
THE TAX DISPUTES AND LITIGATION REVIEW

THIRD EDITION

EDITOR
SIMON WHITEHEAD

LAW BUSINESS RESEARCH

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THE TAX
DISPUTES AND
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Editor
SIMON WHITEHEAD

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EDITOR'S PREFACE

The objective of this book is to provide tax professionals involved in disputes with revenue authorities in multiple jurisdictions with an outline of the principal issues arising in those jurisdictions. In this, the third edition, we have continued to concentrate on the key jurisdictions where disputes are likely to occur for multinational businesses.

Each chapter provides an overview of the procedural rules that govern tax appeals and highlights the pitfalls of which taxpayers need to be most aware. Aspects that are particularly relevant to multinationals, such as transfer pricing, are also considered. In particular, we have asked the authors to address an area where we have always found worrying and subtle variations in approach between courts in different jurisdictions, namely the differing ways in which double tax conventions can be interpreted and applied.

It is noticeable in this third edition that the past year has seen a general increase in litigation as tax authorities in a number of jurisdictions take a more aggressive approach to the collection of tax; in response, no doubt, to political pressure to address tax avoidance. In the UK alone we have seen the tax authority vested with broad new powers not only of disclosure but even to require tax to be paid in advance of any determination by a court that it is due. The provisions empower the revenue authority, an administrative body, to compel payment of a sum, the subject of a genuine dispute, without any form of judicial control or appeal. A further announcement has just been made to introduce a 'diverted profits tax' to impose an additional tax in the UK when it is felt that a multinational is subject to too little corporation tax. These are, perhaps, extreme examples, reflective of the parliamentary cycle, yet a general toughening of stance seems to be felt. In that light, this book provides an overview of each jurisdiction's anti-avoidance rules and any alternative mechanisms for resolving tax disputes, such as mediation, arbitration or restitution claims.

We have attempted to give readers a flavour of the tax litigation landscape in each jurisdiction. The authors have looked to the future and have summarised the policies and approaches of the revenue authorities regarding contentious matters, addressing

important questions such as how long cases take and situations in which some form of settlement might be available.

We have been lucky to obtain contributions from the leading tax litigation practitioners in their jurisdictions. Many of the authors are members of the EU Tax Group, a collection of independent law firms, of which we are members, involved particularly in challenges to the compatibility of national tax laws with EU and EEA rights. We hope that you will find this book informative and useful.

Finally, I would like to acknowledge the hard work of my colleague Alice McDonald in the editing and compilation of this book.

Simon Whitehead

Joseph Hage Aaronson LLP

London

February 2015

Chapter 20

LIECHTENSTEIN

Heinz Frommelt and Angelo Trebo¹

I INTRODUCTION

The Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis and has been a sovereign state since 1806. The state authority is shared between the Prince and the people of Liechtenstein. The state in its current form is based on the Constitution enacted in 1921. In 1924 Liechtenstein adopted the Swiss franc as official currency and became part of the Swiss customs area. Since 1995, Liechtenstein has been a member of the European Economic Area (EEA).

Until 2011, taxation in Liechtenstein was governed by the Tax Act of 1961, which provided for a wealth tax and ancillary income tax for individuals as well as a capital and corporate income tax for legal entities. Foundations or trusts with settlors or beneficiaries resident in Liechtenstein were usually considered as transparent for tax purposes and were subsequently also subject to wealth tax. In addition, a coupon tax was levied on certain dividend distributions by legal entities and certain interest payments, and a capital gains tax was levied on the sale of real estate located in Liechtenstein. Further, the Tax Act provided for an estate tax as well as an inheritance and gift tax. Moreover, legal entities qualifying as holding companies (including foundations) as well as entities having merely their registered seat in Liechtenstein and without exercising any commercial activity in the country (domiciliary companies) were subject to a privileged taxation. The same applied to trusts registered in Liechtenstein. Finally, a lump sum taxation was available for foreign individuals resident in Liechtenstein who had no occupation in the country and no income from Liechtenstein sources.

In 2010, a new Tax Act and a new Tax Ordinance were enacted with effect from 1 January 2011. The new Tax Act 2010 has brought some radical changes to the

¹ Heinz Frommelt is a partner and Angelo Trebo is an associate at Sele Frommelt & Partner Attorneys at Law Ltd.

Liechtenstein taxation system, in particular for legal entities, since the capital tax on equity was abolished and a unitary corporate income tax was introduced for all legal entities. The coupon tax and the estate tax, as well as the inheritance and gift tax, have all been abolished. In lieu of the inheritance and gift tax, a new endowment tax applicable upon transfer of assets to a legal entity considered as opaque for tax purposes with a settlor or beneficiaries resident in Liechtenstein has been introduced.

