Taxation of trusts in civil law jurisdictions

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I. Private law framework[1]

A. Recognition of trusts in Liechtenstein

1. Liechtenstein statute law

Liechtenstein is one of the very few civil law jurisdictions having implemented the trust into its own law. The cornerstone was laid in 1926 with the creation of the Law on Persons and Companies (PGR). This law is essentially the work of a versatile draftsman, Dr. Wilhelm Beck, who with a view of improving the economic conditions in Liechtenstein had masterminded many of the legal changes in that decade.

Whilst the trust had been newly introduced into the Liechtenstein law and had been adopted from the common law system, the foundation is an ancient institution in civil law countries. It has been fully recognized in the PGR and further developed and modernized.

2. Liechtenstein trust law

Pursuant to Article 897 PGR a trustee is a natural person, firm or legal entity to whom another (the settlor) transfers movable or immovable property or a right (as trust fund) of whatever kind with the obligation to administer or use such trust fund in his own name as an independent legal owner for the benefit of one or several third persons (beneficiaries) with effect towards all other persons. Hence, the Liechtenstein trust according to Article 897 PGR complies with the definition of the trust pursuant to the Hague Convention.

In contrast to other trust jurisdictions, Liechtenstein trust law does not have a rule against perpetuities. Furthermore, Liechtenstein statute law allows the establishment of pure purpose trusts. As an example a Liechtenstein trust may therefore be used for ecclesiastical and charitable purposes pursuant to § 1 and 3 of the Law on Trust Enterprises (TrUG).

The trust creation is based on private autonomy, i.e. the settlor may structure the trust instrument according to his wishes. He may also reserve to himself rights and powers, including the right to revoke the trust. Such reservation of powers, specifically the power to revoke, has to be made expressly. There are, however, two limits to this. The settlor cannot reserve as many rights and powers so that the instrument no longer really constitutes a trust, and concerning the beneficiaries and the trustees he cannot oust the jurisdiction of the court. The settlor may, however, institute an arbitration instead of the ordinary court. In practice, the settlor usually reserves no or very little power within the ambit of family trusts.

3. International law and trusts pursuant to foreign law

Pursuant to Article 930 PGR the law of the state expressly determined as governing law by the trust deed is applicable to a trust. If no express choice of law is apparent, the law of the state in which the trustee or the majority of the trustees have their usual

[1] Special thanks go to Dr.iur. Klaus Biedermann for his valuable input on this part.

residence or domicile and subsidiarily the law of the state in which the trustee functions are effectively exercised shall be applicable to the trust relationship.

Liechtenstein even allows the settlement of a trust pursuant to foreign law as well as the transfer of such trusts to Liechtenstein pursuant to Article 931 PGR. In such an event the relationship between the settlor, the trustee and the beneficiaries is governed by the provisions of the foreign law as expressly set out in the trust deed, while the relationship between the trust and third parties remains governed by Liechtenstein law.

4. Recognition of the Liechtenstein trust in international private law

The Liechtenstein trust has been well recognized in other countries. In principle, non-recognition cases fall under one of the following three headings, namely

- non-recognition as a party where the institution of a trust has been abused;
- tax non-recognition because control and management was not in Liechtenstein, but the "beneficial owners" used the trust like a current account;
- the use of a trust with the intention to gain illegitimate tax advantages.

Surprisingly, the Swiss Tax Conference (SSK) takes a different view in its circular letter 30 of 22 August 2007 (Circular Letter) regarding the taxation of trusts.

According to point 2.4. of the Circular Letter a trust under Liechtenstein law differs significantly from the main features of a trust. As a result, the Liechtenstein trust is not further referred to in the circular.

Considering point 2.1. of the Circular Letter a trust under Liechtenstein law clearly corresponds to the main features of a trust described therein. Consequently, point 2.4. of the Circular Letter is erroneous and should be subject to revision.

5. The Hague Convention

The Hague Convention on the Law Applicable to Trusts and on their Recognition made on 1 July 1985 amplifies the recognition of foreign trusts in civil law jurisdictions on the basis of internationally recognised norms. Despite of its own trust law, Liechtenstein has ratified the Hague Convention in December 2004 and it came into force on 1 April 2006. Through the accession to the Hague Convention, Liechtenstein guarantees the recognition of the existence and validity of foreign trusts in addition to the provisions contained in Articles 930 and 931 PGR. Vice versa, the existence and validity of Liechtenstein trusts is safeguarded in the contracting states to the Hague Convention.

6. Reform of Liechtenstein trust law

As announced by the government, the Liechtenstein trust law shall be subject to revision. On 27 June 2007, thoughts on the need for a reform of Liechtenstein trust law as well as possible focus areas of such a reform were presented for the first time at the University of Liechtenstein.

The goal of the total revision of the trust law is to create a modern law governing trusts in Liechtenstein. The new, modern trust law should meet both national and international demands, strengthen domestic legal certainty, and make the Liechtenstein trust competitive and attractive internationally.

Experience gained in the total revision of entire laws has shown that preference should be given to the enactment of a self-contained body of law rather than to a mere selective revision of certain legal provisions. This perception was confirmed especially during the revision of the law governing Liechtenstein foundations. The goal should therefore be to create a new, comprehensively revised trust law as a self-contained and competitive body of law that is also able to establish itself in the international marketplace. Various modern trust laws serving as models have been drawn on and compared with each other. Building on this up-to-date foreign legislation, a Liechtenstein law has been drafted and presented to the government.

After the adoption of the new law governing foundations on 26 June 2008, the plan is now to launch the consultation report on the new trust law.

According to the Ministry of Justice, the new draft law will be a "stand-alone act", so that a basic understanding of the legal text does not require reference to other legislative provisions in the PGR. This will facilitate use of the law both nationally and internationally. The draft partially replaces the traditional language used until now and abandons certain terms and phrases that are no longer up-to-date. The draft also presupposes that the provisions of the law are mandatory unless expressly stated otherwise. The draft law is short and concise, offering legal leeway corresponding to the international standard. Due to the "stand-alone" nature of the legal text, the draft does not contain explicit references to other provisions of the Liechtenstein legal order such as the TrUG.

B. Comparison with similar civil law concepts

1. General remarks

Besides of its trust, Liechtenstein offers a wide selection of instruments which may be used for similar purposes. The Liechtenstein Persons and Companies Act (PGR), offers a great variety of entities, such as the trust enterprise, the foundation or the establishment (Anstalt).

2. Coexistence of the common law trust and the civil law fiducia

In addition to the Liechtenstein trust according to Article 897 et seq. PGR, the Liechtenstein law also offers contractual relationships with elements of the Roman law fiducia (fiduziarische Treuhand). In contrast to the trust, the settlor of the fiducia may validly give binding instructions to the trustee, whereas Article 918 PGR stipulates that the settlor may not bind the trustee by continuous instruction. The Fiducia is a contract sui generis and the provisions of the mandate (Article 1002 et seq. of the Liechtenstein Civil Code) are applicable supplementary. The Liechtenstein Supreme Court held[2] that the parties may freely choose whether they want to apply the trust provision or the fiducia based on the principles of the mandate on their contractual relationship.

