed to be insignificant, which would suggest that the company was more likely to not be tax resident in Liechtenstein. It is important to mention, however, that this is true merely for the purposes of the tax treaty with Switzerland. For any other purposes (and hence for domestic purposes) the company, as it meets the criteria for domestic residency in Liechtenstein given its Liechtenstein incorporation, will continue to be treated as resident.[11]

For operating companies with local Liechtenstein business activity, the place of effective management is rarely a disputable fact pattern given local offices, employees as well as presence. For Liechtenstein tax practice, the question of the place of effective management is primarily relevant for private asset investment structures (personal holding, foundation, or establishment) and respective underlying investment or holding companies owned by such Liechtenstein investment vehicles. Thus, the focus of this report lies primarily on such situations. Practical cases include the question of whether the ultimate investment vehicle (typically foundation or establishment) is effectively managed in Liechtenstein and whether the underlying entities of such Liechtenstein tax resident investment vehicles themselves are also effectively managed in Liechtenstein.

What is ultimately subsumed under the terms "supreme management" and "effective place of management" is assessed based on all facts and circumstances of the individual case, including the purpose and activity of the structure (holding, private investment, operational business, etc). This ensures a fair evaluation of the individual case. As the specific facts and circumstances of each case vary (number of investments, complexity, decision power, board composition, investment guidelines, by law and statutes, letter of wishes, UBO control, etc.), the weighing of criteria may vary. In practice, the following factual elements are assessed by the tax authorities with higher emphasis in the order listed:

The starting point is the *composition and residence of the board or corporate bodies*. "A key criterion is the number and origin of the bodies of the foreign structure. If the majority of these have their registered office (or residence) in Liechtenstein, this is an indication that the place of effective management is in Liechtenstein."[12] Because particularly for holding and investment asset structures the bodies are typically the decision-making persons, the starting point for the assessment of the effective place of management starts with them.

[11] See BGer 11.11.2016, 2C_483/2016.

[12] See Matthias Langer, Das liechtensteinische Steuerrecht, Springer Gabler 2019, ch. 4.8.1.1.1.

The mere board member/company director's individual private residence is *not* relevant but the residence where the decisions are largely made (e.g. Swiss resident board member working in an office in Liechtenstein creates Liechtenstein residence).

Second, the *board meetings* are analysed, starting with the location of the board meetings. If at least the majority of board meetings physically take place in Liechtenstein, this is an indication of the effective place of management in Liechtenstein, in particular for private investment and holding companies. The content of the meeting (meeting minutes) as well as the type of decisions made by the board are also relevant to the assessment. Also relevant is the role of each board member and the corresponding voting rights (president of the board, voting rights, tie-breaker votes, etc). Board members that prepare and guide all decisions (influence and/or lead the way) and have tiebreaker votes – with other board members merely approving or vetoing in some limited cases – may be considered more relevant and thus the location from where they perform the work may be more relevant. As pointed out above, if the board can only decide within a very strict instructions range, the relevance of the board is less impactful and it has to be reviewed who is making the decisions. Physical board meetings supported by proofing documents (travel tickets, hotel bills, etc) are a clear indication of an effective place of management.

Next, it is to be considered whether the strategic decision-making is actually with such bodies or where the executives (CEO in particular) as well as middle management (where any, typically not in place for investment / holding structures) are resident and where executives and management make the decisions. Shareholder meetings are taken into account with less relevancy. Typically, operational executive and headquarters functions are more relevant for the operational company while for the holding/investment company, the board decisions are more relevant as usually no other executives exist.

In this context, it is important to note that board member preparatory actions that significantly influence or anticipate a decision, in the sense of an analytical examination that leads to a decision, must be distinguished from general administrative activities. In cases where a Liechtenstein board member plans, suggests and leads the discussion such that the other board members or fiduciaries are in majority only confirming the agreement but no real decision process involving other board members beyond their formal vote is present, an assignment of the effective place of management to Liechtenstein may occur, especially if board meetings are done virtually.

The place where the bank account is located as well as the place where the company's books are kept or where the balance sheet, the profit and loss account or the annual reports are prepared are not clear differentiation criteria. The relevance of these criteria varies with the situation, requiring consideration of all facts and circumstances, while an individual consideration should not per se lead to Liechtenstein residency. Typically, in a particular case, these criteria serve more as a supplementary factor. Access and signature power on bank accounts may be considered in combination with the actual role and decision power of a respective person.

