

## Breaking Tax News Tackling taxes



### Tax Treaty between Austria and Liechtenstein signed

Austria and Liechtenstein signed a tax treaty on 29 January 2013. According to the treaty, untaxed income generated in the past by persons covered by the treaty will be recaptured. Furthermore, taxation for future shall be assured. The treaty is also applicable on Liechtenstein foundations ("Stiftungen") and similar entities established under Liechtenstein law with Austrian beneficiaries.

#### Who is covered by the treaty?

**Individuals** are covered by the treaty, if

- they were **resident in Austria on 31 December 2011** and
- had a **bank account or deposit** at a **Liechtenstein bank** or
- were **beneficiaries** of a **Liechtenstein foundation or similar entity** managed by a Liechtenstein trust (both bank and foundation are referred to in the treaty as "paying agent")
- both **on 31 December 2011** as well as
- on the date the **treaty enters into force** (presumably 1 January 2014).

Thus, the treaty covers direct **investments in Liechtenstein and foundations** or similar entities in **Liechtenstein** of individuals resident in Austria.

#### Recapture of untaxed income generated in the past

Individuals covered by the treaty may choose between the two following options:

- anonymous lump sum payment as a redemption of any evaded taxes from the underlying capital,
- voluntary disclosure of personal and capital-related data with Austrian tax authorities.

The **lump sum payment** is determined according to a formula set out in the treaty. As such, **15-30 %** (in special cases up to 38 %) of the capital of 31 December 2011 or 31 December 2013 (the higher value is the "**relevant capital**" for purposes of recapture) is withheld by the paying agent and must be transferred to Austrian tax authorities. The lump sum payment covers any income taxes, VAT, inheritance and gift tax, donation tax and insurance tax from the relevant capital. Also, an amnesty for fiscal criminal liabilities becomes effective.

Alternatively, Austrian individuals covered by the treaty may opt for **voluntary disclosure** of personal and capital-related data with Austrian tax authorities. Disclosure must be effected by the paying agent and is regarded as a self-disclosure granting exemption from punishment under Sec 29 Fiscal Criminal Act ("FinStrG"). Consequently, any taxes within the statute of limitation must be repaid based on actually generated income according to Austrian tax law.

#### Taxation of future income

For taxation in the future, persons covered by the treaty may choose between a **withholding tax of 25 %** withheld by the paying agent on any income or a **voluntary disclosure** of personal and capital-related data with Austrian tax authorities. In case of voluntary disclosure, an Austrian tax return including the Liechtenstein income must be filed mandatorily.

### Special rules for Liechtenstein foundations and similar entities under Liechtenstein law

Also covered by the treaty are **Liechtenstein foundations and similar entities** ("Stiftungen", "stiftungsähnliche Anstalten") with Austrian beneficiaries (individuals covered by the treaty). For purposes of recapture of untaxed income, foundations and similar entities are generally regarded as transparent (no exemption!). As such, it has to be chosen between lump sum payment and voluntary disclosure (also in case of a factually non-transparent foundation).

The lump sum payment must be effected from the total worldwide financial assets recorded at the foundation or similar entity. In case there is more than one beneficiary, assets are to be attributed to all beneficiaries in number of beneficiaries. As such, all beneficiaries must be defined; otherwise, the total assets recorded are attributed to the Austrian beneficiary.

Regarding **future taxation**, a foundation or similar entity must be qualified as **transparent or non-transparent**. The treaty sets out certain criteria for these purposes. Choosing **withholding tax** at 25 % or a **voluntary disclosure** is required for **transparent** structures only.

**Non-transparent structures** are subject to a special **donation taxation** (similar to the existing tax under Austrian tax law) on any contributions. Withholding obligations in this respect rest upon the paying agents. If all corporate documents of the structure (statutes, bylaws and comparable documents) are disclosed with

Austrian tax authorities, donations to the foundation or similar entity are subject to a **tax rate of 5 %** of donated capital. This tax rate is increased by 2.5 % if documents are not disclosed or in case of a qualification as a private structure according to Liechtenstein law ("Privatvermögensstruktur"), thus leading to a maximum rate of 10 %.

Distributions of non-transparent entities to beneficiaries are subject to a 25 % flat tax.

### Relevant due dates

The treaty presumably enters into force on **1 January 2014**. Persons covered by the treaty must be informed on their rights and duties by the Liechtenstein paying agents within two months after the treaty entered into force (presumably by **28 February 2014**). After five months (presumably **31 May 2014**) persons covered by the treaty must inform the paying agents on their choice on how to proceed with recapture of taxation of income generated in the past. If the paying agent is not informed in time, the lump sum payment applies automatically.

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