3. Trust enterprise

In 1928, Liechtenstein enacted the Law on Trust Enterpriese (TrUG). It was instituted in the Liechtenstein PGR as Article 932a PGR. With its 170 paragraphs it is very rich and quite a complicated piece of legislation. It is supplementary applicable on the Liechtenstein trust. This supplemental and analogous application of the provisions of

[2] Decision of the Liechtenstein Supreme Court of 6 July 2000, 5 C 303/98-53, LES 3/2000.

the trust enterprise to the Liechtenstein trust is only possible as the Liechtenstein trust enterprise resembles a trust insofar as the main characteristics are concerned. The trust enterprise was amongst others intended to regulate a special type of trust. Based on the role model of the Massachusetts business trust, the Liechtenstein statutory draftsman implemented the trust enterprise being a trust structure in lieu of a company.

§ 1 TrUG defines the trust enterprise as follows: “A trust enterprise as a real business trust is an undertaking managed or further operated on the basis of the trust articles by one or several trustees (as fiduciary owners) under their own name or company name which, legally autonomous and organized, pursues economic or other objects and is endowed with its own assets.” It is worth mentioning, that according to the law, the regular form of the trust enterprise does not have legal personality. However, the articles may provide so. In practice, the trust enterprise is regularly equipped with legal personality. A second main difference to the trust is that a trust enterprise may carry out commercial activities and, in practice, usually is being used for business activities.

Liechtenstein practice has not used the richness of the TrUG to its full extent, but has been using for years a trust enterprise structure, which is mirrorlike to the most commonly used establishment, i.e. with founder’s rights and the founder being the supreme organ with all relevant powers including the power to appoint beneficiaries.

4. Foundation

4.1 Foundations in civil law countries

Foundations are not a specialty of Liechtenstein, quite contrary to what is often said. Foundations do have a long tradition in the surrounding civil law countries, such as Switzerland, Austria and Germany. Foundations have been used for centuries for the furtherance of abstract, particularly ecclesiastical purposes, the furtherance of art and charitable purposes as well as for the furtherance of family purposes. The latter use has been severely cut in the surrounding countries and, as a result, may be qualified more or less a Liechtenstein specialty.

4.2 The codifications of the law in civil law countries and their impact on foundations

The 19th and the early 20th century reflect the era of the great codifications of the private law in civil law countries. Apart from many other important issues of legal thinking during this period, there were two ideas, which ran controversial to the family foundation, i.e.

- the moving away from feudal structures and the adversity against tying-up of family property and making it res extra commercium;
- the idea of the so-called inheritance regime or mandatory portion (forced heirship).

The result was that

- all sorts of fideicommissa have been restricted to more or less two generations or even forbidden;
- family foundations have either been totally abolished or severely restricted.

Not so in Liechtenstein where these changes were not implemented.

4.3 The Liechtenstein foundation

Pursuant to Article 552 PGR for a foundation to be formed by natural persons or legal entities or firms, it is necessary for assets to be endowed (foundation property) for a certain specific purpose. Ecclesiastical, family and non-profit making purposes may be given particular consideration. Commercial activities may be undertaken by a foundation only provided such activity serves its non-commercial purpose or the type and scope of the participations held require the facilities of a commercial business.

The foundation does not have members or owners. Its capital is not divided into shares and, consequently, there are no shareholders. Thus, the foundation is sometimes referred to as an independent estate in the form of a legal entity with its own legal personality set up in order to pursue a specific non-commercial purpose in accordance with the founder's will as set forth in the foundation's articles and by-laws. In Liechtenstein practice, the foundation is often used for family purposes and/or wealth and estate planning as well as for charitable purposes due to its legal nature that is geared to survive the founder and to guarantee the perpetuity of his will as expressed within the articles and by-laws. There is no limitation of perpetuity.

Generally, the purpose of a foundation includes the determination of fixed beneficiaries with a claim to a certain interest in the foundation's assets or the income thereof (fixed foundation), or potential beneficiaries or the definition of a class of beneficiaries as well as of the criteria according to which beneficiaries may be appointed out of the class of beneficiaries (discretionary foundation).

After its creation the foundation lives independently from the founder. Usually he has no further function and there are no so called founder's rights. However, within the articles the founder may expressly reserve to himself powers and rights such as the right to change the purpose or the organization or even to revoke the foundation.

The first and foremost duty of the board of foundation is to ensure the proper administration and distribution of the foundation assets in strict accordance with the purpose of the foundation and, therefore, according to the founder's will. The articles may confer to the board specific rights to change or amend the foundation's organization or purpose within the limits and under the conditions as provided for by the law.

Sometimes, the foundation is referred to as the exact civil law counterpart to the common law trust. Dogmatically, the main difference to the common law trust is that the civil law foundation has legal personality and is the owner of its property. Seen from a mere functional angle, there is no big difference between a family foundation and a family trust. They have been used in the past and are being used today for similar purposes, which may totally overlap.

Once created, the foundation has to be registered with the public register showing among others:

- the name of the foundation;
- the seat;
- the objects;
- the date of the instrument of creation;

- the organization and representation, whereby the name and residence or firm and seat respectively of the board members as well as of other representatives have to be indicated.

Ecclesiastical foundations, pure and mixed family foundations and foundations whose entitled beneficiaries are specifically designated or definable acquire legal personality without being entered in the public register.

Although private foundations (i.e. family foundations, foundations with ascertained or ascertainable beneficiaries etc.) are not subject to supervision of the court, the court has a wide ad hoc jurisdiction when applied to by beneficiaries or other concerned parties to grant relieves and solve contentious matters.

Charitable foundations usually are subject to the continuous supervision of the Liechtenstein government, although the present law still provides for specific exemption which may also apply to charitable foundation under certain conditions.

4.4 Reform of Liechtenstein foundation law

Liechtenstein has carried out a reform of its law governing foundations that will enter into force on 1 April 2009.

Liechtenstein's total revision of foundation law is based on the contemporary demands and needs of the financial centre's clients. The balanced overall concept of the reform meets international standards without deviating from the Liechtenstein legal tradition, which has always considered the protection of privacy to be a valuable good. The reform of foundation law was due not only to harmonization with international standards, but also to the widespread use of the foundation and its national economic significance to Liechtenstein. The requirements of market participants were taken into account, as well as the need to create a legal foundation that can be measured in accordance with scientific criteria and international standards, as the government stipulated in its guideline at the beginning of the reform process.

The new foundation law is a self-contained body of law with a new systematic structure differentiating private-use from charitable foundations and strengthening the responsibility of the founder. The protection of the foundation assets is subject to new rules, as are the supervision of foundations and foundation governance. The non-transferability of the founders' rights as a further new key feature entails greater legal certainty and clarity. The "deposited" foundation, which need not be registered in the public register and has thus been an object of criticism, has been retained. The retention of this type of foundation serves to protect the confidentiality of the founder if he wants to engage in long-term asset planning in the interest of his family. The exemption from the registration requirement only applies to private-use foundations, however, not to commercially operating foundations, which as a rule are limited to the mere management of assets.

