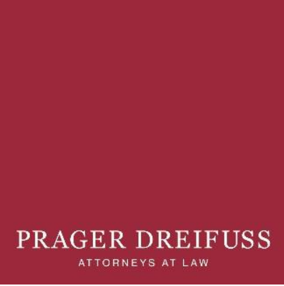

Newsletter – March 2017

Double Taxation Treaty Switzerland - Liechtenstein, entered into force on January 1, 2017

Since January 1, 2017 Switzerland and Liechtenstein have entered into a double taxation treaty, which regulates potential distinction issues regarding income and wealth taxes ("DTT-LIE"). The prior treaty established in 1995, only regulated the taxation of certain types of income such as income from gainful employment, pensions and interest on real estate security claims. The DTT-LIE is more complete and follows the OECD Model Tax Convention with a typical "Swiss finish". Both countries are further connected on tax issues by the common VAT system, the common customs territory and by the stamp duty on the issue and transfer of securities.

The types of taxes covered by the DTT-LIE are the taxes on income and wealth, which are provided for by the law in both countries. The tax system of the Principality of Liechtenstein is described in more detail further below. In principle, the regulation of the "resident individual" follows the OECD Model Tax Convention. As in Switzerland, foundations are considered legal persons in Liechtenstein and lead to a legal independence of the foundation's assets. In contrast to Swiss foundation law, Liechtenstein's foundation law leaves the founder a large freedom of choice when setting up the foundation. For purposes of the DTT-LIE, residency requires a legal and a factual sale of the foundation assets and that the foundation assets, as well as its revenues, cannot be allocated to the founder or to the beneficiaries. This excludes every possibility of influence on the foundation's management by the founder, beneficiaries or related persons. An indication index was agreed upon, which negatively enumerates several common ways of taking influence on the foundation, which, according to cantonal practices, would lead to refusal of recognition of the foundation. This indication index does not exclude a review of additional criteria on a case-by-case basis. Individuals which are exclusively subject to minimum taxation in Liechtenstein are not considered to be "resident". In particular, this affects people with a "private asset structure" tax status. The OECD Model Convention serves as basis for the definition of a permanent establishment and for the allocation of company profits. The regulation of taxes on dividends, interest and licence fees complies with the current Swiss agreement policy in this area: In principle, the DTT-LIE provides for a residual tax rate of 15% for dividends. Dividends which companies achieved through relevant participations (10% of the capital, held for at least 12 months), as well as dividend payments to pension funds or to the treaty signatories themselves, are, however, not subject to residual taxation. Interest payments and licencing fees are not subject to residual taxation, these can solely be taxed in the country of residence of the beneficiary. The right of taxation of gainful employment is principally reserved for the state in which the work is carried out. Cross-border commuter regulation is noteworthy as, according to the DTT-LIE, the country of residence retains the exclusive right of taxation. Liechtenstein and Switzerland avoid double taxation through exemptions subject to the progression clause and by applying the imputation method for dividend payments. Taxes on remunerations paid to members of the Supervisory Boards and Boards of Administration in the partner state are credited against the tax in the country of

residence. An explicit equal treatment regarding cross-border dividend payments within group companies rounds up the concept. The DTT-LIE contains a provision on exchange of information according to international standards. In order to prevent misuse of the DTT-LIE, a clause was included which denies the drawdown of the provisions on dividends, interest, licencing fees and other forms of revenue in improper situations. This explicit abuse clause corresponds to the development of Swiss agreement policy, as well as to the Swiss Federal Court's jurisprudence. Individuals resident in the treaty states, which are beneficiaries of the income or wealth, can invoke the DTT-LIE with immediate effect.

A short side note on Liechtenstein's tax law: Since 2011, Liechtenstein has an internationally accepted taxation system in place, which, inter alia, imposes a 12.5% tax on company profits. Liechtenstein knows the so-called "interest-adjusted revenue tax" according to which tax-deductible interest expenses on excess funds may be enforced. Dividend payments are directly exempt and tax groups are available to companies. Tax loss carry-forwards in respect to the set off with future profits are not subject to time limitations. However, in accounting years, at least 30% of the annual profit must always be taxed. Liechtenstein does not impose a unilateral withholding tax on dividends, interest or licencing fees. Since several years, Liechtenstein has concluded double taxation treaties with important countries (Germany, Austria, Luxemburg, UK, Guernsey, Hong Kong, Malta, Hungary, Uruguay, Singapore, the Czech Republic, San Marion, Andorra, Georgia, Iceland) and has negotiated bilateral information exchanges with more than 25 countries. Thus, Liechtenstein clearly has committed itself to the "clean-money strategy" and constitutes an attractive tax location – thanks to the DTT-LIE also in combination with Switzerland. Now, fiscal optimisations in international group company structures become possible by involving Liechtenstein holding companies. Furthermore, international financing structures by way of a "finance branch" in Liechtenstein headquartered in Switzerland becomes more tax attractive.

Dr. Roland Böhi
Partner
roland.boehi@prager-dreifuss.com

Danielle Wenger
Partner
danielle.wenger@prager-dreifuss.com