First

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1. Private asset structures

Introduction:

The preferential taxation of domiciliary and holding companies (so-called special corporation taxes) was repealed with the new Liechtenstein Tax Act in order to ensure international compatibility of the Liechtenstein tax system, in particular conformity with European law. Since other EU countries also recognise special tax regimes – which are in line with European law – for private asset companies which are not economically active, the Principality of Liechtenstein introduced in the new tax system the concept of private wealth structure (hereinafter called «PWS»). The essential aspects of a PWS are represented as follows:

Preconditions:

All legal persons that manage, exclusively, private assets in pursuit of their purpose and carry on **no economic activity** are deemed a PWS. In addition to this requirement of not performing any economic activity, the law requires, in essence, the fulfilment of the following additional prerequisites for classification of legal persons as a PWS:

1. Their stocks or shares are not permitted to be placed publicly and are not traded on a stock exchange;
2. They are not allowed to advertise for any shareholders or investors, nor receive from these latter or third parties, payments or reimbursements of costs for their non-economic activities;
3. Only natural persons and PWS or intermediaries acting on their behalf are allowed to be involved therein and/or preferred;
4. The Articles must show that they are subject to the restrictions for PWS.

On application, which must be made on the setting-up of the legal person or three months before the start of the new tax year, the Liechtenstein revenue authorities will, if all preconditions prescribed by law are fulfilled, grant the status of a PWS. Subsequently, the revenue authorities will also be responsible for monitoring compliance with the corresponding classification hallmarks. The revenue authorities are to be advised, no later than six months after the end of the tax year, of material changes such as a change in the business activity, for example.

Concept of economic activity:
In principle, it can be noted that the acquisition, possession, management and disposal of **assets** in particular does not constitute an economic activity provided this is done merely in the course of exercising title and not in the course of an active, regular activity.

The assets include, inter alia,
- **liquid funds and balances at bank;**
- **precious metals/bullion, precious stones/gems or works of art;**
- **financial instruments** according to Art. 4 para. 1 g of the Asset Management Act such as transferable securities and money market instruments, for example.

Where the PWS avails itself of an external asset manager with independent decision-making, an acquisition, possession, management and disposal of these assets going beyond the scope of the mere exercise of title is also possible.

Equity investments:
The PWS is allowed in principle to hold interests in companies or partnerships. Be that as it may, the prohibition on carrying on an economic activity directly as well as indirectly applies. This means that the PWS is permitted, neither by itself nor through legal persons whom it controls in active operation, to conduct economic activities. Therefore neither the PWS, nor its shareholders, nor beneficiaries may wield influence over the management of an economically operating equity investment company inasmuch as this goes beyond the mere exercise of members' rights (e.g. shareholders' rights).

Loans:
The granting of loans is not compatible with the status of a PWS, unless involving an interest-free loan to beneficiaries or shareholders.

Real estate:
The rent-free grant of a **property** to a beneficiary or shareholder, such as the use of the real estate for one's own use, does not amount to an economic activity. However, a letting of the property, just as the rent-free grant to third parties, is not possible. Nor may the PWS itself make any decision to the effect of what property is to be acquired. However, the contribution (allocation) of a property by the shareholder or beneficiary is possible – likewise, for instance, also the purchase of a specific property, for the acquisition of which a corresponding amount has been contributed beforehand by the shareholders or beneficiaries for the acquisition specifically of that real estate.

Taxation:

The following are the essential forms of direct taxation:

Issue duty / formation duty:
In principle, legal persons whose capital is split into shares (e.g. a public limited company) are subject, inter alia, to the so-called issue duty under the Swiss Federal Act on Stamp Duties (based on the Customs Union Treaty of 1923, Swiss regulations on stamp duties, which also includes the issue duty, are applicable in Liechtenstein). These arise, inter alia, on formation as well as on a capital increase. The issue duty is 1%, the calculation being based on that figure which accrues to the legal person in consideration, but no less than on the nominal value. An exemption from the issue duty is provided for where the payments do not exceed CHF 1'000'000 in total (exemption limit).

