

Liechtenstein and the Automatic Exchange of Information on Tax Matters

In the “Liechtenstein Declaration” of 2009, the Principality of Liechtenstein committed itself, on the basis of the global OECD standard, to the implementation of the Automatic Exchange of Information on Tax Matters (AEOI). On 29th October 2014, together with 50 other states and jurisdictions, Liechtenstein signed a multilateral agreement on the implementation of new global standards for the automatic exchange of information. The Liechtenstein AEOI law, incorporating this agreement, came into force on 1st January 2016.



By Dr. Norbert Seeger

CEO Seeger Advokatur and ArComm Trust & Family Office

Liechtenstein is a member of the “early adopters group” which strives towards the first automatic exchange of information by 2017. Membership was possible because, in 2013, the Liechtenstein government, in its declaration on international tax cooperation, made an express commitment to the global OECD standard.

Within the framework of an integrated financial marketplace strategy, the government, in collaboration with business associations, also succeeded in gaining widespread support for the establishment of a joint position in the field of tax cooperation which corresponds, on the one hand, with current international developments and, on the other, takes into account the requirements of the financial marketplace.

An important concern of Liechtenstein in the implementation of the automatic exchange of information was the

safeguarding of data protection and the adherence to the principle of speciality, guaranteeing that the information exchanged by partner states would only be used for the assessment and collection of taxes. In this context, the OECD published confidentiality guidelines, setting out proven confidentiality practices together with practical tips on guaranteeing a reasonable level of protection. Liechtenstein will, within the framework of negotiations on the automatic exchange of information agreements with individual countries, demand safeguards from the contractual parties to have the appropriate legal framework in place, in order to guarantee the confidentiality of information and its exclusive usage. In addition to data protection and the principle of speciality, Liechtenstein attaches importance to reciprocity, in which the rights and obligations for both contractual parties are

mutually applied. In the case of non-compliance with the obligations set out in the agreement, e.g. lack of data protection or non-adherence to the principle of speciality, the partner state can, in accordance with the OECD agreement, refuse to exchange information.

Tax cooperation based on global OECD standards

Since the “Liechtenstein Declaration” of 2009, Liechtenstein has continually taken the path of aligning the financial marketplace to international standards. When the European Council took the decision in spring 2013 to expedite the automatic exchange of information at an EU and international level, Liechtenstein was already prepared. Shortly afterwards, the OECD approved a model for a global standard on exchange of information, which had been developed by the “OECD Task Force 10”, in which Liechtenstein had participated. In the governmental declaration which followed on 14th November 2013, Liechtenstein, once again, committed itself to international tax cooperation on the basis of the OECD standard. This political commitment to the implementation of the new OECD standard was also made to the Global Forum on Transparency and Exchange of Information for Tax Purposes. In 2014, Liechtenstein, along with 50 other states and jurisdictions, also signed a multilateral agreement on the implementation of the new OECD standard on the automatic exchange of information.

Liechtenstein followed the recommendations of the International Monetary Fund and the European Council to provide legal assistance in cases of serious tax offences in the areas of direct and indirect taxation by extending the laws on legal assistance to matters of fiscal crimes. These extensions came

into force on 1st January 2016. The legal situation, up until then, had placed Liechtenstein in somewhat of a dilemma as it conflicted with the strategy laid out in the “Liechtenstein Declaration”. This rectification means that there is no longer a distinction made between tax fraud and tax evasion. However, the concept of dual criminality must apply: Legal assistance will only be granted if the circumstances described in the request for legal assistance also constitute a punishable crime under Liechtenstein law. The broadening of legal assistance to encompass fiscal matters not only fulfils international standards but also follows the goal of removing the discrepancy between rulings on legal and administrative assistance in criminal tax procedures.

Liechtenstein once again receives a AAA rating

Liechtenstein’s active policy has strengthened its reputation and the integrity of its financial market. In September 2015, Standard & Poor’s recognised Liechtenstein’s policies by once again presenting a AAA rating. Standard & Poor’s justified the high rating by pointing out that Liechtenstein has no state debt and has a wealthy and healthy economy at its disposal.

Inclusion of AEOI standards into national legislation

The legal framework for the implementation of the AEOI standard is structured on three levels: an international agreement, a common reporting standard and the inclusion into national law. The exchange of information with a partner state is not automatic but requires a special bilateral agreement between both parties.

The national implementation law, passed by the Liechtenstein government, sets out the legal framework, in which information exchange with partner states can be conducted. The financial institutions that are required to make declarations must do so by presenting such to the Liechtenstein tax authorities who then, in turn, in an automated process, forward them to the responsible authorities of the partner state. Financial institutions who are required to make declarations are, in particular,

banks and life insurance companies, whereas industrial and commercial companies as well as trading and service organisations are not generally required to exchange information. The tax authorities are not required to forward information if it contravenes with the Liechtenstein “ordre public”. Equally, there is no obligation to transfer information if the foreign authority is not in a position to provide comparable information on reportable accounts. Tax authorities are obliged to store the information exchanged for a period of five years. After this maximum storage period, it is to be destroyed.

Classification as reporting or non-reporting financial institutions

Within the terms of the automatic exchange of information, all legal entities must be classified as either financial institutions (FI) or as non-financial entities (NFE). A legal entity covers all forms of legal bodies, e.g. trusts, foundations, establishments, corporations, partnerships, trust companies or asset structures. Sole proprietorships, however, do not fall into the category of legal entity. The classification of existing legal entities must be undertaken within one year after the law has come into force, whereas new legal entities must be classified immediately.

The AEOI standard requires that financial institutions should be classified as reporting or non-reporting financial institutions. The accounts and persons identified by the reporting institutions must be automatically reported, annually, to the tax authorities. This information will then be forwarded to the partner state. The term “financial account” applies to identified accounts which may not only be classical bank accounts but e.g. security accounts and, in the case of investment companies, the benefit from a foundation. In the case of insurance, this term also covers redeemable insurance and annuity contracts.

Detailed information on accounts and account holders

Within the framework of information exchange, financial institutions are obliged to provide detailed information on account holders to the tax authori-

ties. The information to be reported must include the name, address, state of residence and tax identification number, together with the date of birth of the account holder. In the case of a legal entity, e.g. a foundation, data on all parties to the foundation must be disclosed. The calendar year closing balance must also be presented. In the case of custodial accounts, information on interest, dividends or proceeds from sales is to be provided.

Data protection requires that financial institutions must inform account holders about their duty to provide information as well as with which partner state the information has been exchanged and the details of the information to be forwarded, whereby account holders have the right to demand that any incorrect information, which may have been passed on, be rectified. Data protection also requires that all information exchanged by tax authorities be treated with discretion. The information exchanged shall only be used for taxation purposes, i.e. assessment, collection or prosecution.

Liechtenstein offers planning and legal certainty

The international trend towards automatic exchange of information has been apparent for some years. Liechtenstein was aware that this tendency would not leave the Liechtenstein financial marketplace unscathed. Liechtenstein’s requirements on the structure of an automatic exchange of information concentrated on creating a “level playing field”, as only an acceptable international standard could guarantee competitive neutrality and equality for all participants.

The most important requirements for Liechtenstein in the implementation of the automatic exchange of information were the protection of confidentiality of data and the principle of reciprocity. Liechtenstein has gained international recognition for actively participating in the development of international information exchange and has, from the onset, set the points for future planning and legal certainty for enterprises in the Liechtenstein financial marketplace and for its international clientele.

admin@seeger.li
www.seeger.li