In Liechtenstein, taxes are levied on a state and municipal level. Income of resident individuals is taxed at a progressive rate, with applicable allowances depending on the taxable base and the marital status of the taxpayer. Spouses are generally assessed jointly, unless they both request a separate assessment. The wealth tax is calculated through a notional interest on the taxable assets at a current rate of 4 per cent, which is then added to the taxable income base. In the case of individuals and legal entities subject to wealth taxation (basically foundations or trusts with settlors or beneficiaries resident in Liechtenstein), a state tax rate of currently maximum 8 per cent is levied on the taxable base. The figure is then further multiplied by a percentage rate depending on the municipality of residency of the taxpayer. The multiplier ranges between 150 per cent and 250 per cent and can be determined individually by each municipality on an annual basis. Currently, the highest multiplier imposed by a Liechtenstein municipality is 200 per cent.

The possibility to obtain lump sum taxation for foreign individuals resident in Liechtenstein with no occupation in the country and no income from Liechtenstein sources has remained unchanged under the new Tax Act.

The new Tax Act 2010 has abolished the privileged taxation of holding and domiciliary companies. All legal entities with a registered seat or place of effective management in Liechtenstein are nowadays subject to full corporate income tax liability at a rate of 12.5 per cent with a minimum income tax of 1,200 Swiss francs per year. Legal entities set up before 2010 and formerly subject to privileged taxation were granted a three-year transition period until the end of 2013. Unwilling to completely give up the former taxation regime, the legislator has introduced a new special tax regime for legal entities qualifying as ‘private asset structures’ (basically a vehicle – very often a private foundation – used for the management of an individual’s private wealth without pursuing an economic activity). Due to Liechtenstein’s membership in the EEA, the new private asset structure-tax regime was examined by the EFTA Surveillance Authority and declared by the same to be in compliance with the applicable European competition and state aid rules. Also, a new notional interest deduction as well as an attractive IP-box regime were introduced for legal entities subject to tax in Liechtenstein. A tax group is further possible with a parent subject to full taxation in Liechtenstein and group members subject to tax in Liechtenstein or abroad.

Partnerships are treated as transparent for tax purposes, and the income generated by the partnership is thus taxed directly in the hands of each partner. In relation to partners who are resident individuals, the partnership’s assets directly attributable to them are subject to wealth tax.

Since Liechtenstein is part of the Swiss customs area, the Swiss federal legislation on stamp duties (including formation duties, duties on insurance premiums and securities transfer tax) is directly applicable in Liechtenstein. In those cases where the Swiss federal legislation on stamp duties is not applicable, a special Liechtenstein formation duty or

a duty on insurance premiums are levied. Because of the customs area with Switzerland, Liechtenstein also applies the Swiss VAT regime, and Liechtenstein has undertaken to adopt the material Swiss VAT provisions. Liechtenstein has thus enacted its own VAT Act (2009) and a VAT Ordinance (2009), which are modelled upon the Swiss legal basis.

Litigation in tax matters was rare in Liechtenstein in the past. This was largely due to the fact that a great portion of the Liechtenstein legal entities were subject to privileged taxation, and resident individuals, as well as legal entities subject to ordinary taxation, would rather address uncertain questions with the Tax Authority by way of advance rulings. These rulings were and still are widely used in daily practice. Since the new Tax Act 2010 has come into force, the litigation cases have increased considerably, although the number of cases still remains low compared to the total number of taxpayers (individuals and legal entities).² Also the penalties imposed for violation of tax provisions have increased over the past few years.

II COMMENCING DISPUTES

i Initiation of the tax assessment procedure

Each individual subject to tax in Liechtenstein has a duty to file a tax return with relation to income and wealth taxes on a self-assessment basis within a deadline set annually by the (central) Tax Authority in Vaduz and announced publicly. The same applies to legal entities subject to tax in Liechtenstein in relation to the corporate income tax. The deadlines are usually set around April following the relevant tax year for individuals and around July for legal entities. The tax return must be lodged by individuals either with the tax department of the municipality where the individual resides, or directly with the Tax Authority, or alternatively by means of electronic filing. The tax returns of legal entities must be lodged directly with the Tax Authority or by means of electronic filing. Trusts with no income from real estate located in Liechtenstein and without permanent establishment in Liechtenstein are subject to only the minimum income tax of currently 1,200 Swiss francs and are not required to file a tax return. The same applies to private asset structures. Income generated by a partnership attributable to individual partners must be declared by the same in their own tax return along with, if applicable, any assets of the partnership attributable to the partner for wealth tax purposes.

