

# Liechtenstein bank secrecy continues

## No automatic exchange of information in cases of tax fraud and tax evasion

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The Liechtenstein government, having already developed a forward strategy in 2008 in order to safeguard the future of the financial marketplace, emphasized with the “Liechtenstein Declaration” of 12 March 2009 its stance regarding the protection of privacy and defence of bank secrecy. In addition, Liechtenstein affirmed its readiness to accelerate negotiations on agreements regarding tax information exchange in order to have a network of agreements at its disposal as soon as possible.

Within the framework of this process Liechtenstein reconfirmed its responsibility not only towards tax claims of other states but also to the trust of its international clientele. Since March 2009 the success of this strategy has been crowned when the OECD recognized Liechtenstein’s compliance with the international tax cooperation standards and removed the principality from the grey list of non-cooperating countries.

### Legitimate protection of privacy

In front of a backdrop of efforts to stabilise the global economy and the international financial systems, Liechtenstein decided on a pro-active strategy and presented itself to the world as a fully responsible and reliable partner with its “Liechtenstein Declaration”. The ratification of an interest tax agreement with the European Union and the completion of a tax agreement with the United States, based on OECD standards, paved the way.

Bank secrecy protection continues, contrary to the general misconception that it has been abolished, but, in future, judicial assistance will be given not only in the case of tax fraud but also, under certain circumstances, in the case of tax evasion.

Previous misconceptions compared bank secrecy, which was never absolute, with a bank safe. Liechtenstein had, in the past, always given

judicial assistance in the case of criminal action.

### Model agreement with the United States

Prior to the “Liechtenstein Declaration” Liechtenstein had, on 8 December 2008, signed an agreement with the United States on cooperation and information exchange on tax matters (TIEA). The government declared that this change of paradigm from a restrictive, defensive to a cooperative attitude showed its desire to safeguard Liechtenstein’s financial marketplace and its economic position in the long term.

From September 2009 the Tax Information Exchange Agreement with the United States served as a guideline to the cooperation agreements which were finalised with a number of other countries. In signing the TIEA agreement, Liechtenstein banks fulfilled the requirements for the extension of the QI status (Qualified Intermediary) which was extended by the United States from 1 January 2010 for a further six years.

The judicial assistance law based on the TIEA found the approval of the Liechtenstein Bankers’ Association as it contained clear and, at the same time, strict regulations guaranteeing legal assistance. The Liechtenstein Bankers’ Association praised as a positive step that within the framework of the judicial assistance law, any foreseen exchange of information would be based solely on a precise request. Through this law, as before, no sensitive tax data will be given abroad without a targeted and individual request. Consent also came from the export industry which described the legal assistance law as an important building block for constructive cooperation and continuing good relations with the U.S.

### Information on request

The exchange of information between Liechtenstein and the United States is provided for by means of judicial assistance. The agreement explicitly stipu-

lates that information between the competent tax authorities is not automatically exchanged but on the basis of a precisely phrased request. Liechtenstein must only fulfil a request if the set of conditions is fulfilled. The request for information addressed to Liechtenstein must contain:

- The identity of the taxpayer whose tax or criminal liability is in question.
- The time period for which the information is required.
- The justification for believing that the required information can be found in Liechtenstein.
- The name and address of the person who is believed to be in possession of or in control of the requested information.
- A declaration that the United States has exhausted all possible means at its disposal within its area of sovereignty.

With this by no means complete catalogue of requirements, mere “fishing expeditions” or “fact-finding missions” should be prevented. In addition, the terms of the agreement also provide that a State can refuse to provide information which is protected by attorney secrecy, company secrecy or professional secrecy. Information is not protected if the professional secrecy only applies to the financial service itself.

### Agreement with England

The agreement signed on 11 August 2009 between the United Kingdom and Liechtenstein goes beyond the information exchange agreement with other countries. Following the aim of “Clients first” the government is of the opinion, that it now has an agreement based on customer orientation. The TIEA foresees a number of protective measures with the aim that the required tax information does not encroach on the privacy of a person using the financial marketplace in Liechtenstein.

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