Other factual elements such as the company's directors' individual residence, the place where a company's general policy is developed, the place where the dividends are declared, the company's statutory seat, the currency in which the accounts are kept, the place of registration, the domain of websites or emails, the presence of logos or banners outside of the main building or the location of service centres (particularly when they are responsible for providing management services) are all *not* relevant for the tax authorities to assess whether the place of effective management is in Liechtenstein. They can at most be presented as circumstantial evidence.

In practice, it's generally easier to provide proof that the place of effective management of foreign incorporated entities is in Liechtenstein, for example by means of statutes, physical offices, Liechtenstein board members / fiduciaries, board meetings, all day-to-day operations, etc. If, however, proof has to be provided that the place of effective management of a Liechtenstein incorporated entity is not in Liechtenstein, more detailed documents such as meeting minutes evidencing the decision process abroad will be relevant. In addition, evidence could be provided, showing that i.e. other meetings of greater importance took place during the year, but no Liechtenstein representative was involved. If it turns out that the strategic decisions are co-decided by a Liechtenstein representative and that there are in fact other decision-makers, the question also arises as to where this strategic meeting is held. In such cases, proof can be provided, for example by means of receipts for flights and hotels, provided that the strategic board meetings took place abroad and consequently the place of effective management is abroad and not in Liechtenstein.

Challenges arise in the context of ever-increasing digitalization and remote work when assessing the aforementioned criteria for the ascertainment of residency. The replacement of physical presence on-site with online meetings, e.g. board meetings, must be assessed depending on the context. There is no clear guidance from the Liechtenstein tax authority in this regard and hence no specific considerations have been established yet. However, the increase of digitalization will further emphasize the detailed decision process of who takes which decision and emphasizes the question, of whether a foreign board is truly making the majority of decisions abroad or if in fact all decisions are made by the Liechtenstein board member in Liechtenstein with mere rubber stamping from foreign resident board members.

The Liechtenstein tax law does not provide separate provisions for dual resident companies, i.e. the SteG treats legal persons as "domestic" if their domicile or effective place of management is in Liechtenstein, irrespective of the tax treatment in a foreign country. Conversely, if the domicile of a company is in Liechtenstein, that company is generally subject to unrestricted corporate tax liability regardless of where the effective place of management of the company is located.[13] Any resulting double taxation is to be resolved by means of a tax treaty.

If an entity, in particular private investment structures (holding, foundation, etc), is considered resident in Liechtenstein for tax purposes, then the underlying holding/ investment entities (less if a true business activity exists abroad) of said entity are autonomously deemed to be resident in Liechtenstein. In practice, the tax authorities systematically review whether foreign underlying holding entities of Liechtenstein entities are to be deemed resident. The presumptions of residency are rebuttable. While the proof of Liechtenstein residency is with the tax authorities, in practice, the burden of proof will depend on the detailed documentation the taxpayer can provide.

In the group law relationship, the function of the subsidiary / underlying entity is decisive. The performance of the group management function by the management bodies of the parent company requires the maintenance of a minimum level of independence of the subsidiary. The enforcement of the will by the group management by means of group instructions therefore requires a minimum level of functional management in the subsidiary. The board of directors of the subsidiary incorporated into the group assumes and

[13] See also BERNHARD CANETE, *Qualification of taxable entities and treaty protection, Liechtenstein report*, IFA Cahiers Vol. 99B, 2014.

fulfils group law functions.[14] Referring to Swiss case law, Liechtenstein also carefully assesses Liechtenstein tax residency of underlying entities, in particular, if there is no minimum local decision-making but clear guidance, personal identity etc. with Liechtenstein bodies."