With respect to the capital gains tax on real estate, the endowment tax as well as the Liechtenstein formation duty and the duty on insurance premiums, the public authority involved in the transaction (e.g., the Land Register, the Commercial Register) has the duty to inform the Tax Authority directly about the executed transaction (e.g., sale of real estate, formation of a legal entity), which then issues a tax assessment notice thereupon. In the case of the endowment tax and the duty on insurance premiums, the notification to the Tax Authority must be lodged by the endowing party and respectively by the Liechtenstein fiscal representative of the insurance company.

2 As of 31 December 2013, 37,129 individuals were resident in Liechtenstein (of which 27,868 were assessed for taxation) and 46,453 legal entities and trusts were registered in Liechtenstein.

ii Issuance of the tax assessment notice

After the lodging of the tax return, the same is reviewed by a tax commissioner and a tax assessment notice is issued by the Tax Authority. Prior to that, the taxpayer has the duty to fully cooperate with the Tax Authority in order to enable a full and accurate assessment. This includes, for example, providing oral or written information, and submitting accounting documents, ledgers and other documents deemed necessary. The tax assessment notice has to contain the taxable base, the tax rate and the tax amount due. Likewise, a tax assessment notice is issued by the Tax Authority in the case of capital gains tax on real estate, endowment tax, formation duty or duty on insurance premiums. If a taxpayer fails to file a tax return, or if the taxable base cannot be assessed properly as reliable or complete documentation is missing, the Tax Authority is entitled to assess the tax due at its own discretion by taking into consideration empirical figures, changes in the taxpayer's wealth and his style of living. During the whole tax assessment procedure, the taxpayer has the right to submit any facts, present any evidence and make any request, unless the Tax Act does provide to the contrary.³ The assessed tax becomes due upon service of the tax assessment notice and is generally payable within 30 days after service.

iii Formal complaint with the Tax Authority

In case of disagreement with the tax assessment notice, the taxpayer has the right to lodge a formal complaint within 30 days upon service with the same Tax Authority which issued the disputed notice. The complaint must be filed in writing and contain the requests, the grounds for complaint, the evidence offered and the signature of the taxpayer or of his or her legal counsel. In the complaint, the taxpayer may advance all arguments for legal deficiency of the tax assessment notice, in particular any defectiveness or violation of the law or that certain facts have not or have not been sufficiently considered in the decision (Article 89 LVG). If the tax assessment notice has been issued by the taxing authority at its own discretion, the taxpayer may only challenge the assessment notice on the grounds of obvious inaccuracy. If the formal requirements for the complaint are met, the Tax Authority has to re-examine the tax assessment notice and may then either amend the notice in whole or in part or reject the taxpayer's complaint. The Tax Authority has the duty to examine and evaluate the evidence produced by the taxpayer. The taxpayer has the burden of proof in relation to facts which annul or reduce his or her tax liability, and has the right to illustrate and defend his or her complaint in front of the Tax Authority personally and to be heard. If the taxpayer's complaint challenges a tax assessment notice containing detailed reasons, the complaint can be treated upon the taxpayer's request or with his or her consent as formal appeal filed with the State Tax Commission, and must be forwarded to the same for direct decision.

iv Appeal before the State Tax Commission

The Tax Authority's decision pronouncing on the taxpayer's complaint can be appealed by the taxpayer within 30 days of service by filing an appeal before the State Tax Commission. The State Tax Commission is thus the first instance of appeal in tax

3 See: Administrative Court VGH 2014/003.

matters. The procedural rules applicable in the case of a complaint in front of the Tax Authority (i.e., written form, content of the pleading, evidence, representation, etc.) are also applicable in this case of appeal. The appellant has the duty to indicate the defects of the decision appealed and to substantiate his or her arguments in the notice of appeal. The taxpayer may advance grounds for appeal such as violation of the taxpayer's legal interest protected by the law, or to be protected by the authority or because his or her interests have directly been treated in an appropriate or unfair manner. A tax assessment notice by the Tax Authority issued at its discretion can only be appealed on the grounds of obvious inaccuracy. Different from the complaint procedure in front of the Tax Authority, there is a limitation of possible evidence which may be used in front of the State Tax Commission: evidence which has not been produced during the assessment or complaint procedure is inadmissible in the appeal procedure in front of the State Tax Commission. Such limitation encourages the taxpayer to present useful evidence to the taxing authority in a straightforward fashion during the assessment or complaint procedure.⁴ The Tax Authority is a formal party to the appeal before the State Tax Commission, and has the right to file a counterstatement to the taxpayer's notice of appeal. In the same way as the taxpayer, the Tax Authority has the right to present and defend its arguments before the State Tax Commission.