Confidentiality in the foundation system is not a Liechtenstein peculiarity. In Austria, whose foundation law is closely based on Liechtenstein law, foundations must be entered in the corporate registry, but since a professional trustee acts on behalf of the founder when establishing the foundation and the name of the foundation may be freely chosen, the beneficial founder can remain in the background. And in Germany, only a limited publicity of foundations applies, which as a rule does not extend to the person of the founder. A switch to a general registration requirement for all foundations, including private-use foundations without a commercial purpose, would thus significantly diminish the attractiveness of the Liechtenstein foundation in an international comparison.

5. Establishment (Anstalt)

Until 1980 the establishment had been the legal entity most often used in Liechtenstein practice. After 1980 the foundation has taken over the position of the establishment as the most important entity for the Liechtenstein financial center. However, the establishment is still a very commonly used and attractive entity and, at the same time, probably the most flexible legal form offered by the Liechtenstein law.

Pursuant to Article 534 Para. 1 PGR the establishment is a legally independent and organized enterprise dedicated for continuing economic or other purposes and entered into the public register as establishment register. It does not have public character.

The establishment has yet been qualified as a hybrid. A hybrid because it can be structured either in an association type manner or in a foundation type manner. If structured in an association type manner and if combined with an economic purpose the establishment will organizationally be structured and administered very much along the lines of a business company. If structured in a foundation type manner and combined with e.g. family or charitable purposes, the establishment becomes much like a foundation. This type is often used in Liechtenstein practice. In contrast to the foundation the establishment is more flexible and may be easily controlled by the founder by virtue of the so called founder’s rights that can be assigned or otherwise transferred and bequeathed, but not charged or otherwise encumbered. The holder of the founder’s rights is the supreme body of the Anstalt and as such usually joins all relevant competences such as the amendment of the statutes, the determination of beneficiaries, the dissolution of the Anstalt etc. If there are no third beneficiaries, the law assumes that the founder himself is the beneficiary.

The combination of company type and foundation type elements give the establishment its unique character and may fulfill within one legal entity three functions, i.e.

- to assure that the founder stays in control of the establishment;
- to have an instrument available to perform business activities;
- to implement a family function, namely to provide for concurrent and successive beneficiaries.

The articles of the establishment therefore usually provide for two organs

- the founder being the supreme organ;
- the board of directors being the executive organ.

The establishment has to be registered with the public register, showing among others

- the formation act;
- the date of the statutes;
- the name or firm of the establishment and its seat;
- the purpose or objects respectively;
- the duration of the establishment;
- the amount of the funds dedicated to the establishment;
- name and address or firm and seat respectively of the board members;
- the form in which the establishment makes its public announcements.

II. Direct and indirect taxation of Trusts

A. Overview of national tax system

1. Historical development of the Liechtenstein tax system

The Tax Act of 1923, which replaced the Provisional Tax Act of 1865, created for the first time two different tax regimes aiming to attract foreign capital: Ordinarily taxed and tax privileged juridical persons.

The Tax Act of 1923 was replaced by the Act of 30 January 1961 on State and Municipal Taxes (Tax Act). Pursuant to Article 84 of the Tax Act it distinguishes ordinarily taxed and ordinarily resident juridical persons registered with the public register and juridical persons registered with the public register which have only their residence with or without offices in Liechtenstein and do not carry on any business or commercial activity in Liechtenstein. Such resident only juridical persons registered with the public register are liberated from net wealth tax, income tax and corporate income tax. They only have to pay a net worth tax of 1‰ of the paid in capital or the invested capital and the reserves respectively. However, they have to pay a minimum of CHF 1,000 per annum.

Trust funds under a trust are treated the same way unless the trust funds are Liechtenstein trust funds according to Article 31 Para. 1 Letter e of the Tax Act.

Pursuant to Article 83 of the Tax Act holding companies and non registered foundations whose sole or major purpose is to only administer their own assets or to have and administer continually only holdings in underlying entities have the same tax status, i.e. 1‰ on paid in capital or invested capital and reserves, with a minium of CHF 1,000 per annum.

Pursuant to Article 85 of the Tax Act foundations receive a reduction on the net worth tax. For assets above CHF 2 million the tax rate is ¾‰ and assets above CHF 10 million it is ½‰. However, this provision does not apply to trust funds under a trust.

This net worth tax is the only recurring tax levied for tax privileged juridical persons and trusts subject to Articles 83 and 84 of the Tax Act. Besides the recurring taxes mention will be made to coupon tax, Swiss stamp duty as well as Liechtenstein formation or stamp duty.

The Tax Act of 1961 is still applicable today. In the past partial amendments were passed, a major reform of the tax system in 1990 however has not been successful due to a negative referendum. On 31 October 2006 the Government of the Principality of Liechtenstein appointed a working group, which is currently preparing a tax reform concept in the sense of a comprehensive Liechtenstein tax strategy for natural and legal persons. The final report has been approved by the government in July 2008 and a consultation draft is expected by the end of the year. The planned revision of Liechtenstein tax law shall adjust the existing tax law to the changed economic and legal environment in Liechtenstein and abroad, so that Liechtenstein will continue to offer a domestically and internationally attractive and competitive tax system for natural and legal persons. The tax reform concept is based on the general principle of transparent and simple taxation of citizens, in which income achieved on the markets is, where possible, only taxed once over the course of the life cycle, and in which natural and legal persons are treated the same to the extent possible. Further, the tax reform concept takes special account of conformity with European law and international compatibility.

2. General remarks on taxes levied in Liechtenstein

Liechtenstein has a fully-fledged tax system. Direct taxes among others cover: Net wealth tax, income tax, net worth tax, corporate income tax, coupon tax, real estate gains tax, estate tax, inheritance tax, gift tax, security issue tax or security transfer tax. Indirect taxes among others cover: Value added tax, tax on insurance premiums, customs duties or excise duties.

Liechtenstein has a joint value added tax system with Switzerland since 1995. Due to the Customs Treaty with Switzerland of 1923 Swiss stamp duty also applies in Liechtenstein.

A double taxation agreement with Austria on income and wealth tax and an agreement on several tax matters with Switzerland are applicable. So far Liechtenstein has not concluded any other double taxation agreement.

According to the agreement between the European Union and Liechtenstein, which became effective on 1 July 2005 and provides for measures equivalent to those laid down in the EC Savings Directive (2003/48/EC), all interest payments made by paying agents established in Liechtenstein to beneficial owners resident in EU member states are subject to a retention tax. The applicable rate as of 1 July 2008 is 20%, it will increase up to 35% after 30 June 2011. In this context Liechtenstein also provides for a procedure allowing a beneficial owner to avoid the retention tax by expressly authorizing his Liechtenstein paying agent to report the interest payments to the competent authority of the state in which the beneficial owner is resident.

3. Taxation of individuals

3.1 Taxable persons

Individuals resident in Liechtenstein and individuals who work in Liechtenstein (unless otherwise provided in Liechtenstein’s treaties with Austria and Switzerland) are subject to income tax. Individuals are regarded as resident in Liechtenstein if they reside in Liechtenstein with the intention of staying there permanently. For tax purposes, individuals are also deemed to be resident if they stay in Liechtenstein daily in order to perform a gainful activity (employed or self-employed). The income of husband and wife is aggregated for tax purposes. Investment income of a minor child is added to the parents’ income, while the child itself is assessed on earned income.