2.1.2. *Special cases of residency*

Liechtenstein practice for special cases of residency is as follows:

(i) Anti-lapse rule (i.e. rules for cases where the entity is considered resident in another jurisdiction merely for a short period): No specific rule or practice exists in Liechtenstein. The author is of the view that in light of a reasonable administrative approach, a short period should not lead to residency;

(ii) Low substance: No specific rule or practice exists in Liechtenstein, overall facts and circumstances are relevant;

(iii) Special entities: The princely domain, state, infra-statal or other territory-based public entities; sovereign wealth funds; pension funds as well as religious or spiritual care respectively charitable purpose entities are generally exempt from taxation as per article 4 SteG. Such tax exemption does not apply to charitable legal entities rendering economic business operations generating revenue exceeding CHF 300'000. With respect to tax residency, no special rules for such entities exist;

(iv) Elective residency and elective non-residency: There is no option in Liechtenstein to elect either in or out of tax residency or an in or out as a taxable entity. Foreign incorporated entities with Liechtenstein effective place of management, are mandatorily assessed for classification as either a taxable legal entity or not. If the classification concludes that the entity in question is a taxable legal entity, the regular tax residency rules apply. No taxable person has the possibility to select the way it is taxed;[15]

(v) Statutory non-residency: There is no option to be considered non-resident even if meeting the traditional residency criteria.

(vi) Double non-residency (besides the anti-hybrid rules): There are no special rules. However, since a Liechtenstein incorporated legal entity in the sense of the tax law is per se tax resident in Liechtenstein, no double non-residency can apply.

The private asset structure (PAS) is a special tax regime upon application only, regulated in article 64 SteG.[16] The PAS regime is not a separate form of legal entity, but Liechtenstein tax resident legal entities can apply for this tax regime if certain conditions are met. In contrast to other legal entities, legal entities with the special PAS status are not permitted to carry out any economic activity as a purpose according to article 64 SteG. The activity of such a company is limited to the mere (passive) exercise of ownership of the assets being held in the interest of qualified investors. The type of permitted activity and income is clearly defined. From a tax perspective, legal entities with a special PAS regime differ in that they are not taxed according to article 64(8) SteG and therefore do not have to comply with the obligation to prepare a tax return. The legal entity with a special PAS regime is subject

[14] See JUNG, *Ort der tatsächlichen Verwaltung im internationalen Konzernsteuerrecht*, Zuger Steuer Praxis 55/2014; based on BGE 2C 1086/2012 and BGE 2C 1087/2012.

[15] See BuA 48/2010, p. 119.

[16] For the terms of this report, the meaning of private wealth / asset structure refers to fully subject to tax entities. Only where specifically referred to «PAS», the special tax regime is meant.

exclusively to the minimum corporate income tax of CHF 1'800 according to article 64(8) SteG in conjunction with article 62(1 and 2) SteG. Companies qualifying for PAS are not entitled to apply double tax treaties as they are not considered tax resident.[17]

Liechtenstein tax law includes a general anti-abuse rule in article 3 SteG regarding the abuse of legal or factual arrangements deemed inappropriate to the economic circumstances and whose sole economic purpose is to obtain tax advantages that are abusive, if (1) the granting of this tax advantage would violate the spirit and purpose of the Liechtenstein Tax Law; and (2) the taxpayer cannot provide any economic or other significant reasons for choosing this arrangement and the arrangement does not have any independent economic consequences.

2.1.3. Substance requirements as a proxy for residency

There are no specific "substance requirements" defined in Liechtenstein tax law. The Liechtenstein corporate law only requires a Liechtenstein entity to have a registered address and a Liechtenstein qualified person (executive, fiduciary, a person according to article 180a PGR). According to article 180a PGR, a qualified person exists if at least one member of the administration of an entity (board or managing director) who is authorized to manage and represent the entity is a national of a contracting party to the Agreement on the European Economic Area (EEA), a person who is treated as such on the basis of an international agreement or a legal person and is in possession of a license under the Trustee Act. Nevertheless, the corporate law does not require any substance (office space, meetings etc.). In summary, it can be stated that the dispute of the place of effective management for the claim to unlimited tax liability or residence is lower for companies with a lot of functional substance (active good/services business operation, staff, offices, etc.) but higher for companies with no or little functional substance (holding, investment, finance entities). In the case of entities with low substance indicators (namely, low or no equipment, premises and/or staff or activities), the above-listed criteria and board and decision function become of the highest importance.