The State Tax Commission has the right to engage experts, make inspections, request written or oral information from the taxpayer, request confirmations by the same or inspect his or her books and ledger accounts. If the Commission exercises such right and the taxpayer refuses to comply, the appeal must be rejected as unfounded. Potential consequences for punishment under criminal or administrative law remain reserved.

The State Tax Commission can annul the Tax Authority's decision or remit the matter to the Tax Authority for taking new or further evidence, reconsidering and re-deciding. Besides, the tax initially assessed by the Tax Authority remains due and payable irrespective of the taxpayer's decision to appeal the assessment notice.

v Appeal before the Administrative Court

A decision of the State Tax Commission can be appealed to the Administrative Court as second-instance authority within 30 days of service of the State Tax Commission's decision. The appeal can be filed by either the Tax Authority or the taxpayer. The Tax Authority is, therefore, in each case a party to the appeal. If the taxpayer is the appealing party, the Tax Authority has the right to file a counterstatement. In front of the Administrative Court, the appellant can assert only a violation of the law or argue that the appealed decision has been rendered on the grounds of facts assessed incompletely or upon facts contrary to the records contained in the taxpayer's file. The notice of appeal must contain the grounds of appeal, the request, the matters of fact and the evidence offered. Contrary to the appeal in front of the State Tax Commission, new or further evidence may still be produced in front of the Administrative Court. The appellant must duly denote which parts of the appealed decision are challenged and duly substantiate his or her appeal, otherwise it will be declared inadmissible. The Administrative Court

⁴ See: Administrative Court VGH 2011/082.

may schedule *ex officio* a hearing of the parties, take new evidence or even start the whole assessment procedure from scratch.

The Administrative Court renders a ruling which is final, unless a further appeal to the Constitutional Court is possible on constitutional grounds.

vi Appeal before the Constitutional Court

If the taxpayer considers that the final decision of the Administrative Court violates his or her basic rights granted by the Liechtenstein Constitution or by the European Convention on Human Rights, to which Liechtenstein is a party, a constitutional appeal may be filed. Such appeal must be filed within four weeks of service or can be filed without notice in case of effective immediate violation of the appellant's rights. Generally, the appeal has no suspensory effect. However, if enforcement of the appealed decision would trigger a disproportionate inconvenience to the appellant, and provided there are no overriding public interests, the President of the Constitutional Court can suspend the enforcement upon the appellant's request.

vii Appeal in VAT and Swiss stamp duty matters

As in the case of other Liechtenstein taxes, tax assessment notices of the Tax Authority in the field of VAT may be appealed first by way of complaint and further by appeal to the State Tax Commission and the Administrative Court. However, a verdict by the Administrative Court on the matter of VAT may be appealed further within 30 days of service before the Swiss Federal Supreme Court as competent court in this effect. On VAT matters there is, therefore, an additional third court level available to a Liechtenstein taxpayer liable to VAT. Both the taxpayer and the Liechtenstein Tax Authority have such right of appeal before the Swiss Federal Supreme Court. The appeal is permissible only for reasons of violation of the law, and the procedure is governed by the applicable Swiss rules on appeals in front of the Federal Supreme Court. Decisions relating to VAT offences of criminal nature are excluded from appeals before the Swiss Federal Supreme Court.

With regard to the Swiss federal stamp duties applicable in Liechtenstein, the directly competent assessing authority is the Swiss Federal Tax Authority. Any complaints or appeals by a Liechtenstein taxpayer against notices or orders issued by the mentioned authority must therefore be lodged in front of the competent Swiss authority pursuant to the applicable Swiss procedural rules.

viii Amendment of final tax assessment notices

Once a tax assessment notice has become final, it may still be amended according to the following principles. The Tax Authority has the right to assess a supplementary tax even after the tax assessment notice has become final but no later than within five years, if facts or pieces of evidence previously unknown to the Tax Authority come up at a later stage and lead to the conclusion that taxation has been wrongfully omitted or that the final tax assessment notice is incomplete (Article 120 Tax Act). Likewise, the taxpayer has the right to request a revision of a final tax assessment notice if material facts or decisive evidence have been discovered or if the Tax Authority has ignored material facts or decisive evidence which were or should have been known to the same, or if it

has otherwise violated essential principles of procedural law (Article 123 Tax Act). The revision can also be initiated *ex officio*. The taxpayer's request must be filed in writing within 90 days after gaining knowledge of the ground for revision, or at the latest within 10 years after service of the relevant tax assessment notice.

