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Amendments to the Liechtenstein due diligence law

Background information

With effect from 31 December 2015, the due diligence regime in the Principality of Liechtenstein has been subject to extensive amendment, which – at first glance – does not appear to be too profound. However, this amendment already implements large parts of the provisions of the fourth Money Laundering Directive of the European Union (RL 2015/849/EU) and, on closer inspection, is extremely detailed and far-reaching.

In addition to the above-mentioned directive, the due diligence regime has also been amended as a result of the Common Reporting Standard ("CRS") developed by the OECD. The CRS is implemented in the Principality of Liechtenstein by the law on the automatic exchange of information in tax matters ("AEIO law"). The resulting amendments to the Due Diligence Act (Sorgfaltspflichtgesetz, SPG; "DDA") and to the Due Diligence Ordinance (Sorgfaltspflichtverordnung, SPV; "DDO") are explained below.

As a result of the CRS as well as the AEIO law, every financial institution domiciled in a contracting state are obliged to make reports to their national tax authorities, which, in turn, forward the information obtained from the financial institution to the competent authorities (this is usually the respective foreign tax authority) in the relevant contracting partner state. The agreement is expected to result in information exchange being automated as far as possible and tax-relevant data being reported as uniformly as possible, in order that valid, and above all, verifiable information is transmitted or received. It is worth mentioning in this connection that the CRS is based on the principle of reciprocity, according to which the Principality of Liechtenstein is not only the transmitter of data but also receives "foreign" data from and about persons domiciled in the Principality of Liechtenstein.

Major amendments relating to the definition of beneficial owners

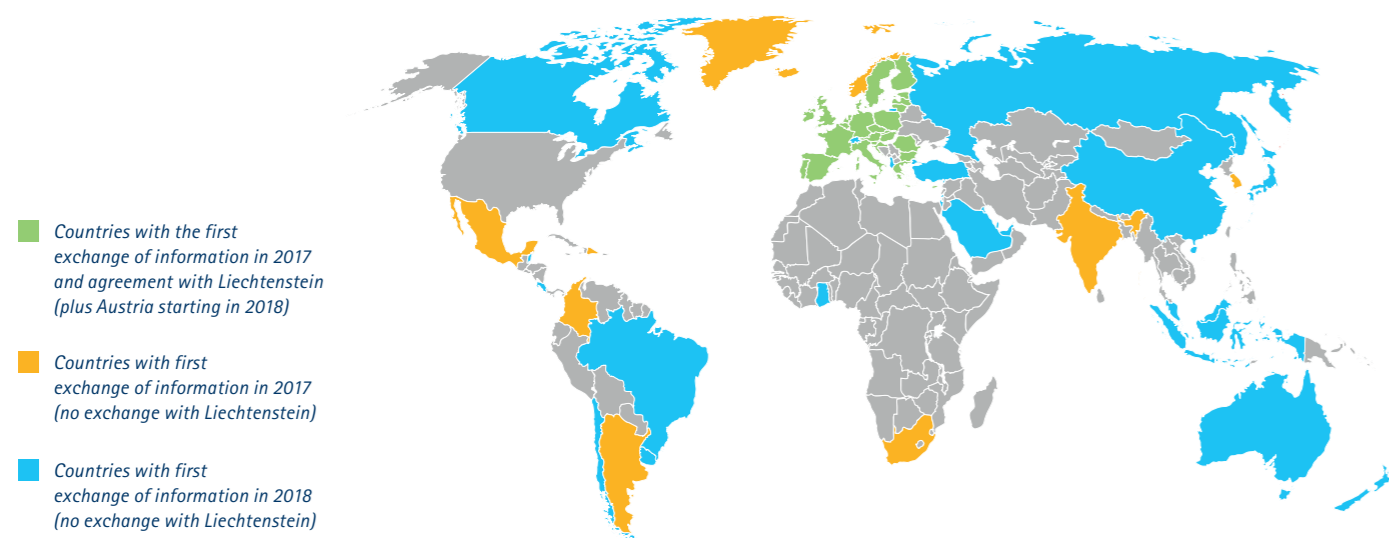
The information previously recorded in compliance with applicable rules and regulations by those persons subject to Liechtenstein due diligence obligations did not include all information that now has to be documented under the CRS. The DDO was therefore adapted in a number of amendments in rapid succession,

so that it could be used as the uniform basis for information gathering and subsequently for information exchange. The first amendment to the DDO entered into force on 31 December 2015 (Liechtenstein National Law Gazette [LGBI] 2015 No. 249) and a further amendment (LGBI 2015 No. 250) was enacted the very next day, on 1 January 2016. These two amendments are also known as "stage 1" and "stage 2" of the implementation of the new due diligence regime. While stage 1 served to clarify individual uncertainties in the interpretation of the due diligence law, stage 2 introduced new, and in some cases extended, due diligence obligations.

These amendments included in particular changes regarding the definition of the beneficial owner within the meaning of Art. 3 DDO. As before, in the case of corporations (including establishments structured as corporations and companies without a legal personality) those natural persons who ultimately directly or indirectly hold or control a share or voting rights of 25% or more in these legal entities or have an interest of 25% or more in the profits of these legal entities or exert control over the management of these legal entities by other means (Art. 3 (1)(a)(1) DDO) are considered beneficial owners. Due to the amendments it is now also possible, in the case of corporations, (including establishments structured as corporations and companies without a legal personality) for natural persons who are members of the governing body to be considered beneficial owners, if no persons within the meaning of Art. 3(1)(a)(1) DDO have been identified (Art. 3(1)(a)(2) DDO).