Similar to the well-established Swiss tax practice, the concept of substance itself can be divided into legal, financial, functional substance, as well as formal substance by law. In the context of residency, the focus is put on the functional substance, which derives from the actual business processes and operational structure in place. Concerning the formal substance mandated by law, representatives may hold either formal (external relations) or material (internal relations) signing or authorization rights, although this distinction is not always clear from the commercial register.[18] Functional substance is present when tasks, whether operational or not, are performed by staff (or possibly automated) in a fixed business location. Operational functions are core activities directly contributing to value creation or profit and are always considered in the context of profit allocation according to the remuneration principle. Non-operational functions, like administrative tasks, only indirectly contribute to value creation. These functions are also generally taken into account (or priced) in the context of profit allocation according to the remuneration principle. The

[17] See Merkblatt Steuerverwaltung Liechtenstein betreffend Privatvermögensstrukturen – https://archiv.llv.li/files/onlineschalter/Dokument-1510.pdf .

[18] Brülisauer, *Sitz versus Verwaltung im interkantonalen und im internationalen Verhältnis*, Forum für Steuerrecht 2024, pp. 107-109.

company's primary purpose determines which functions count as core functions and which do not. Management activities encompass all company functions and thus decisions, noting that all decisions, whether operational or non-operational, must be managed somewhere. For companies with functional substance, the place of effective management usually doesn't affect tax liability, as profit allocation using the arm's length method resolves this. The same applies to companies with limited functional substance (e.g. minimal staff and infrastructure), assuming limited risks within the scope of their limited area of competence to achieve routine profits. For companies without functional substance, the place of effective management can be crucial regarding unlimited tax liability if linking to the statutory seat causes profit shifts.[19]

2.1.4. *Procedural rules*

In Liechtenstein, tax liability begins[20] with the establishment of the legal entity or with the transfer of its registered office or the place of effective management to Liechtenstein.

Upon incorporation of a corporate legal entity in Liechtenstein, the Liechtenstein tax authorities are automatically notified by the respective authority (commercial register or Liechtenstein) when any such vehicle, depending on the legal form, is either to be registered or deposited with the commercial register. This automatically triggers a notification and entry into the Liechtenstein corporate tax register for corporate income tax. No separate tax number application or registration for income tax is required.[21]

Foreign incorporated legal entities whose place of effective management is located in Liechtenstein have to self-register in the Liechtenstein tax register with a specific tax registration application form available on the Liechtenstein tax authorities website, providing an extract from the foreign register on the incorporation of the legal entity.[22] Proactive and due course registration in the tax register is expected by the Liechtenstein tax authorities upon taking up effective management in Liechtenstein to comply with the respective tax filings. In practice, the process is well-established and commonly used. If a case is unclear, an advance tax ruling[23] based on article 93a SteG can be obtained with the Liechtenstein tax authorities to confirm whether a foreign incorporated vehicle is actually effectively managed in Liechtenstein or not.

The Liechtenstein tax authority does issue a certificate of tax residence upon request being valid for the requested tax year. A corresponding request is to be made by the respective resident entity via a special application form available on the Liechtenstein tax authority's website.[24] Liechtenstein tax law includes the following procedural rules:

19 Brülisauer, *Sitz versus Verwaltung im interkantonalen und im internationalen Verhältnis*, Forum für Steuerrecht 2024, pp. 109-110.

20 art. 46 para. 1 and 2 SteG.

21 To be noted that for some other taxes, such as stamp duty, VAT, salary withholding tax etc, if applicable, a separate registration may be required.

22 art. 44 para. 1 SteG (Liechtenstein Tax Law), Form for the entry in the Liechtenstein tax register: https://archiv.llv.li/files/onlineschalter/Dokument-2266.pdf .

23 https://archiv.llv.li/files/onlineschalter/Dokument-2876.pdf .

24 The application form for the issuance of a certificate of tax residence can be found at https://archiv.llv.li/files/onlineschalter/Dokument-1447.pdf .

- *Fact finding*: as per article 93 SteG obliges tax authorities and the taxable person/entity to collaboratively assess the relevant facts. For that, experts, site visits, supporting documentation, oral and written information requests or third-party certifications can be requested by the tax authorities respectively provided by the taxable person/entity to prove the facts;
- *Tax return:* filing obligation as per article 94 SteG applies irrespective of whether a company has received a tax return form (if registered in the tax register) or not (if not yet registered in the tax register). Therefore, a foreign-incorporated Liechtenstein effectively managed and thus tax resident entity has the obligation to inform the tax authorities, request the tax register entry and obtain the tax return form;
- *Collaboration:* is governed in article 97 SteG stating that taxable persons / entities have to take any reasonable actions to ensure a correct tax assessment. For corporate entities, the duty is with the organ of the entity;
- *Certification and information requirement:* as per article 99 SteG requires certain parties to provide respective documentation.

