Advantages of Liechtenstein foundations and trusts when moving to Germany

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Liechtenstein foundations or trusts offer internationally operating employees and wealthy private individuals the opportunity to prevent tax disadvantages that may arise, for example, if they move to Germany or other European countries for professional or family reasons.

Tax policy approaches

Currently, different tax policy approaches can be observed in Europe with regard to the immigration of well-educated and innovative and wealthy private individuals. While southern European countries tend to try to increase their attractiveness through new incentives aimed at specific target groups, the tax strategy of certain northern European countries seems to consist primarily of preventing the migration of the tax base once it has been acquired through high tax burdens and also divestment penalties on moving away. Liechtenstein foundations or trusts can help to prevent or at least reduce tax disadvantages that would only arise from moving to high-tax countries.

Liechtenstein foundations and trusts

Liechtenstein family foundations and trusts are tried and tested instruments for long-term wealth planning and protection. Liechtenstein not only has an outstanding political, legal, economic and tax framework for long-term wealth preservation and a highly specialized and fully regulated service sector, but also an internationally recognized and attractive tax system that complies with European law and also reflects the freedom of the state system. Liechtenstein itself therefore has no exit tax.

Liechtenstein is also an attractive location in terms of its corporate law framework. The development path is characterized by legal continuity and legal certainty. Company and foundation law continues is characterized by liberalism, flexibility and international compatibility.

Income tax advantages

Persons who hold a share of more than 1% in a domestic or foreign corporation and become subject to unlimited tax liability for at least seven years after moving to Germany (e.g. through a residence), are subject to the so-called exit tax (§ 6 AStG) when they leave Germany. This means that a national sale of the shares in the company is assumed, so that a tax of approx. 30% is payable on the increase in value that has occurred since the move to Germany. As the notional departure does not result in an increase in liquidity, the tax amount may be paid in seven annual installments. Experience has shown that taxpayers often do not have enough liquidity to pay the exit tax due, which cannot be deferred under the current legal situation, so that moving away (e.g. to start another job in or outside the EU) is made much more difficult, delayed or prevented.

This often concerns leading managers who work for German companies in Germany for a certain period of time and live there (usually with their whole family), as well as technical developers and programmers who have their own patent companies or shares in connection with previous activities (possibly also share options or employee shareholdings).

Only shares that are held as private assets are affected by the exit tax. If these corporate shares are transferred to a Liechtenstein non-transparent foundation before moving to Germany, for example, they are no longer held as private assets and are no longer subject to tax in Germany.

If the shares held in the foundation are sold before moving on or returning to the home country, the capital gains from operating corporations are tax-free in Liechtenstein. In addition, no withholding tax is payable on distributions (in cash or in kind) in Liechtenstein. This means that a significantly greater flexibility can be achieved. In the event of a sale during the period of residence in Germany, a tax burden of 30% would again be incurred.

Inheritance and gift tax advantages

Moving to Germany not only creates an unlimited income tax liability (on income earned worldwide), but also an unlimited inheritance and gift tax liability (on worldwide assets). This can have different consequences.

Asset outflow

Taxpayers often find themselves in the unexpected situation that gifts (e.g. due to unexpected emergencies in the family or among friends or due to sudden death in an accident) that would have been tax-free in their home country are then subject to German gift tax at rates of up to 50% depending on the respective tax bracket and amount of assets.

Assets that are transferred to, for example, a non-transparent Liechtenstein foundation before moving to Liechtenstein are no longer part of the taxpayer's assets. However, they are not subject to German inheritance and gift tax.

Asset inflow

It is not only the taxpayer who has moved to Germany who has a lot to consider, but also the taxpayer's relatives who wish to make gifts to persons with unlimited tax liability in Germany. If a gift or inheritance is made to a resident (from a German perspective), the gift or the inheritance is subject to German gift or inheritance tax. If instead a tax-free gift can be made to a Liechtenstein non-transparent foundation, no German gift tax has to be paid as the assets do not belong to the taxable person in Germany. Dedications to Liechtenstein foundations are tax-exempt in Liechtenstein.

If someone becomes a German citizen while taking up residence in Germany, or if German citizenship is otherwise acquired, further regulations apply, whereby in certain cases an income tax liability and/or an inheritance and gift tax liability may continue to have an effect for up to 10 years after moving away from Germany.

Summary

The migration to other countries should not be made without careful consideration and planning. This also applies to the individual tax situation. Transferring assets to a Liechtenstein foundation before moving to another country can help to avoid or reduce tax risks in the areas of income tax, gift tax and inheritance tax.

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