Where no issue duty is applied, a formation duty of 1% of the capital is incurred, for instance, on formation or setting-up of legal persons, on a capital increase, as well as on their relocation of place of business to Liechtenstein, there being an exemption of CHF 1'000'000. The formation duty is reduced to 0.5% for capital in excess of CHF 5'000'000, and to 0.3% for capital in excess of CHF 10'000'000. The capital specified in the Articles is conclusive in each case.

There is a special arrangement in place for foundations. The formation duty is reduced to 0.2%, but a minimum duty of CHF 200 is payable in any event.

Income tax:
A legal person which has received the status of PWS is subject merely to minimum income tax of CHF 1'200 and is exempt from standard income tax.

Property gains tax:
The aim of property gains tax is to tax Liechtenstein property gains. Property gains tax is applicable on the disposal, or on a transaction which is economically equivalent to a disposal. In principle, the property gain is taxed according to the scale for single, natural persons in accordance with Art. 19 of the Liechtenstein Tax Act. A surcharge of 200% is added to the amount of tax which is determined in this way. The total rate of tax payable on property gains is a maximum of 21%.

Transitional period:

A transitional period of three years since the entry into force of the new Liechtenstein Tax Act has been granted by the EFTA supervisory authority for special corporation taxes. As a result, domiciliary and holding companies under the old law may maintain their tax status until the end of 2013. Be that as it may, these, too, must pay an annual minimum amount of CHF 1'200 during the transitional period.

An opting for PWS status is possible even before the transitional period expires.

Closing remark:

Classification as a PWS is possible subject to the preconditions mentioned above and may, in these cases, be described as an appealing instrument for tax optimisation. However, in view of the limitations associated with the status of a PWS in terms of activities, the advantageousness needs to be examined in each case individually and a weighing-up exercise with standard income taxation carried out with respect to a possible claiming of a Double Taxation Convention.

2. The State Treaty between Switzerland and Great Britain of 6 October 2011 compared with the «Liechtenstein Disclosure Facility» (Update)

On 6 October 2011, Switzerland and Great Britain signed and published a Tax Agreement concerning the legal regularising of the past as well as in respect of the introduction of a withholding tax on future income.

Furthermore, Great Britain and the Principality of Liechtenstein have already had an Agreement in place since August 2009 concerning the regularising of the past of investors taxable in Great Britain and who have a connection with Liechtenstein.

The so-called «Liechtenstein Disclosure Facility» or «LDF» regulates the past of investors taxable in Great Britain in a way which differs from the said Tax Agreement with Switzerland. That is why the new Tax Agreement between Switzerland and Great Britain as well as the «Liechtenstein Disclosure Facility» are each described in brief hereafter in order to compare both systems with each other. Moreover, the most recent developments in respect of these two Agreements will additionally be discussed in brief.

The Tax Agreement between Great Britain and Switzerland of 6 October 2011

With regard to the terms of the Tax Agreement between Great Britain and Switzerland of 6 October 2011, the regularising of the past as well as the introduction of a withholding tax on future income and capital gains can be counted as the latter's key highlights.

The past will be regularised by levying an anonymous, flat-rate, one-off payment. The tax rate imposed on this one-off payment was originally intended to be between 19% and 34%. The one-off payment relates to bank accounts which already existed as at 31 December 2010 and will still be in existence as at 31 May 2013. All possible forms of bankable assets such as cash accounts, precious metals, securities, options and structured financial products are affected. On the other hand, safe deposit boxes, real property or other chattels are explicitly excluded from the ambit of the one-off payment. The one-off payment will satisfy the existing income, capital gain, inheritance and value added tax liabilities in respect of the accounts concerned. Corporation tax or stamp duties, for example, will not fall within the one-off payment. However, bank customers will also have the right to elect between levying the one-off payment and a report to the British revenue authority «Her Majesty's Revenue & Customs» (HMRC). However, the once-only payment does not guarantee any immunity from any criminal prosecution.

Bank customers who settle for the one-off payment must assure the bank that sufficient assets are available to pay the one-off levy. Should there not be sufficient assets, the banks will have the right to grant their customers a time limit of 8 weeks in order to provide sufficient assets. On expiry of this time limit, the banks will be allowed to declare the bank account.