In general, partnerships are taxed as individuals and therefore are subject to income tax and net wealth tax.

3.2 Taxable income

Resident individuals are generally subject to unlimited income tax on their worldwide earned income.

Taxable income includes, among others, the following categories:

- salaries, wages, benefits in kind and other remuneration earned from employment;
- income derived from self-employment;
- benefits from social security/insurance;
- alimony and maintenance payments;
- royalties;

- capital gains (other than gains on real estate which are subject to real estate gains tax).

The following types of income, among others, are exempt from income tax:

- income from private investments (mainly dividends, interest, rental income), provided that the underlying assets are subject to net wealth tax;
- income from a business carried on abroad by an individual;
- proceeds from private redeemable lump-sum insurance policies;
- various social distributions;
- taxable income of resident individuals not exceeding in total CHF 24,000.

3.3 Employment income

Salaries and wages are any amounts earned by an individual for work performed in a dependent position (employment). Costs directly related to employment income are deductible, e.g. travel expenses and food expenses. A standard deduction of CHF 1,500 is granted to individuals with income from employment.

Benefits from basic social insurance (old-age and dependant pension, disability insurance) are subject to income tax but a tax allowance of 70% is granted. Contributions to state pension schemes are fully deductible. Benefits from company pension schemes which are recognized by the state as part of the social security system are subject to income tax but a tax allowance of 30% (in general) is granted. An employee's contributions to company pension schemes are deductible up to 12% of the taxable income. Lump-sum payments derived from state pension schemes and company pension schemes are taxable at a special rate (pension tax rate). In the case of a change of work, accrued capital amounts based on pension insurance paid by the employer or by a pension fund are exempt from income tax to the extent they are reinvested within 2 years in a new pension fund.

Remuneration, as well as any percentages of profits, allowances, etc., paid to non-executive directors, i.e. persons who are only members of the supervisory board and representatives, are taxed as employment income in the normal manner.

3.4 Business and professional income

"Business income" is defined as income derived from activities exercised with the intention of earning profits by participating in the commercial market. "Professional income" includes income earned by architects, engineers, entertainers, artists, attorneys, etc. Both business and professional income is income earned from self-employment. Taxable income from self-employment is the difference between equity at the end and at the beginning of the financial year, increased by the sum of private withdrawals and decreased by the sum of contributions. Income-related expenses are, in general, deductible.

3.5 Investment income

Individuals are not subject to income tax on private income derived from dividends and interest, irrespective of their source (domestic or foreign), provided that the underlying assets are subject to net wealth tax. Royalties are normally deemed to be income from a business or profession, such income is subject to income tax accordingly. The right may not be amortized and a decrease in its value may not be set off against taxable earned income. Income from privately held immovable property (private rental income) is not taxable in Liechtenstein. The rental value of an owner-occupied dwelling is not taxable.

3.6 Capital gains

Capital gains on domestic immovable property are exempt from income tax but are subject to real estate gains tax. Otherwise, capital gains realized by individuals (private capital gains) are subject to income tax in the normal manner. Private capital losses realized within the preceding 2 years may be set off against private capital gains, if they have not been considered in the calculation of the taxable income of the preceding years. The first CHF 5,000 of private gains are exempt.

3.7 Personal reliefs

The costs for education of children are deductible up to CHF 12,000 per child annually. Actual payments to persons whom the taxpayer is required to support by law (divorced spouse, children) are deductible. Medical expenses, including expenses for dentistry, borne by the taxpayer are deductible annually up to CHF 6,000 per person included in the household of the taxpayer. Donations to tax-exempt charitable organizations resident in Liechtenstein or Switzerland are deductible up to CHF 10,000 annually. Premiums paid for obligatory accident insurances are fully deductible. Premiums for all other private insurances are deductible up to a maximum of CHF 7,000 (married couple), CHF 3,500 (single taxpayer) and CHF 600 up to 2,100 (per child depending on age). An employee’s contributions to company pensions schemes are deductible up to 12% of the taxable income. Mortgage interest is not deductible.

Personal allowances are granted as follows:

- CHF 2,400 for taxpayers without an own household;
- CHF 4,800 for single persons;
- CHF 6,000 for married couples, and;
- CHF 9,000 for each child included in the taxpayer’s household.

For married couples, the aggregate amount of income tax and net wealth tax is reduced by credits. The credits are subject to a minimum of CHF 550 and a maximum of CHF 5,500. Single parents with children living in the same household are granted one half of the above-mentioned credits.

3.8 Losses

The total of losses suffered in the 5 preceding tax years may be deducted from the income of the current year, provided that such losses have not been set off (or could not have been fully set off) against income earned in the following years. Only losses of the same type of income may be set off against each other. Therefore, losses derived from self-employment may not be set off against income derived from employment, etc.

3.9 Rates

The basic tax rate on income (including private capital gains) is fixed by the parliament annually. The basis for the calculation of the tax rate for fiscal year 2008 is 54% of the statutory tax unit of 2%, which is 1.08% of taxable income. A surcharge between 5% and 425% is levied on the tax so calculated. In addition, the municipalities levy a surcharge on the tax calculated including the above surcharge.

This surcharge is fixed each year by the municipalities and differs from municipality to municipality, at present between 150% and 200%. The total tax rates on income, including the surcharges, range from 3.24% to 17.01% (for 2008).

A withholding tax on salaries is levied by resident employers. In computing the tax payable by an individual on his total annual income, the tax liability is reduced by the withheld tax.

A 4% withholding tax (coupon tax) is imposed on:

- dividends distributed by resident companies with capital divided into shares;
- loan interest paid by a resident company if the loan's duration exceeds 2 years and its amount exceeds CHF 50,000, and;
- interest on bonds issued by a resident company.

The tax withheld is final, i.e. it is not credited or refunded. There is no withholding tax on royalties.

3.10 Administration

Income tax, together with net wealth tax, is levied by the Tax Authority with the assistance of the municipal tax departments. The tax year covers 1 year and coincides with the calendar year. Apart from taxpayers with no income other than income subject to withholding tax on wages, all taxpayers receive a tax return form, and are requested to file it by the end of April of the calendar year following the respective tax year. Married couples file a joint tax return. There are no pre-assessments. The deadline for the assessment is fixed by the Tax Authority.

In computing the tax payable by an individual, the tax liability is reduced by the payments of tax already made by wage tax withholding. The balance is payable within 30 days after receipt of the assessment.

3.11 Concept of the Liechtenstein tax law reform

Net wealth and income tax will continue to be viewed only jointly as a general income tax. Net wealth will continue to be taxed on the basis of standardized earnings on assets with target earnings in the amount of foreseeable 3%, but henceforth also will be taxed jointly with income from work by means of a reconciliation. Further individuals will continue to be subject to real estate gains tax.

In the long term, the goal in accordance with the general principles underlying the tax reform concept is to eliminate the net wealth tax entirely and to levy solely an interest-adjusted income tax on all earnings on assets. This will ensure that all income of an individual is taxed as uniformly as possible and only once over the course of the life cycle.