The definition of beneficial owners in the case of foundations, trusts and establishments structured as foundations differs significantly from the previous law. In the case of foundations, trusts and establishments structured as foundations, the following are now also considered beneficial owners under Art. 3(1)(b) DDO:

- those natural persons, who are the effective, non-fiduciary benefactors, founders or settlor, regardless of whether or not they exert control over the legal entity after its foundation; Previously, benefactors, founders or settlors were only considered beneficial owners, if they ultimately exerted control, directly or indirectly, over the assets of a legal entity. Now, benefactors, founders or settlors are considered beneficial owners in any event. A natural person must always be recorded as the benefactor, founder or settlor. This must be the effective, non-fiduciary benefactor, founder or settlor. The natural person who, ultimately, economically contributes



the assets to a corresponding legal entity, is therefore to be regarded as the benefactor, founder or settlor.

- those natural persons or legal entities that are members of the foundation council or board of directors or who serve as trustee;
- any natural persons who serve as protector or perform similar or equivalent roles;
- those natural persons who are beneficiaries;
- where no beneficiaries have been identified yet, the group of persons for whose benefit the legal entity primarily acts or was established;
- in addition, those natural persons who ultimately control the legal entity through direct or indirect ownership rights or by other means.

In this context, it is also necessary to point out that the word "control" within the meaning of Art. 3(1) DDO means in particular the possibility of a) disposing of the assets of the legal entity, b) amending the provisions that characterise the legal entity, c) altering the beneficial interests, or d) exercising the control options according to a) to c) (Art. 3(2) DDO).

Moreover, as part of the amendments, the provisions with regard to identifying and verifying the identity of the beneficial owner and the corresponding documentation regulations have been revised (see Art. 11(a) et seq. DDO).

Practical consequences

Beneficial owners and persons receiving distributions in the case of discretionary and non-profit or charitable legal entities

within the meaning of Art. 12 DDO are identified in practice using forms C, T and D (LGBI 2015 No. 250).

Form C is used to establish the ultimate beneficial owner of a legal entity (Art. 11(a) and Art. 12(7) DDO). Form T is used to identify all natural persons in their respective function and the group of beneficiaries with regard to discretionary legal entities. Finally, form D documents the recipients of distributions and records the amount and year of each distribution (Art. 12 DDO). Further information is also recorded using these forms.

The information recorded in this way – where provided for under the AEOI law – is forwarded to the Liechtenstein tax authorities, which in turn forward the data to the foreign tax authorities that are entitled to receive them. As part of the two transmission processes, legal provisions exist for correcting any data that may be incorrect. The Liechtenstein tax authorities will file the first reports to the foreign tax authorities that are entitled to receive them in 2017 for the year 2016.

While the changes implemented in stage 1 apply to all existing business relationships, differences can be seen with regard to the changes implemented in stage 2. In the case of business relationships existing as at 1 January 2016, the new due diligence regime only applies when the identification and verification of the identity of the beneficial owner is renewed. However, it is only applied to the change which triggered this renovation. For organisational reasons, however, when the identification and verification of the identity of the beneficial owner is renewed for the first time in a business relationship, the documentation must be completely reissued with form C or form T according to the due diligence regime. In the event that there have been

no changes, the documentation process may in principle also be carried out according to the previous due diligence regime. It is however advisable to make this completely clear on the forms.

Finally, it should be noted that the new law implemented in the context of stage 2 is to be applied to all business relationships existing as at 1 January 2016 until the expiry of specific deadlines using the corresponding form according to Art. 11(a)(2) DDO. The applicable deadlines are 31 December 2018 for business relationships with enhanced due diligence obligations and 31 December 2020 for all other business relationships.

DISCLAIMER:

Please note that due to the brevity of this article, the issue has not been examined explained in full detail. This article is no substitute for professional advice and readers are advised to seek professional advice on their individual circumstances. The authors accept no liability arising from or in connection with this article.

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Knowledge box

CRS – Common Reporting Standard

Creates a multilateral basis for the reciprocal exchange of potentially tax-relevant information.

AEOI law

Implements, at national level, the CRS in the Principality of Liechtenstein, which is a member of the early adopter initiative. It has been in force since 31 December 2015.

DDA | DDO

Due Diligence Act (Sorgfaltspflichtgesetz, SPG) | Due Diligence Ordinance (Sorgfaltspflichtverordnung, SPV)
As a result of the AEOI law, it became necessary to amend the previous due diligence regime, which essentially served to prevent money laundering and terrorist financing and which implemented the directives on money laundering of the European Union. The DDO now also acts as the basis for the collection of potentially tax-relevant information.

Controlling person

A natural person defined by the CRS (and referred to in AEOI law using the German term "beherrschende Person"), who controls a legal entity.

Beneficial owner

A category of persons defined by Art. 3 DDO, which is not identical to that of the controlling person but is more extensive.

Form C

DDO form for documenting the natural person who is the ultimate beneficial owner of legal entities according to Art. (3) (1)(a) DDO; furthermore, it also includes tax-relevant information. Generally used, among others, for corporations, establishments structured as corporations and companies without a legal personality.

Form T

DDO form for documenting the natural person who is the ultimate beneficial owner of legal entities according to Art. (3) (1)(b) DDO; furthermore, it also includes tax-relevant information. Generally used, among others, for foundations, trusts and establishments structured as foundations.

Form D

Form for documenting recipients of distributions and the amount of the distribution in the case of discretionary and non-profit or charitable legal entities according to Art. 12 DDO; furthermore, it also includes tax-relevant information.