In the context of withholding tax on future income and capital gains, the Swiss banks will be obliged to withhold a retention tax on account on all taxable income and capital gains of accounts of investors taxable in Great Britain and pay these over anonymously. Depending on the investment income and/or capital gains, the withholding tax rate will be between 27% and 48%. The withholding tax on dividend income is 40% and 48% on other income. Capital gains will be charged a withholding tax of 27%. Here, too, bank customers again have the right to elect between the levying of the withholding tax and report to the revenue authorities in Great Britain.

All assets which are directly or indirectly (e.g. via corporate structures) attributable to investors taxable in Great Britain are affected by the State Treaty between Great Britain and Switzerland of 6 October 2011. Accordingly, investors taxable in Great Britain who are beneficial owners of an offshore company, a Foundation, a Trust as well as other structures which do not engage in any commercial activities, or hold assets via an insurance «wrapper» are also affected thereby. However, it appears that trusts with a discretionary element where the beneficial entitlement to the trust assets cannot be identified will not fall within the ambit of the State Treaty of 6 October 2011.

Finally, Switzerland undertakes under the new State Treaty of 6 October 2011 to notify Great Britain of the top 10 jurisdictions into which assets from persons taxable in Great Britain flow and which are withdrawn from Switzerland.

Furthermore, it will be possible for the HMRC to enquire of the Swiss authorities whether certain persons have bank accounts in Switzerland or not. This possibility of enquiry is initially

(for the first three years) limited to 500 enquiries a year, but can be extended.

The following are excluded from the regularising of the past:
- Persons against whom the HMRC, as at 31 May 2013, is conducting investigations;
- Persons against whom the investigations have been conducted in respect of assets in Switzerland and were completed after 31 December 2002, and who have not declared these assets in the course of the investigations concerned;
- Persons who have completed and/or submitted a «Certificate of Full Disclosure» or a «Statement of Assets and Liabilities»;
- Persons who have already been convicted for the commission of tax crimes;
- Persons who have already been contacted in the course of earlier disclosure programmes; or
- Persons who have assets in Switzerland which originate from criminal acts (tax crimes excluded).

By an Amending Protocol of 20 March 2012, Switzerland and Great Britain have already adjusted the Tax Agreement before its entry into force. Now the Tax Agreement provides that the withholding tax is no longer going to be levied on interest payments insofar as the 35% EU interest tax is levied. In addition thereto, a withholding payment of 13% will then be levied on interest income.

Furthermore, the Tax Agreement now provides that the Swiss paying agents (the banks) must freeze the assets affected by the Agreement as soon as they learn of the bank customers' death. The assets cannot be released again until either a report has been made to the British revenue authorities or the levying of a tax of 40% on the assets has been forthcoming at the time of death. However, an anonymous settlement of the 40% tax will lead to a higher incidence of tax than the reporting and accounting of inheritance taxes in Great Britain. In principle, neither a report nor the levying of 40% tax is necessary for «non-UK domiciled individuals».

As a final adjustment of the Tax Agreement, Switzerland and Great Britain have agreed upon the introduction of a most-favoured clause whereby Great Britain may require the size of the one-off payment to be brought into line with the size of the one-off payment under the Tax Agreement between Switzerland and Germany. Now such an adjustment has been made, it may be assumed that the one-off payment under the Tax Agreement between Switzerland and Great Britain will also be re-adjusted. The one-off payment will now probably range between 21% and 41%.

«Liechtenstein Disclosure Facility»

On 11 August 2009, the Government of the Principality of Liechtenstein and the Government of Great Britain as well as the English revenue authority «Her Majesty's Revenue & Customs» (HMRC) signed a Tax Information Exchange Agreement (TIEA), an agreement on co-operation in tax matters (MoU) as well as a Joint Declaration. The MoU includes, inter alia, a special possibility for disclosure, the «Liechtenstein Disclosure Facility» (LDF). The LDF started on 1 September 2009.