4. Taxation of companies

4.1 Taxable persons

Liechtenstein has a classical corporate income tax system with a participation exemption for dividends from substantial shareholdings.

The corporate tax system differentiates between companies with business activities in Liechtenstein and special tax privileged companies, i.e. holding companies, domiciliary companies, insurance companies and captives. Companies with business activities in Liechtenstein are generally subject to corporate income tax and net worth tax.

In general, partnerships are not transparent for tax purposes; they are subject to individual income tax and net wealth tax. An entity is resident if its legal seat is in Liechtenstein.

4.2 Taxable income

Resident companies are subject to corporate income tax on their worldwide income, with the exception of income from a permanent establishment and immovable property located abroad. Dividends are exempt from corporate income tax to the extent they qualify for the participation exemption. Capital gains on domestic immovable property are exempt from corporate income tax but are subject to real estate gains tax.

All expenses necessary for the achievement of business profits are deductible. The corporate income tax itself and the net worth tax are also deductible. Loan interest paid is considered a normal business expense. Interest paid on loans from related parties is deductible to the extent that the rate does not exceed the allowed maximum interest rate published annually by the Tax Authority. The coupon tax on dividends and interest paid is not deductible. Dividends paid in any form are not deductible.

Inventory is valued at the lower of cost or market value. One third of this value may be deducted for tax purposes. Regarding depreciation and amortization the declining-balance and the straight-line methods are permitted. Official rates are published for each type of fixed asset. Depreciation can be postponed. Provisions for bad debts are allowed up to 10% of domestic receivables and up to 15% of foreign receivables. Special rules apply for banks and financial institutions.

4.3 Capital gains

Capital gains on domestic immovable property are exempt from corporate income tax but are subject to real estate gains tax. Otherwise, capital gains are part of taxable ordinary income of companies. In the case of a merger, division or transformation, however, no taxable capital gain arises, provided that the book values remain unchanged, the entities involved remain taxable in Liechtenstein and the business is not discontinued.

4.4 Losses

Losses may be carried forward for 5 tax years. No carry-back is allowed. No special rules for capital losses exist.

4.5 Rates

The corporate income tax rates are graduated and based on the ratio of taxable net income to taxable net worth of the company. The minimum rate is 7.5%, which applies to the taxable net income of companies with that ratio below 15%. The maximum rate is 15%, which applies to the taxable income of companies with that ratio above 30%. The applicable tax rate is increased if the amount of dividends distributed by the company for the relevant tax year exceeds 8% of its taxable net worth. The increase is one to five percentage points, depending on the dividend distribution percentage, with the maximum increase applicable to dividend distributions exceeding 24% of the company's taxable net worth. The maximum

income tax rate is therefore 20%, which is reached if the ratio of taxable net income to taxable net worth is more than 30% and the dividend distribution exceeds 24% of taxable net worth.
A coupon tax of 4% is imposed on:

- dividends distributed by resident companies with capital divided into shares;
- loan interest paid by a resident company if the loan's duration exceeds 2 years and its amount exceeds CHF 50,000, and;
- interest on bonds issued by a resident company.

The tax withheld is final, i.e. it is not credited or refunded. There is no withholding tax on royalties.

4.6 Administration

The tax year covers 1 year and usually coincides with the calendar year. If a company uses a financial year different from the calendar year, the taxable income of a year is the income of the financial year that ends in that tax year.

All corporate taxpayers receive a tax return form, and are requested to file it by 1 July of the calendar year following the respective tax year. The tax return must be accompanied by all relevant documents (including financial statements and the auditor's report). The final assessment usually takes place within 12 months after the filing. No preassessments and prepayments are applicable. The tax is due at the date of the assessment, and has to be paid within 30 days of that date.

4.7 Group treatment

There are no rules for group consolidation for tax purposes. Dividends are generally taxable for the recipient company. However, relief is granted in respect of a substantial participation in a resident or non-resident company (participation exemption).

Dividends derived from a substantial participation are included in the taxable income of the corporate shareholders, but the corporate income tax on total net income (including the dividends) is reduced by a fraction equal to the proportion between the net dividend and the total net income. The net dividend is the dividend from the substantial participation after non-refundable foreign withholding taxes, less related financing costs (e.g. interest) and less a lump sum of 5% of the gross dividend in order to take personal and management costs into account. If the actual costs are less than the 5% lump sum, the taxpayer may deduct these lower costs instead.

A substantial participation exists if a company holds at least 20% of the capital of the distributing company or if the value of the participation is at least CHF 2 million. The duration of the shareholding has to be greater than 1 year. Participation exemption is not granted if the dividend is derived from a non-resident company that lacks substance and is not subject to a regular corporate income tax in its jurisdiction.

4.8 Net worth tax

Companies with business activities in Liechtenstein are generally subject to net worth tax, which is assessed together with corporate income tax. The tax base is the lower of the value of equity at the beginning and at the end of the financial year, less distributed dividends. The valuation principles correspond to those relevant for corporate income tax. There are no deductions or exemptions. The rate is 0.2%.

4.9 Taxable foreign capital, income and capital gains

In general, all foreign income is included in taxable income of resident companies. However, income attributable to a foreign permanent establishment or foreign immovable property is exempt. Foreign dividends, interest and royalties may be exempt if they have borne a foreign withholding tax. The taxpayer has to submit a request for exemption to the tax authorities.

Movable property located abroad is subject to net worth tax. Immovable property located abroad and any property attributable to a foreign permanent establishment are exempt. Double taxation of income is avoided by the exemption method in most important cases. Regarding net worth tax, foreign immovable property and any property attributable to a foreign permanent establishment are exempt.

Non-resident companies are subject to corporate income tax on income and capital gains derived through a permanent establishment in Liechtenstein. In the case of domestic immovable property, non-resident companies are subject to the individual net wealth tax. In the case of capital gains on immovable property, non-resident companies are exempt from income tax but are subject to real estate gains tax. Non-resident companies are assessed to tax in the same manner as resident companies.

4.10 Withholding taxes

A final withholding tax (coupon tax) of 4% is imposed on dividends distributed by resident companies with capital divided into shares to their resident and non-resident shareholders. Furthermore, loan interest paid by a resident company to a creditor is subject to a 4% final withholding tax (coupon tax) if the duration of the loan is more than 2 years and the amount of the loan exceeds CHF 50,000. There is no withholding tax on royalties, no other withholding tax exists.

Liechtenstein's only income tax treaty applicable to taxation of companies is the one with Austria. The withholding tax rates under that treaty are less favourable than the corresponding domestic rates, which rates prevail. The following are the treaty rates for payments to Austrian residents:

- dividends: 15%;
- interest: 10%, and;
- royalties: 5% or 10%.

4.11 Transfer pricing, thin capitalization and controlled foreign company

All transactions between related parties must be concluded on an arm's length basis. Otherwise, the tax authorities may adjust the profit and capital and assess taxes (net worth tax, income tax and withholding tax (coupon tax)) on the adjusted amount. There are no thin capitalization rules, no CFC legislation applies either.