The Tax Act further enables the correction of arithmetical errors or typos in final assessment notices and decisions upon the taxpayer's request or *ex officio*, at the latest within five years upon service of the notice or decision (Article 125 Tax Act).

III THE COURTS AND TRIBUNALS

A taxpayer's formal complaint addressed to the Tax Authority is dealt with and decided by the same authority. The decision procedure is smooth and usually concluded within a short period of time. Most disputed cases are resolved at this level.

The State Tax Commission is the first level of appeal and is composed of five members and three alternate members who are elected by the Liechtenstein Parliament for a term of four years. Members of government and officials of the Tax Authority and of the municipality's tax department are not eligible for election. The President and Vice-President of the Commission are nominated by Parliament and must have legal education. The State Tax Commission usually meets once a month to hear the cases. A decision is generally rendered within a couple of months.

The Administrative Court is the second and, unless a motion to the Constitutional Court is permissible, final level of appeal. It consists of a panel of five judges and five alternate judges who are appointed by the Prince of Liechtenstein. The judges are independent in the exercise of their duties and subject only to the Constitution and the law. The majority of the judges must be Liechtenstein citizens and have legal education. The term in office of each judge is five years, taking into account that every year one judge must be replaced by a new member. The panel nominates a President and a Vice-President, renewable on an annual basis. A verdict by the Administrative Court is usually rendered within six to 12 months.

The Constitutional Court consists of a panel of five judges and five alternate judges who are appointed by the Prince of Liechtenstein. The President of the Court and the majority of the judges must be Liechtenstein citizens. In addition, the procedural rules relating to the Administrative Court apply *mutatis mutandis*. Decisions of the Constitutional Court are generally rendered within six to 12 months.

Due to the applicability of the Swiss stamp duty legislation and the Swiss VAT-regime, the Swiss Federal Tax Authority in the first case and the Swiss Federal Supreme Court in the second case are the competent assessing authority respectively final judicial authority in relation to the mentioned taxes.

IV PENALTIES AND REMEDIES

i Administrative penalties

Misdemeanours are subdivided into the violation of procedural duties, jeopardising of duties and tax evasion.

Anyone who, wilfully or negligently, and in spite of a reminder, fails to comply with or complies incorrectly with a duty imposed upon the same by the Tax Act, the Tax Ordinance or a decree issued by the Tax Authority on the basis of the Tax Act, is punished by a fine of up to 1,000 Swiss francs or, in severe or recurrent cases, up to 10,000 Swiss francs (Article 135 Tax Act).

Unless the *actus reus* is punishable as tax evasion or tax fraud, anyone who wilfully or negligently jeopardises the levy either of the formation duty or of the duty on insurance premiums is punished by a fine of up to 20,000 Swiss francs. The act committed can consist of failure to file a tax return, account statements or breakdowns; to provide information or produce the books, registers or other written evidence, but may also consist of making untrue statements or concealing essential facts in a tax return, account statement or breakdown or of producing untrue documents about essential facts or of giving false information or impeding, obstructing or making impossible a regular control (Article 136 Tax Act).

Tax evasion is defined as an act committed by the taxpayer by wilfully or negligently filing an untrue or incomplete tax return or by impeding the levy of the tax due by giving false or incomplete information or by otherwise culpably keeping back taxes due. The law also considers it as an act of tax evasion when a withholding agent obliged to withhold taxes at source wilfully or negligently fails to withhold the tax in total or in part, or anyone who wilfully or negligently keeps back the formation duty or the duty on insurance premiums for its own benefit or the benefit of others (Article 137 Tax Act). The law also punishes any taxpayer or withholding agent who wilfully or negligently triggers an unlawful reimbursement of a tax, or an unlawful exemption from taxes. Tax evasion is punished by a fine, usually two times the amount of the tax evaded. In case of minor fault, the fine can be reduced down to a third, while in case of serious fault the fine can be increased to three times the amount. Also an attempt to evade taxes is punished by a fine, which corresponds to two thirds of the fine which would have been imposed in case of intentional consummation of the misdemeanour. The law further punishes with a fine anyone who instigates or aids and abets a taxpayer to commit a tax evasion, irrespective of whether the taxpayer has ultimately been subject to punishment. If a misdemeanour is committed with effect for a legal entity, the penalty is imposed directly upon the legal entity in accordance with the general administrative penalty rules. If the legal entity fails to pay the fine imposed, the body legally representing the company is liable for the payment of the fine.