Based on the above procedural tax rules and the standard court process laws, the burden of proof is first based on collaborative fact-finding; respectively in disputed cases, the tax authority has to prove facts for taxable positions, whereas the taxpayer has to prove facts for tax reducing positions. In practice, the taxpayer will need to be able to produce supporting documentation to validate the position. The lack of court cases with respect to tax residency shows that the collaborative approach works well and assessments are dealt with in advance tax rulings or as part of the assessment procedure.

2.1.5. Assessment of residency in other jurisdictions

Liechtenstein does not specifically per se assess, if a legal entity is effectively resident in another (contracting) state but rather assesses whether an entity "is" or "is not" resident in Liechtenstein. However, referring to chapter 2.1.4, when registering with the tax authorities, a legal entity registered abroad for Liechtenstein tax residency due to effective place of management must enclose an extract from the registers kept abroad on the legal entity or, if applicable, another credible proof of its existence.[25]

In practice, in particular with respect to structures managing and investing private wealth through a Liechtenstein investment vehicle, the tax authorities systematically review, whether foreign intermediary/underlying holdings are effectively managed in Liechtenstein. Often, such foreign underlying holdings are in fact managed by the Liechtenstein fiduciaries of the ultimate investment vehicle. The assessment follows the previous descriptions in this report based on Liechtenstein's domestic criteria. While the burden of proof to assess if such foreign intermediary holding company is tax resident in Liechtenstein due to effective management is with the tax authorities, the taxable entity is required to collaborate and provide supporting documentation and evidence as outlined above. The type of evidence varies based on facts and circumstances but includes information on board members, descriptions of the decision-making process and the decision-makers, meeting locations and minutes, travel documentation (flight/hotel/

[25] See https://archiv.llv.li/files/onlineschalter/Dokument-2266.pdf .

restaurant invoices), bank account access, instruction proof such as e-mails, etc. Whether the foreign entity is subject to tax abroad may be taken into account but is not a decisive or important factor per se.

2.2. At the treaty level

As of 1 January 2024, Liechtenstein has 22 tax treaties in effect.[26] No tax treaty is in place with the US. Liechtenstein generally follows the wording as well as interpretation of OECD MC article 4 and its Commentary.

In 12 of its 22 tax treaties or in the respective protocols,[27] wording as per the 2016 US model tax convention regarding pension funds or religious, charitable, etc. tax exempt organisations as tax resident have been included. The general position of Liechtenstein is to use the place of effective management as tie-breaker, with only exemptions in the tax treaties with Austria, Iceland, Lithuania, Netherlands, Romania and UK. With the exception of the tax treaties with Hong Kong, Monaco, Singapore and Austria, the tax treaties include the last sentence of OECD MC article 4(1) "not to include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein". The expression "liable to tax" in a Liechtenstein understanding means that the person in question is liable to pay tax in Liechtenstein due to unlimited tax liability. A withholding obligation (of tax due by others) would not suffice. An instance that falls under the last sentence of article 4(1) concerns persons that are liable to pay tax in Liechtenstein or the respective territory due to limited tax liability (foreign entities that are subject to tax due to nexus via permanent establishment or real estate and thus only taxation on income from such source).

In article 4, the Liechtenstein treaties do include the term "other relevant factors of similar nature."[28] In practice, the author is not aware that to date such a term has been applied in a case, thus lacking available interpretation support. Conceptually, it should cover situations leading to unlimited taxation as defined in the SteG.

Most tax treaties clarify in the protocol that Liechtenstein foundations and establishments are resident as per article 4 by virtue of being subject to tax as per article 44(1)(a) SteG. Entities qualifying for the PAS regime do not qualify as resident under article 4 of the tax treaty.