4.12. Tax privileged companies

4.12.1 Holding companies

Juridical persons registered with the public register and non-registered but deposited foundations whose sole or major purpose is to only administer their own assets or to have and administer continually only holdings in underlying entities have to pay a net worth tax (capital tax) of 1‰ on the paid in capital or invested capital and reserves, with a minium of CHF 1,000 per annum.

4.12.2 Domiciliary companies

Juridical persons registered with the public register which have only their residence with or without offices in Liechtenstein and do not carry on any business or commercial activity in Liechtenstein are exempt from net wealth tax, income tax and corporate income tax. They only have to pay a net worth tax of 1‰ of the paid in capital or the invested capital and the reserves respectively. However, they have to pay a minimum of CHF 1,000 per annum.

Trust funds under a trust are treated the same way unless the trust funds are Liechtenstein trust funds according to Tax Act Art. 31 Para. 1 Letter e.

4.12.3 Insurance companies

Foreign insurance companies having no domicile in Liechtenstein but engaging in business in the country (the company receives premiums in Liechtenstein) are not subject to ordinary taxation. Instead of paying net worth tax and corporate income tax they have to pay 1% on the premium revenues from life or annuity insurances and 2% on all other premium revenues. Insurance companies with domicile in Liechtenstein are subject to ordinary taxation.

4.12.4 Self-insurance companies (captives)

Insurance companies that only perform self-insurance (captive) pay a special net worth tax (capital tax) of 1‰ on the company's capital. This rate is reduced to 0.75‰ if the capital exceeds CHF 50 million and to 0.5‰ if the capital exceeds CHF 100 million. Alternatively, the insurance company can request ordinary taxation (net worth tax and corporate income tax). Insurance companies performing self-insurance and insurance of third parties are subject to ordinary taxation with respect to the part deriving from the insurance of third parties. Captive insurance companies are exempt from withholding tax (coupon tax). If the insured risk is located in Liechtenstein or in Switzerland, stamp duty on the insurance premiums is due.

4.12.5 Investment Undertakings

Pursuant to the Act of 19 May 2005 on Investment Undertakings there are three types of investment undertakings:

- investment undertaking set up in the legal form of a trust (investment fund, Anlagefonds);
- investment undertaking set up in the legal form of a company limited by shares with variable capital (investment company, Anlagegesellschaft);
- investment undertaking set up in the legal form of a company limited by shares with fixed capital (investment company, Anlagegesellschaft).

4.12.5.1 Investment undertaking in the legal form of a trust (investment fund)

With respect to the taxation of investment undertakings set up in the legal form of a trust (investment fund), distinction is made between the management company (Fondsleitung) and the funds assets (Fondsvermögen). The fund assets are tax exempt. Distributions to the holders of fund units are not subject to withholding tax (coupon tax).

The management company must be organized as a company limited by shares (Aktiengesellschaft), Societas Europea (SE) or an establishment (Anstalt). It is a separate taxable entity from the funds assets and taxed in the same way as an operative company. The management company is therefore subject to corporate income tax and net worth tax. If the capital of the management company is divided into shares distributions from such a company are subject to withholding tax (coupon tax).

Management company	**Funds assets (including proceeds)**
- net worth tax and corporate income tax - withholding tax (coupon tax)	- tax exempt - no withholding tax (coupon tax) on distributions

4.12.5.2 Investment undertaking in the legal form of a company limited by shares (investment company)

With respect to investment undertakings set up in the legal form of a company limited by shares with variable or fixed capital (Aktiengesellschaft, Societas Europea), distinction with regard to taxation is made between the company's own funds (Eigenmittel) and proceeds (Ertrag) on one hand and the fund assets (Fondsvermögen) on the other hand. The fund assets are tax exempt. Distributions to the holders of fund units are not subject to withholding tax (coupon tax). The company's own funds and proceeds are subject to net worth tax and corporate income tax. The company's own funds consist of the paid-up share capital, the reserves and the profit carried forward or losses carried forward respectively. Distributions on founder's shares are subject to withholding tax (coupon tax).

Company limited by shares	
Company-owned funds and proceeds	**Fund assets (including proceeds)**
- net worth tax and corporate income tax **Distributions on founder's shares** - withholding tax (coupon tax)	- tax exempt - no withholding tax (coupon tax) on distributions

5. Real estate gains tax

Real estate gains tax is payable to the state by any person realizing capital gains on the sale of immovable property located in Liechtenstein.

The taxable base is the amount by which the proceeds of the sale exceed the invested cost. “Invested cost” is an officially assessed value plus any excess of original purchase cost and subsequent capital additions (less maintenance costs) over the assessed value. A general deduction of CHF 1,500 from the such calculated real estate gains is granted.

The basic tax rate is the same basic rate that is fixed annually by the parliament for income tax. That rate is increased, depending on the holding period, by one third (holding period of 5 to 10 years), two thirds (holding period of 3 to 5 years) or 100% (holding period of less than 3 years). The amount so calculated is increased by the progressive surcharge ranging from 5% to 425% and furthermore by a standard surcharge of 200%. The total tax rate, including the increases and surcharges, varies from 3.24% to 34.02% (for 2008).

6. Estate, inheritance and gift taxes

6.1 General remarks

Liechtenstein levies a separate estate tax and, in addition, an inheritance tax and a gift tax. It has concluded treaties of reciprocity with the four Swiss cantons St. Gallen, Graubünden, Fribourg and Schaffhausen, on tax relief for charitable or state entities (applicable to the two death taxes and gift taxes).

6.2 Estate tax

Estate tax is payable by the (resident or non-resident) beneficiary or beneficiaries (jointly and severally) prior to the distribution of the estate. An estate is considered to be in Liechtenstein if it consists of domestic immovable property, the decedent was resident or domiciled (usual abode or sojourn) in Liechtenstein at the time of death or the estate is executed in Liechtenstein.

The estate tax rates range from 1% to 5%, depending on the value of the estate. For estate passing over to near relatives of the decedent (spouse, children and parents), the rates are halved. A tax allowance of CHF 10,000 is granted to the decedent’s spouse and descendants.

6.3 Inheritance tax

Inheritance tax is payable by the (resident or non-resident) beneficiary or beneficiaries prior to the distribution of the assets on any acquisition of property by way of inheritance in Liechtenstein, whether by law or by will. Such acquisition is considered to take place in Liechtenstein if it consists of domestic immovable property, the decedent was resident or domiciled (usual abode or sojourn) in Liechtenstein at the time of death or the beneficiary (heir or legatee) is resident or domiciled in Liechtenstein and is unable to prove that a similar foreign tax is levied on the same property.

Public establishments and foundations (private establishments and foundations upon approval) exclusively serving church, charity, science or art are exempt from inheritance tax.

Inheritance tax is calculated on the amount remaining after deduction of the estate tax, a tax allowance of CHF 10,000 is granted to the decedent's spouse and descendants. The inheritance tax rates range from 0.5% to 18%, depending on the degree of relationship between the decedent and the beneficiary. In addition, the tax is increased by a small surcharge (0.05% to 0.25%), which is determined by the amount of the inherited assets.