The Tax Act attributes the competence to sanction a violation of procedural duties, jeopardising of duties and tax evasion to the municipality where the taxpayer resides, or the Tax Authority. The taxpayer has the right to appeal the penalty order within 14 days from service, either before the Tax Authority or the State Tax Commission. Decisions of the State Tax Commission can be further appealed before the Administrative Court within 14 days from service.

ii Criminal penalties

Tax fraud and embezzlement of taxes withheld at source are punishable as criminal offences.

Tax fraud is defined as the act of committing tax evasion by wilfully using false, forged or in terms of content untrue accounts or other documents. Such criminal act is punished by a prison sentence of up to six months, or a penalty of up to 360 daily fines (Article 140 Tax Act). Equally, the Tax Act punishes with a prison sentence of up to six months or a penalty of up to 360 daily fines the act committed by a withholding agent obliged to withhold tax at source, who uses the tax withheld for its own benefit or for the benefit of others (Article 141 Tax Act). If the tax fraud or the embezzlement of taxes withheld at source are committed by a legal entity, the punishment is imposed upon the body of the entity.

Tax fraud and embezzlement of taxes withheld at source are sanctioned by the Princely Court in Vaduz. Court orders can be appealed before the Court of Appeal pursuant to the rules of the Code of Criminal Procedure.

In the case of VAT, the same punishable acts apply as with the other taxes, however with different penalties. In addition, the VAT Act contains the punishable crimes of qualified tax evasion (Article 89 VAT Act) and dealing with goods on which VAT has been evaded (Article 90 VAT Act).

V TAX CLAIMS

i Recovering overpaid tax

The Tax Act entitles a taxpayer to recover taxes paid erroneously in whole or in part, on which an interest amount of currently 2 per cent is due if the payment day of the recoverable tax dates back more than 30 days. The application for recovering the overpaid tax must be submitted within five years from the end of the year in which the tax was effectively paid (Article 130 Tax Act).

The refund of taxes acknowledged as overpaid by the Tax Authority is usually smooth and quick. We are not aware of cases where a refund of overpaid tax has been refused or delayed by the Tax Authority.

With respect to VAT, the taxpayer is entitled to obtain a refund in case of a surplus following the calculation of the VAT effectively due. The taxpayer is further entitled to request repayment of taxes paid, but not due, as long as the tax assessment has not become final (Article 78 VAT Act).

ii Challenging administrative decisions

It is possible to challenge administrative decisions on the grounds illustrated in section II. Tax provisions are usually enacted with effect going forward. The enactment of tax provisions triggering financial burdens on the taxpayers with retroactive effect is generally prohibited, unless special circumstances apply. If a tax provision is declared to be in violation of the Constitution, such provision is usually abrogated with effect going forward, starting from within a maximum of one year as set by the Constitutional Court, and may thus in certain cases still continue to apply in spite of the verdict.⁵

5 See: Constitutional Court StGH 2012/175.

iii Claimants

As a general rule, only the respective taxpayer addressee of the tax assessment notice is entitled to bring a tax claim against the authorities. In the case of a tax group, each member of the group subject to tax in Liechtenstein is obliged to file an individual tax return and will therefore receive an individual tax assessment notice, which may be appealed by the member.

As regards VAT, the taxpayer liable to VAT, who thus lodged the VAT return and becomes the addressee of the tax assessment notice, is entitled to bring a claim. In the case of a VAT tax group, the group representative lodges the VAT return consolidating the individual VAT-accounting of each group member and will thus be the addressee of the tax assessment notice. Each tax group member is, however, severally and jointly liable for the tax due along with the group representative (Article 15 VAT-Act).

VI COSTS

The general rule is that, if the complainant or appellant taxpayer loses the case, the same has to bear the procedural costs, while no costs are imposed if the complaint or appeal is successful. If the complainant or appellant is partially successful, the costs payable are reduced in relation to the degree of success. Even if the complainant or appellant has succeeded with the complaint or appeal, the same can be ordered to bear the costs if the complaint or appeal proceeding has been initiated for no reason. The same principles apply for the proceedings in front of the Administrative Court. No costs for attorney's fees or expenses are awarded to the taxpayer, even in case of prevail and regardless of the procedural level.