26 See Steuerverwaltung Fürstentum Liechtenstein, "Übersicht aller Doppelbesteuerungsabkommen (DBA)"; Tax treaty with Romania in force as per 29 February 2024 with effect per 1 January 2025. Bahrain, Estonia, Ireland, Italy, and Latvia paragraphed with pending ratification.

27 Included in the tax treaties with Andorra, Czech Republic, Hungary, Iceland, San Marino, Switzerland, UAE, Italy, Jersey, Lithuania, Netherlands, Romania and the UK.

28 Term is included in all tax treaties except with Austria, Hong Kong and Monaco.

3. Solving instances of double or multiple taxation

3.1. At the domestic level

Since, in Liechtenstein, the corporate income taxes are assessed directly by the state at a central location (Tax Administration of the Principality of Liechtenstein), it is not possible to be considered resident in more than one sub-system.

3.2. At the tax treaty level

3.2.1. Instances of multiple residency

Paragraph 21 of article 4 of the OECD MC Commentaries states: "It may be rare in practice for a company, etc., to be subject to tax as a resident in more than one State.[29]"

From the perspective of Liechtenstein's tax practice, this statement is to be denied. There are no special rules for dual resident companies in the Liechtenstein tax law. Since a legal entity is subject to unlimited tax in Liechtenstein if its domicile (legal seat) or its effective place of management is in Liechtenstein, there are many cases in practice of dual tax residency. In particular, foreign incorporated entities that are tax resident in the foreign state due to their legal seat/place of incorporation, and tax resident in Liechtenstein due to their place of effective management, are quite common. In case such other states also levy tax, double taxation is to be resolved by application of the double tax treaty tie-breaker rules.

While the above fact pattern is quite common, no MAP case or Liechtenstein court case exists on potential disputes.

Because of the already mentioned lack of (publicly) available information on Liechtenstein case law, it is not possible to identify more than ten disputes over the last five years (i.e. between 2019 and 2023). It therefore does not seem appropriate to make a precise statement regarding the characterisation of the most frequent situations leading to double or multiple taxation. In instances of multiple residency, the so-called "tie-breaker" rule as below applies.

3.2.2. Solving instances of dual or multiple residency

3.2.2.1. The substantive criterion (namely following the Pre-2017 OECD MC approach)

Due to the fact that no such MAP case exists and because of the already mentioned lack of (publicly) available information on these cases, it is difficult to identify instances where dual-residence is solved by reference to a (material or substantive) criterion or to identify the criteria used to assess such disputes.

The Liechtenstein tax treaties generally include the provision "place of effective management" as the tie-breaker rule in place. As the interpretation for unilateral as well as tax treaty purposes follows the OECD model treaty meaning, typically an agreement is

[29] OECD Model Tax Convention on Income and Capital, C(4)-11, 2017.

expected to be found. There are some tax treaties in place, where other criteria are taken into account. For example, according to the tax treaty with:

- Austria: A body corporate is considered a resident of a contracting State if it has its corporate domicile *and* place of effective management in that State.[30] Resulting in cases where an Austria domiciled entity with its place of effective management in Liechtenstein is not a resident under the tax treaty;
- UK: The tie-breaker rule is mutual agreement and if no agreement is possible, the entity is not considered resident for the treaty benefits except for articles 22, 23 and 24 of the treaty;
- Iceland, Italy,[31] Lithuania, Netherlands and Romania: The tie-breaker rule is mutual agreement and if no agreement is possible, no entitlement to the relief or exemption except as agreed.

3.2.2.2. The procedural or MAP test (namely the post-2017 two-tiered MAP approach)

There are very few cases covered by the MAP for Liechtenstein. The MAP statistics for Liechtenstein (2016-2022) show a caseload of only 11 cases in the inventory of 31 December 2022,[32] where four cases concern transfer pricing and the other seven cases are attributed to "Other cases."[33] The final decisions are not published and hence detailed information regarding MAP cases is not publicly available.

According to the Liechtenstein Tax Administration, the MAP test seems less relevant, because most emerging cases of possible double taxation disputes in connection with residency are resolved at an earlier stage and do not get assessed via the mutual agreement procedure.