6.4 Gift tax

Gift tax is primarily payable by the donee; the donor is jointly and severally liable with the donee. Any acquisition of property by way of donation inter vivos in Liechtenstein is subject to gift tax. Such acquisition is considered to take place in Liechtenstein if it consists of domestic immovable property; the donor is resident or domiciled (usual abode or sojourn) in Liechtenstein at the time of donation or the donee is resident or domiciled in Liechtenstein and is unable to prove that a similar foreign tax is levied on the same property.

Donations made during the past 10 years have to be taken into consideration. A tax allowance of CHF 10,000 is granted to the donor's spouse and descendants. The tax rates are the same as for inheritance tax.

7. Withholding tax (coupon tax)

To this date, Liechtenstein has no general provisions for a withholding tax regime (like the Swiss anticipatory tax, for example).

A 4% withholding tax (coupon tax) is imposed on:

- dividends distributed by resident companies with capital divided into shares;
- loan interest paid by a resident company if the loan's duration exceeds 2 years and its amount exceeds CHF 50,000, and;
- interest on bonds issued by a resident company.

There is no withholding tax on royalties. The tax withheld is final, i.e. it is not credited or refunded.

8. Stamp duties

8.1 General remarks

Due to the Customs Treaty concluded with Switzerland in 1923, the Swiss regulations on stamp duties (Swiss Federal Act on Stamp Duties) are applicable also in Liechtenstein. Difference is made between security issue tax, security transfer tax and tax on insurance premiums.

8.1 Security issue tax

The formation and expansion of capital of companies is subject to a 1% stamp duty.

8.2 Security transfer tax

The transfer of securities is subject to a stamp duty of 0.3% for foreign securities and 0.15% for domestic securities.

8.3 Tax on insurance premiums

Insurance tax amounts to 5% of property/casualty insurance premiums or 2.5% of the single premiums of redeemable life insurance policies. Such tax is due if the insured risk is located in Liechtenstein or Switzerland.

9. Liechtenstein formation or stamp duty

This one time tax applies where the Swiss stamp duty does not. It becomes applicable at formation, change of domicile, or capital increase of juridical persons or particular property dedications at a rate of 1%. If the capital is less than CHF 1 million no stamp duty is payable. The tax rate is reduced to ½% if the capital is more than CHF 5 million and to 0.3% if more than CHF 10 million.

This tax also applies to the changing of hand of participation rights in juridical persons, companies or particular property dedications which are economically liquidated or brought into liquid form.

Foundations and particular property dedications with the simple purpose of administering their assets, in the holding and continuous administration of holdings in other enterprises are taxed at a tax rate of 2‰, with a miniumum of CHF 200.

10. Value added tax (VAT)

10.1 General remarks

Liechtenstein has a joint value added tax system with Switzerland pursuant to the Treaty of 28 October 1994 between Liechtenstein and Switzerland regarding the value added tax in Liechtenstein since 1995. As a result, Liechtenstein incorporated the substantive provisions of the Swiss value added tax legislation into national legislation. Liechtenstein has its own VAT administration and enforces its VAT legislation parallel to Switzerland. Final Liechtenstein judgements on material VAT regulations may be appealed at the Swiss Federal Court.

Similar to Switzerland, entrepreneurs, i.e. individuals and companies exercising a business or professional activity, are basically subject to VAT, provided that their taxable domestic (i.e. Liechtenstein and Swiss) turnover exceeds CHF 75,000 per year. Persons subject to customs duty are subject to VAT on the import of goods. In addition, all persons are subject to VAT on services imported from abroad.

Taxable transactions include the supply of goods and services for remuneration in Liechtenstein and Switzerland, the import of services exceeding CHF 10,000 per year and the import of goods.

The taxable amount is the remuneration payable for the supply of goods and services. The taxable amount for the import of goods is, in principle, the remuneration that would have been paid on an arm's length basis. Input tax, i.e. the tax paid on purchases of goods and services, can be deducted. In effect, only the value added is taxed.

The law provides for two kinds of exemptions, i.e. an exemption without credit for input tax and an exemption with credit for input tax. The main exemptions without credit are:

- services performed in the areas of health, social services and social security;
- education and teaching;
- cultural activities;
- changes in the ownership of long-term leasing and property; and
- supplies in the area of money and financing, e.g. the supply of shares, credit card services, management of certain unit trusts and money lending.

The most important supplies to which the zero rate (exemption with credit) applies are:

- the export of goods;
- the supply of foreign goods temporarily imported into Switzerland-Liechtenstein VAT jurisdiction, and;
- the supply of work on movable goods for foreign persons to the extent the goods are exported.

The standard rate is 7.6%. A reduced rate of 3.6% applies in the letting of hotel rooms, holiday homes, guest rooms, camping grounds, etc. A reduced rate of 2.4% applies to certain goods and services, including:

- food and beverages, except for alcoholic beverages and services rendered in the hotel or catering sectors;
- medicines, and;
- newspapers, magazines, books and certain other printed material.

Non-resident entrepreneurs with a turnover in Switzerland or Liechtenstein in excess of a threshold must register for VAT and appoint a VAT representative. Such entrepreneurs can claim back the input VAT directly. Non-resident entrepreneurs without taxable activities in Liechtenstein or Switzerland are entitled to a refund of the domestic VAT if their foreign activities would qualify as taxable turnover under domestic VAT law and if the country of residence grants reciprocal treatment to Liechtenstein entrepreneurs (most EU Member States, the United States and Japan).

10.2 Reform of Swiss VAT system

Switzerland aims to improve its tax framework in order to retain and improve its position in international tax competition. In this context the VAT system shall be subject to simplification. In January 2008, the Federal Council instructed the Federal Department of Finance to draw up a dispatch for a revised VAT Act with a uniform tax rate of 6.1%. Furthermore, as many exemptions as possible from tax liability should be abolished. Along with tax relief for companies, the reform provides for more growth and shall strengthen Switzerland as a business location. The dispatch to parliament has been published in June 2008. Pursuant to the Treaty between Liechtenstein and Switzerland regarding the value added tax in Liechtenstein, Liechtenstein would incorporate any amendment of the Swiss VAT Act simultaneously into national legislation.

B. Taxation of the trust, the settlor and the beneficiary

1. General remarks

In principle foreign trust funds under a Liechtenstein trust are taxed in the same way as a domiciliary company.

Domiciliary companies pursuant to Art. 84 Para. 1 of the Tax Act are juridical persons registered with the public register which have only their residence with or without offices in Liechtenstein and do not carry on any business or commercial activity in Liechtenstein. Such resident only juridical persons registered with the public register are liberated from net wealth tax, income tax and corporate income tax. They only have to pay a net worth tax of 1‰ of the paid in capital or the invested capital and the reserves respectively. However, they have to pay a minimum of CHF 1,000 per annum.

In this context, Article 84 Para. 2 of the Tax Act contains the only explicit regulation regarding the taxation of trusts, which ascertains that trust funds under a trust are subject to the above mentioned net worth tax unless they are subject to taxation according to Article 31 Para. 1 Letter e of the Tax Act.

Pursuant to Article 88 Para. 2 of the Tax Act the minimum net worth tax of CHF 1,000 is payable annually in advance.