In case of disputes involving VAT, the Tax Authority is entitled to order the payment of costs for its own decrees and decisions in whole or in part. If, following a complaint, the same is rejected, the taxpayer is usually ordered to bear the costs of the rejecting decision. A proportional reduction of the costs is due if the taxpayer is partially successful. If the complaint has been initiated for no reason, the succeeding taxpayer can nevertheless be ordered to pay the costs in whole or in part. Costs of investigations can be imposed upon such person who has culpably triggered them, irrespective of the outcome of the proceedings. For VAT proceedings before the Administrative Court, the same principles as with other taxes apply. Also, as with other taxes, no costs for attorney's fees or expenses are awarded to the taxpayer even in case of prevail.

With regard to advance rulings, the administrative cost for the granting usually ranges between 500 Swiss francs and 2,000 Swiss francs.

VII ALTERNATIVE DISPUTE RESOLUTION

Liechtenstein law does not provide for a legal mechanism of alternative dispute resolution with the Tax Authority. The EU Arbitration Convention does not apply either, since Liechtenstein is not a Member State of the EU.

However, Liechtenstein has a long tradition of advance rulings, which continue to be part of the dealings with the Tax Authority. Advance rulings are granted by the Tax Authority in relation to facts leading to taxation not yet realised at the time of requesting

the ruling and provided the taxpayer has a special interest due to foreseeable relevance of the envisaged legal effects. Tax rulings may be requested by individuals and legal entities, partnerships, trusts as well as any other person having a legitimate interest in obtaining the confirmation of the tax assessment even if the taxable event will be realised by a legal entity, partnership or trust not yet set-up at the time of application. Advance rulings have a binding legal effect with regard to the Tax Authority, in other words, in the assessment and potential complaint procedure before the Tax Authority, but have no binding legal effect in front of upper court levels. The State Tax Commission or the Administrative Court may therefore quash the effects of the ruling.

The binding effect of advance rulings is subject to the proviso that the facts assessed remain unchanged or depart to an immaterial extent and the legal provisions ruled are not amended. Advance rulings can also be obtained in relation to transfer pricing issues (APAs) and are granted for a limited duration.

VIII ANTI-AVOIDANCE

The Tax Act 2010 has introduced an anti-avoidance provision, which was previously unknown in Liechtenstein. Article 3 of the Tax Act now enables the Tax Authority to disregard a legal tax planning or an arrangement in fact which is deemed abusive. Such can be the case if the planning is deemed inadequate in relation to its economic circumstances and if its only aim is to obtain a tax advantage, which would otherwise collide with the rationale of the Tax Act and which has no valid economic or other non-tax reasons for its implementation. All mentioned requirements must be met in order to affirm the application of the anti-avoidance provision.

In a recent case of 2013, the Administrative Court applied the new anti-avoidance principle and ruled against a medical doctor resident in Liechtenstein, who had restructured his medical business activity by setting-up a company limited by shares, of which he became the owner and an employee. Before that, the doctor had run its medical business as a self-employed person and all his income had been taxed as income from self-employment. The Court ruled that, while the structuring of the medical business by using a company limited by shares and the conclusion of an employment agreement with the doctor's company were not deemed abusive, the doctor had violated Article 3 of the Tax Act by agreeing an employee's wage which was too low in comparison with the average annual income generated by the doctor in the past as self-employed person.⁶ So far, this judgment remains the only published court decision dealing with the new anti-avoidance provision.

With regard to VAT, it is worth mentioning a decision by the Swiss Federal Supreme Court of 2013, which was preceded by a dispute between the Liechtenstein Tax Authority and a Liechtenstein Establishment. The Swiss court – as competent supreme authority in VAT matters relating to Liechtenstein – held that the Liechtenstein Establishment had abused the VAT-regime and ruled against the Establishment by ordering the retroactive cancellation of the Establishment from the VAT register (thus

6 See: Administrative Court VGH 2013/067.

invalidating the Establishment's VAT number) and disallowing the deduction of VAT input tax.⁷ The Court acknowledged an abusive behaviour of the taxpayer on the ground of its effective business activities, in other words, purchase of luxury cars by deducting the input tax and only partial lending to paying third parties, while mainly making the cars available without consideration to parties related to the owner of the Establishment.

IX DOUBLE TAXATION TREATIES

Until recently, Liechtenstein had only concluded double taxation treaties (DTTs) with Austria (1969) and Switzerland (1995). Since 2009, Liechtenstein has signed and ratified a growing number of new DTTs, which have mainly been modelled upon the OECD Model Tax Convention on Income and Capital. New DTTs have been signed, in chronological order, with Luxembourg (2009), San Marino (2009), Uruguay (2010), Hong Kong (2010), Germany (2011), Georgia (2012), the United Kingdom (2012), Bahrain (2012), Singapore (2013), Guernsey (2013), Malta (2013) and the Czech Republic (2014).⁸ Other treaties are under negotiation. All DTTs concluded by Liechtenstein contain a Mutual Agreement Procedure clause which has, in most cases, been established in accordance with the OECD standard.