The LDF offers a special disclosure option for investors taxable in Great Britain and with a connection with the Principality of Liechtenstein. Under the LDF, untaxed assets can be regularised on exceptionally advantageous conditions. Participation in the LDF is envisaged for natural and legal persons who, as investors taxable in Great Britain, possess the right to use relevant and undeclared assets in Liechtenstein. Accordingly, bank accounts or financial «portfolio» accounts, companies, partnerships, foundations, establishments, trusts, trust companies or other trust structures as well as insurance policies which are and/or have been set up, formed, established, incorporated, managed or run in Liechtenstein fall within the assets which are relevant to the LDF. Furthermore, legal persons that possess assets in Liechtenstein or that have been set up in Liechtenstein, registered in Liechtenstein or have been managed or run out of the Principality fall within the relevant assets.

Yet the LDF is also open to anyone who does not hitherto possess any assets relevant to the LDF and, therefore, still needs to establish new links with Liechtenstein financial intermediaries. Therefore, existing as well as future customers of financial intermediaries out of the Principality of Liechtenstein can take advantage of the LDF. The precondition is that, at the time of disclosure, a relevant connection exists with a Liechtenstein financial intermediary.

Persons who, at the time of signing the MoU, were already the «subject of enquiries» by the HMRC and persons who receive a communication from a Liechtenstein financial intermediary under the TACP (Liechtenstein Taxpayer Assistance and Compliance Program) and must know or have to assume upon receiving the communication that they are already the subject of enquiries by the HMRC cannot participate in the LDF. The same applies to investors taxable in Great Britain without any relevant assets in Liechtenstein.

In view of the course of the LDF which has so far been successful (so far around 2,350 British taxpayers have made use of the LDF), Liechtenstein and Great Britain agreed on 7 February 2012 to extend the LDF by a further year. As a result, British taxpayers can disclose on exceptionally advantageous conditions, by 5 April 2016, assets which have so far been undeclared and are taxable in Great Britain.

Comparison of the Tax Agreement between Switzerland and Great Britain of 6 October 2011 and the LDF

The LDF agreed between Liechtenstein and Great Britain offers the following advantages for investors taxable in Great Britain:

- The usual penalty under the LDF is 10%
- Inheritance tax will similarly be limited to 10% under the LDF.
- Immunity from prosecution.
- Only tax years starting April 1999 are taxable.
- In the case of innocent error, the assessment period for natural persons is shortened to six tax years from the time of the disclosure report.
- There is no penalty for innocent error.
- In the event of a complete, correct and voluntary disclosure, no criminal investigations will take place if it can be ensured that the assets have not been obtained by criminal acts.
- Instead of calculating individual taxes, there is the option of electing, for each year up to April 2009, a composite rate of 40% on the investor's income. This option is particularly attractive where several types of tax are involved or in the event of gaps in documentation.
- The HMRC accepts reasonable offers for a taxation based on estimated tax debts if no other ways of calculating the tax debts are available. Pre-existing practice shows that the relevant taxation lies within the range of 20% and also offers of less than 20% have been accepted by the HMRC.
- There is the option of conducting the first contact made between the financial intermediary involved and the HMRC on an anonymous basis.
- Participants in the LDF are not affected by the HMRC's «naming and shaming» procedure. Discretion is assured.
- The amounts paid over pursuant to the EU Interest Tax Agreement are credited in the course of calculating the amount of tax payable.

Whilst the «Liechtenstein Disclosure Facility» guarantees for investors taxable in Great Britain a full clarification of all tax matters as well as criminal immunity, the Tax Agreement between Switzerland and Great Britain of 6 October 2011 to regularise the past merely offers the levying of an anonymous, flat-rate one-off payment at the new rate of between 21% and 41% as well as the ensuing annual payment of a withholding tax of between 27% and 48% on investment income and/or capital gains. The Tax Agreement does not relate to assets which have been withdrawn from Switzerland before the relevant dates mentioned above. Nor, by virtue of the anonymity, will the payment of the one-off levy as well as of the withholding tax, unlike participation in the LDF, stop the HMRC from conducting further enquiries regarding the taxpayer's financial affairs, should they become alert to him.

Further, it can be assumed that participation in the LDF will, in principle, be more favourable than payment of the one-off levy and withholding tax under the new Tax Agreement between Switzerland and Great Britain of 6 October 2011. As already mentioned, pre-existing practice shows that the taxation under the LDF is in the region of 20% and may even be below 20%.

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