The current Tax Act does hence not distinguish between revocable and non-revocable trusts or discretionary and non-discretionary trusts. Pursuant to Article 31 Para. 1 Letter e of the Tax Act the only relevant distinction is made between trusts with domestic property and trusts with foreign property. In this context another distinction is made between the domestic or foreign residence of the settlor, i.e. the original owner of the trust funds under a trust, or the domestic or foreign residence of the beneficiaries of the trust.

If pursuant to Article 84 Para. 3 of the Tax Act property or a part of a property of a domiciliary company consists of domestic real estate, Article 56 Para. 2 of the Tax Act applies regarding the taxation of the domestic real estate. Such property is subject to ordinary net wealth tax. However, allowances according to Articles 42 and 43 of the Tax Act are not permitted. Capital gains on domestic immovable property are subject to ordinary real estate gains tax pursuant to Article 62 et seq. of the Tax Act. These regulations in principle also apply to trust funds under a trust that are subject to Article 31 Para. 1 Letter e of the Tax Act, allowances according to Articles 42 and 43 however are admissible.

Pursuant to Article 31 Para. 1 Letter e of the Tax Act trustees are subject to ordinary net wealth and income tax for trust funds under a trust which consist of domestic property.

2. Estate tax, inheritance and gift tax

In principle, the taxation of a non-resident settlor as well as a non-resident beneficiary is effected by the jurisdiction in which the settlor or the beneficiary is resident and to which they are liable by virtue of personal affiliation. A transfer of foreign trust funds to a domestic trust by a non-resident settlor is not subject to Liechtenstein gift tax, estate or inheritance tax. Alternatively a transfer of trust funds under a domestic trust to a non-resident beneficiary is not subject to Liechtenstein gift tax provided that the trust funds under a trust are not domestic trust funds.

3. Foreign jurisdiction trust

A foreign jurisdiction trust which is fiscally recognized as foreign factual reality due to its non-resident settlor and beneficiary as well as its foreign trust assets and which is administered by a qualified trustee resident in Liechtenstein is free to register with the public register. As long as a foreign jurisdiction trust is not registered or deposited respectively with the public register its trust funds are in principle not subject to taxation pursuant to Article 84 Para. 2 of the Tax Act.

4. Tax relief

Pursuant to Article 85 of the Tax Act foundations receive a reduction on the net worth tax. For assets together with reserves above CHF 2 million the tax rate is ¾‰ and for assets together with reserves above 10 million it is ½‰. This provision does not apply to trust funds under a trust.

5. Liechtenstein formation or stamp duty

Pursuant to Article 4 Para. 1 of the Finance Act of 22 November 2007 (Finance Act) this non-recurring tax applies where the Swiss stamp duty does not. It becomes applicable at formation, change of domicile, or capital increase of juridical persons or particular property dedications at a rate of 1%. If the capital is less than CHF 1 million no stamp duty is payable. The tax rate is reduced to ½% if the capital is more than CHF 5 million and to 0.3% if more than CHF 10 million.

Pursuant to Article 4 Para. 2 of the Finance Act the Liechtenstein formation and stamp duty also applies to the changing of hand of participation rights in juridical persons, companies or particular property dedications which are economically liquidated or brought into liquid form.

With respect to trusts Article 4 Para. 3 of the Finance Act generally applies. Accordingly, ecclesiastical, charitable and family foundations and foundations and particular property dedications with the simple purpose of administering their assets, in the holding and continuous administration of holdings in other enterprises are taxed at a tax rate of 2‰, with a minimum of CHF 200 if they do not carry on a commercial activity.

6. Value added tax (VAT)

Liechtenstein has a joint value added tax system with Switzerland pursuant to the Treaty of 28 October 1994 between Liechtenstein and Switzerland regarding the value added tax in Liechtenstein since 1995. Accordingly, Liechtenstein incorporated the substantive provisions of the Swiss value added tax legislation into national legislation. Liechtenstein has its own VAT administration and enforces its VAT legislation parallel to Switzerland.

Consequently, Liechtenstein has its own VAT brochure 14 (Financial Sphere), which is identical in form and content to the corresponding Swiss VAT brochure 14. Pursuant to its regulations a trust is a legal relationship which arises when the settlor transfers certain assets to the trustee on the basis of a trust deed. This includes trusts with common law features as well as trusts that have been established under Liechtenstein law and that do not have a legal personality.

A trust cannot keep a bank account. Only the trustee can be regarded as owner of the account or the deposit respectively.

Services according to Article 14 Para. 3 of the Liechtenstein Value Added Tax Act of 2000 (Value Added Tax Act) to a trust are presumed to be effected at the residence or the seat of the trustee and are not subject to VAT if

- the trustee is a natural person and has its residence abroad, or;
- the trustee is a legal person (or partnership) and has its seat abroad.

This provision applies with the reservation of tax evasion pursuant to Para. 5.11 of the VAT brochure 14.

Currently, the VAT brochure 14 is subject to revision by the Swiss Federal Tax Administration. It must be assumed that the current VAT practice in the field of trusts will be amended. The Swiss Federal Tax Administration aims to publish the revised VAT brochure during autumn 2008.

The Liechtenstein Tax Authority will fully implement the revised Swiss VAT brochure 14 as soon as the final Swiss version has been released.

III. Trusts and double taxation conventions

Liechtenstein has concluded a full-scope tax treaty with Austria in November 1969. Pursuant to Article 26 the provisions of this convention apply to companies and trusts, which are exempt under Liechtenstein tax legislation from capital, income and corporation taxes (under Articles 83 and 84 of the Tax Act) only to the extent that individuals, resident in Liechtenstein and companies, foundations and establishments of Liechtenstein public law are directly interested in or benefit from such companies and trusts.

Liechtenstein has further concluded a limited-scope tax treaty (wages, pension fund payments and mortgage interest payments) with Switzerland in June 1995. This convention does not apply to trusts.

IV. Taxation of Liechtenstein trusts under the tax reform

According to the parameters for a Liechtenstein tax reform published on 14 April 2008 particular attention will be paid to the taxation of various manifestations of asset-managing structures, including foundations, establishments, and trusts.

The special company taxes currently levied in some cases will be replaced by a fundamentally revised taxation concept for non-commercially operating private investment companies and for the various forms of investment undertaking. This concept aims being compatible with European law and is designed in a manner that is uniform nationally and internationally. Taxation will continue to be on an attractive basis.

With this revision, the internationally oriented Liechtenstein financial centre will continue to have an internationally competitive and attractive tax system that is recognized under European law. A tax system that is able to comprehensively take the market's need for legal certainty into account and that meets the highest demands in an international comparison. Legal persons shall be defined as qualified private investment companies which exclusively manage assets for private persons with respect to the ownership, management, and sale of financial investments and which do not carry out any commercial activity, trusts will be treated as such. The taxation of these private investment companies will be uniform, according to a minimum tax on earnings.

The final report of the working group has been approved by the government in July 2008 and a detailed consultation draft is expected by the end of the year.

V. Disclaimer

The opinions expressed herein are the personal opinions of the authors and do not represent any authority’s and or employer's view in any way.

Vaduz, 17 November 2008