For historical reasons, there is very little case law on the application and interpretation of DTTs in Liechtenstein. So far, there has been only one published decision dealing with a DTT to which Liechtenstein is a party. In a 2009 case pertaining the DTT with Austria, the Administrative Court ruled that Article 23 of the DTT explicitly provides for a tax progression clause for the state of residence of the taxpayer, but does not exclude such tax progression for the state of source. Therefore, the court held that an individual tax resident of Austria is subject to the tax progression clause applicable by Liechtenstein tax law in relation to his or her income and assets subject to taxation in Liechtenstein.⁹

X AREAS OF FOCUS

The case regarding the new anti-avoidance provision illustrated in Section VIII is an absolute novelty in the tax jurisprudence of Liechtenstein courts. Given the recent introduction of the concept of anti-avoidance in the Liechtenstein legal order and the rather strict application of the provision by the Administrative Court, it may safely be assumed that the Tax Authority will likely scrutinise future tax planning schemes more deeply from an anti-avoidance point of view.

Moreover, since the transitional provisions applicable to former holding and domiciliary companies elapsed on 1 January 2014, thus subjecting all those legal entities to the new Tax Act, it is to be expected that controlling of tax rules by and enforcement against corporate taxpayers will increase compared to the past. Notably, private asset

7 See: Swiss Federal Supreme Court BGE 13.02.2013, C2_487/2011.

8 Some of the signed DTTs have not yet come into force pending ratification.

9 See: Administrative Court VGH 2008/147.

structures may become a bigger target of control regarding whether the entity meets the legal requirements for the privileged tax regime and whether the declarations rendered upon application are being respected and implemented.

XI OUTLOOK AND CONCLUSIONS

Due to the increasing number of DTTs signed by Liechtenstein since 2009, and following the enactment of the new Tax Act 2010, tax issues have come to the forefront on the Liechtenstein legal agenda. As a result, tax disputes have increased considerably over the past few years, although their number still remains low compared to the number of resident taxpayers and to the overall figure of litigation cases in courts. The Tax Authority has seemingly started to interpret and enforce tax provisions in a stricter manner than in the past, which may be one of the reasons for the higher number of tax disputes. The trend of the judiciary is less clear, but seems likewise to move towards applying greater rigour.

Since its enactment, the Tax Act 2010 has already been revised a few times, partially for clear fiscal reasons and partially in a view of clearing out certain ambiguous provisions. A revision of the notional interest deduction regime and of the minimum income tax for legal entities, as well as of the assessment base of assets for wealth tax purposes, are likely to become the subjects of revision in the future.

Appendix 1

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Heinz Frommelt is a partner with Sele Frommelt & Partner Attorneys at Law Ltd and of NSF Services Trust reg. Heinz Frommelt studied law at the University of Zurich, graduating in 1988 (Dr.iur.) and was admitted to the bar in 1992. Heinz Frommelt acted as Minister of Justice in the Government of the Principality of Liechtenstein from 1997 to 2001. His practice focuses on tax planning and asset structuring but also on banking law, investment fund and insurance law. Heinz Frommelt publishes on a range of tax issues and is active in various think tanks. He is Secretary of the International Fiscal Association, Liechtenstein branch, a member of the Liechtenstein Chamber of Lawyers, the International Association of Young Lawyers and DACH Europäische Anwaltsvereinigung (European Lawyers' Association).

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Angelo Trebo is an associate with Sele Frommelt & Partner Attorneys at Law Ltd and with NSF Services Trust reg., the fiduciary arm of the law firm. Prior to joining Sele Frommelt & Partner, he worked as an associate with a major Liechtenstein law firm and as a wealth planner with a major Liechtenstein trust company. Angelo Trebo advises private and corporate clients on all aspects of national and international tax law and cross-border transactions in the area of corporate structuring as well as wealth and succession planning.

Angelo Trebo graduated in law from the University of Innsbruck, Austria and gained a dual Master's degree in international business and tax law (LLM) from the Frankfurt School of Finance and Management, Germany and from the Management Center Innsbruck, Austria. He further obtained a Diploma in International Trust Management from the Society of Trust and Estate Practitioners (STEP).

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