Most of the tax treaties of Liechtenstein in force as of 1 January 2024 do not include the second sentence of article 4(3) OECD MC: "In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States."[34] The tax treaties with the UK, Iceland, Lithuania, Netherlands, Romania and Malta include the sentence mentioned. With the exception of Malta (tie-breaker being the place of effective management), these tax treaties require mutual agreement as tie-breaker. The tax treaty signed with the United Kingdom contains an addition at the end of the sentence included in article 4(4), which provides for exceptions in connection with other articles of the tax treaty (article 22: Elimination of Double Taxation, article 23: Non-Discrimination and article 24: Mutual Agreement Procedure).[35]

[30] See art. 4 para. 1 lit. b tax treaty Liechtenstein – Austria, concluded already in 1969.

[31] Italian treaty not in force yet (pending ratification in Italy).

[32] See Mutual Agreement Procedure Statistics per jurisdiction. Liechtenstein. 2016-2022 (post-MAP Statistics Reporting Framework), https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-liechtenstein.pdf .

[33] See footnote 32.

[34] See art. 4 para. 3 OECD Model Tax Convention on Income and Capital, 2017.

[35] See the tax treaty Liechtenstein – United Kingdom.

3.2.2.3. Denial of tax treaty benefits for dual-resident companies

Other than the Liechtenstein – Austria tax treaty mentioned above, there are no other tax treaties of Liechtenstein with other states in force as of 1 January 2024, which include a provision according to article 4(4) of the US model convention, in which the consequence of a dual residency for companies is the denial of tax treaty benefits.[36]

3.2.3. Triangular situations and application of bilateral tax treaties

There is no unilateral law, guidance or established practice regarding the indication of criteria used to solve cases of multiple taxation in the presence of bilateral tax treaties with all involved jurisdictions or triangular situations in which there is no treaty with one of the involved jurisdictions. Irrespective of the existence of a double tax treaty, Liechtenstein's unilateral tax law exempts foreign permanent establishments from taxation in Liechtenstein. Accordingly, in situations with or without a double tax treaty, dual residency situations typically result in full unlimited taxation in Liechtenstein but given in such situations, entities often also have substance abroad raising to the level of a permanent establishment, an international profit allocation is to be applied.

3.2.4. Solving double-residency in dualist systems

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.[37] As such, treaties have primacy over existing domestic legislation.

3.2.5. Other treaty issues regarding residency

Regarding the tax treaties of Liechtenstein, there is no exclusion of entities of a certain part of the territory (as an alternative to restricting the geographic scope of the treaty) and no exclusion of the residency issues from the MAP or arbitration.

Entities qualifying for and applying the PAS tax regime as per article 64 SteG are not considered resident in the sense of a double tax treaty and are excluded from double tax treaty benefits.

[36] See art. 4 para. 4 United States Model Income Tax Convention, 2016.

[37] See also Irene Salvi, *Reconstructing the treaty network, Liechtenstein report*, IFA Cahiers Vol. 105A, 2020.

3.3. At the EU level

3.3.1. Residency, dual residency and EU directives

Not applicable, since Liechtenstein is not a member of the EU.

3.3.2. Dispute resolution directive

Not applicable, since Liechtenstein is not a member of the EU.

3.4. Mismatches between the different levels

Liechtenstein generally follows the OECD interpretation of place of management, generally for both domestic and tax treaty law.

In Liechtenstein's tax treaties, no (relevant) deviations to article 4(1) according to the OECD MC or UN MC with regard to the concept of residency can be identified. Therefore, with the exception of the tax treaty with Austria, no mismatches between the concept of residency in domestic and tax treaty law can be identified and no consequences of being considered a resident under domestic law but not qualifying as resident under tax treaty law (besides those covered by the last segment of article 4(1) of the Models) can be described.

4. The consequences of attributing residency

4.1. At a procedural level

4.1.1. The residence certificate

4.1.1.1. Certificate of residence for residents

Tax residence certificates are issued upon request using the application form provided by the tax authorities. The application has to include details of the taxpayer such as name and legal form, date of incorporation, full address, and residence title (effective place of management including since when). The tax authorities will issue the tax residence certificate if the legal entity is accordingly registered for unlimited subject to tax in the Liechtenstein tax register, if it is fully subject to tax in Liechtenstein (entities applying the "PAS" regime or private asset structures without legal personality subject to annual corporate minimum tax are not entitled to a tax residence certificate) and if the relevant tax documents have been submitted to the tax authorities.

