



Newsletter

ACCURATA TREUHAND- UND REVISIONS-AG

Information on legal entities and on private asset structures (PAS) pursuant to the Tax Act of 23 September 2010 of the Principality of Liechtenstein

A. General information on the current Tax Act

On 23 September 2010, the Liechtenstein Parliament passed the law on National and Municipal Taxes (Tax Act) and thus enacted a full revision of Liechtenstein tax law. The new Tax Act and the corresponding Ordinance entered into force on 1 January 2011.

A major and relevant change is that the special company taxes for domicile and holding companies have been removed. A three-year transition period was granted for legal entities established before 1 January 2011. Therefore, these legal entities are taxed under the "old" tax provisions until and including the tax year 2013.

As of 1 January 2014, these legal entities will be taxed finally according to the new Tax Act, and therefore they have to file their first tax return including all related documents for the accounting/tax year 2014 within 1 July 2015.

B. Information on the taxation of legal entities (revenue tax of 12.5%)

The following comments are exclusively about legal entities subject to unrestricted tax liability in terms of the new Tax Act that entered into force on 1 January 2011.

Legal entities (such as foundations, establishments, companies, trust reg. etc.), along with their entire corporate income, shall be subject to unrestricted tax liability if their domicile or effective place of management is in Liechtenstein. The corporate income tax shall be 12.5% of the taxable net corporate income, with a minimum corporate income tax currently of CHF 1'200.

Please note that Liechtenstein based trusts (domicile or effective place of management) are not set up as own legal entities and therefore are subject exclusively to the minimum corporate income tax. A tax return is not required. Furthermore the registered charitable foundations are tax exempt in Liechtenstein upon application.

Basically, the taxable net corporate income is calculated on the basis of the annual accounts prepared pursuant to the Persons and Companies Act

(PGR). In addition to the unlimited deduction of interest for borrowed capital, it is also possible to apply the so-called notional interest deduction of currently 4% of the modified equity to reduce the taxable net corporate income. This means that in fact a tax liability arises only on yield of more than 4%. A reduction of the notional interest deduction of 4% is being actually discussed at the tax authorities. Additionally, a set-off of income against losses is currently possible without any limitation.

Distributions or allocations of profits of legal entities to shareholders or beneficiaries are not subject to any withholding tax.

With legal entities subject to unrestricted tax liability, the following income is not part of the taxable net corporate income (among others):

a) Dividends:

Dividends arising from participations in domestic or foreign legal entities are exempt from taxation. Dividends are exempt from taxation without regard to any minimum holding period or minimum participation percentage;

b) Capital gains:

Capital gains from the sale or liquidation of participations in domestic or foreign legal entities (e.g. subsidiaries) are exempt from taxation just like dividends. This exemption also applies without regard to any minimum holding period or minimum participation percentage;

c) Profits of foreign permanent establishments:

Profits of foreign permanent establishments are unilaterally exempted by Liechtenstein. This is in accordance with article seven of the Model Tax Convention on Income and on Capital issued by OECD. Therefore, the objective of this exemption is the prevention of double taxation;

d) Rental and lease income from real estate situated abroad;

e) Capital gains from the sale of foreign real estate; and

f) Income from the managed assets of investment companies pursuant to the Liechtenstein UCITSG (Act on Undertakings for Collective Investment in Transferable Securities) and the IUG (Act on Investment Companies).

All other income such as interest income from bank accounts and bonds, profits from the sale of precious metals and works of art, and income from leasing contracts are subject to taxation.

A short summary of the advantages and disadvantages of ordinarily taxed legal entities:

Advantages:

- free selection of purpose;
- no limitations with respect to the asset management;
- structuring options for tax planning.

Disadvantages:

- higher administrative expenses (e.g. submission of an annual tax return and preparation of a detailed schedule of assets / annual accounts).

C. Information on the taxation of private asset structures (minimum corporate income tax of CHF 1'200)

The Tax Act which entered into force on 1 January 2011 permits the special taxation of legal entities that can be classified as private asset structures (PAS).

The Surveillance Authority of the European Free Trade Association (EFTA) has examined the provisions on PAS status for conformity with the rules on state aid, and by decision of 15 February 2011 it confirmed their conformity.

A PAS must not carry out any business activities in the pursuit of its object. Any offering of goods and services on the market constitutes business activity. Any direct or indirect influencing of the management of subsidiaries and the regular active trading of securities is also considered to be a business activity. Thus, the activities of a PAS are limited to the mere and passive exercising of the right of ownership in the assets held by the PAS.

Basically only individuals, acting within the context of management of his or her private wealth, may be the shareholders or beneficiaries of a PAS.

The above mentioned criteria lead to the following conclusions:

Securities / financial instruments:

The purchase and sale of securities and/or financial instruments is admissible within the framework of exercising one's right of ownership. However, regular active trading of financial instruments (more than 50% of the deposit value per year) is detrimental to PAS status because this is considered to be a business activity unless asset management is done exclusively by an external independent asset manager. The collection of dividends and interest is based on the passive position as the owner of these assets and therefore does not constitute a business activity.

Participations:

Basically, the holding of participations is detrimental to PAS status. A PAS may only hold participations under the condition that the PAS or its shareholders or beneficiaries do not actually exercise any control through direct or indirect influence on the management of that company.

Real estate / property:

The holding of real estate is basically inadmissible. If use of the property is permitted to a beneficiary or shareholder free of charge, this is an acceptable appropriation of earnings and therefore does not affect the PAS status.

Loans:

The granting of interest-bearing loans is basically detrimental for a PAS status. However, granting loans without interest to a beneficiary or shareholder are allowed because this is an acceptable appropriation of earnings.

The time-limits for submitting applications to grant PAS status are as follows:

- a) with newly formed legal entities, within one month from formation;
- b) with existing legal entities, before the beginning of the business year starting from which PAS status is being applied for (e.g. apply for PAS status not later than 30 December 2013 in order to be valid for the tax year 2014).

A short summary of the advantages and disadvantages of private asset structures (PAS):

Advantages:

- a) pays only the minimum corporate income tax of currently CHF 1'200;
- b) does not have to submit a tax return (also applies to parent companies/subsidiaries subject to unrestricted tax liability in Liechtenstein if both companies may claim PAS status);
- c) basically requires a simple schedule of assets only; neither annual accounts nor securities accounting required;
- d) has been recognised by the EFTA Surveillance Authority.

Disadvantages:

- a) is limited to pure asset management and/or the mere and passive exercise of the right of ownership in the assets held by it;
- b) subject to regular checks by the tax authorities for compliance with the PAS rules;
- c) in many cases, cannot apply double tax treaties and others tax treaties (PAS are explicitly exempted from application);
- d) risk of retroactive taxation if the PAS criteria are not or no longer met;
- e) complex criteria that are difficult to handle in large-scale structures.

D. Taxation of legal entities in Liechtenstein with foreign subsidiaries

Legal entities with domicile or place of effective management in Liechtenstein, provided that they did not file the application to be classified as private asset structures, have to pay a corporate income tax of 12.5%. Dividends arising from foreign subsidiaries and capital gains from the sale or liquidation of foreign subsidiaries are exempt from taxation in Liechtenstein.

For any questions regarding the taxation of legal entities (corporate income tax of 12.5%) or the taxation of private asset structures (minimum corporate income tax of CHF 1'200), please contact your tax consultant, as any specific case should be individually analysed. Our specialists for tax matters will be glad to assist you under the following data:

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