A tax residence certificate can be requested upon incorporation/the beginning of tax residency for the respective tax year, without the application of a specific minimum period. The application form requires an indication of the State, type of foreign income (dividend, interest, royalties, board fees, services, etc) as well as the date of receipt for which a residence certificate is requested. In the request also the full name and full address of the remuneration debtor has to be declared. The foreseeable amount does not have to be specified. The tax residence certificate is issued for the specific double tax treaty it has been requested for.[38] A tax residency certificate may also be granted for a jurisdiction where no double tax treaty is in place. For such cases, a general tax residence certificate may be issued.

The tax residence certificate is issued with a wet ink stamp and signature and is sent to the taxpayers' Liechtenstein tax residency address via postal mail. The Liechtenstein tax authorities are constantly expanding their e-portal as well as digital services. At the date of this report, it is unclear when the tax residency certificate may be available in digital form for request and issuance in the e-portal system.

4.1.2. *Other procedural rules*

There is no publicly available corporate income tax register (or similar) in Liechtenstein.

4.2. Substantive consequences of residency

4.2.1. *Type of tax system: worldwide vs territorial*

The Liechtenstein tax system is a worldwide tax system. A legal entity tax resident in Liechtenstein due to its legal seat or place of effective management is subject to unlimited tax in Liechtenstein on its corporate income. The taxable income is determined according to the corporate entity income, based on the stand-alone financial statements of the entity. Dividend income and capital gains from subsidiaries are exempt via the participation exemption, provided the anti-abuse rules do not apply.[39] The tax liability does not include income from foreign branches, permanent establishments, or real estate for which an international tax allocation is to be applied based on unilateral Liechtenstein tax law.

4.2.2. *From worldwide to territorial taxation: the case of residents*

A Liechtenstein legal entity is tax resident irrespective of whether it has participation income exempt from tax due to participation exemption or due to domestic international tax allocation.

4.2.3. *From territorial to worldwide taxation: the case of non-residents and availability of options to be treated as resident*

There are no tax features in Liechtenstein according to which an entity is obliged or can opt to be treated as a non-resident.

[38] See sample of certificate of tax residency in the application form https://archiv.llv.li/files/onlineschalter/Dokument-1447.pdf .

[39] See art. 48 para. 3 to 7 SteG.

5. Outlook and overall assessment

5.1. Function of the concept of residence

Currently: From Liechtenstein's perspective, there is currently no crisis with regard to the concept of residence.

In the future: From Liechtenstein's perspective, the concept of residence can be considered as a resilient concept, considered to be fit for purpose. Residence will continue to play an important role in national and international tax practice in the future. The question of whether the tax systems should move to a different nexus for global taxation is, in view of the author, not required.

5.2. Residence and digitalization

As mentioned before, challenges for the concept of residence arise in the context of ever-increasing digitalization when assessing the aforementioned criteria for the ascertainment of residency. The replacement of physical presence on site where the decisions are actually made (permanent office location and board meetings) with online meetings, e.g. board meetings, must be assessed depending on the context. Since there is no clear guidance from the Liechtenstein tax authority in this regard and hence no specific considerations established, it is a field where future disputes may be expected. As the Liechtenstein practice is however already focussing on "where the decisions are made", no material impact on the criteria is to be expected and the decision roles of individual board members will become even more relevant. Due to the increased usage of online meetings, the actual role, power and impact of an individual in the decision process becomes more crucial. There are no Liechtenstein tax law cases publicly available regarding globalization or digitalization leading to a crisis of the residency concept.

5.3. Residence and avoidance

Today's concept of residency and substance is assessed as sufficient and appropriate and should not be further enhanced to fight against tax avoidance and evasion. The facts and circumstance-based approach to assess the place of effective management seems appropriate, even necessary.

5.4. Concluding remarks

Establishing residency for corporate income tax purposes involves a complex process that necessitates thorough evaluation of numerous legal and practical elements. The effective place of management criteria are well established and function well in Liechtenstein. The focus on the decision-making aspect is appropriate as long as it is aligned to the key decisions required to execute the purpose of an entity while still strongly protecting the corporate seal or the legal seat as the domicile. Caution and flexibility should be applied when assessing digitalization, taking into account the overall facts and circumstances.


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