Spain removes Liechtenstein from the national List of Non-Cooperative Jurisdictions for Tax Purposes

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Spain has removed Liechtenstein from the national List of Non-Cooperative Jurisdictions for Tax Purposes, resulting in the elimination of a series of repressive tax sanctions against Liechtenstein and creating a new momentum for the prosperous development of economic relations between Spain and Liechtenstein. Specifically, the following positive changes arise:

- **Reduction of Spanish withholding tax on income derived by Liechtenstein legal entities from Spanish sources.**
- **Granting of tax exemptions for dividends and capital gains derived from Liechtenstein investments.**
- **Facilitation of evidence and documentation of appropriate transfer pricing in group situations.**
- **Simplified tax recognition of business expenses (such as services provided by Liechtenstein companies to Spanish companies).**
- **Elimination of Controlled Foreign Corporations (CFC) regime on Liechtenstein investment funds (particularly UCITS).**
- **Elimination of special tax on Spanish real estate held by a Liechtenstein legal entity.**

Against this backdrop, it is advisable for market participants from both countries to analyze existing as well as potentially new business relationships.

Background

On February 10, 2023, Spain published an amended List of Non-Cooperative Jurisdictions for Tax Purposes ("Blacklist"). Spain was one of the last EU member states to still include Liechtenstein on a so-called "Blacklist" under national law. In accordance with EU and OECD standards, Liechtenstein is no longer included on this new list, thereby eliminating the aforementioned sanctions and restrictions on the freedom of services, establishment, and capital movement with respect to Liechtenstein.

Liechtenstein Business Location and Financial Center

The Liechtenstein business location and financial center is characterized not only by excellent service competence, reliability, and years of experience among advisors, banks, and authorities but also by meeting the highest legal and tax standards.

The consistent strategy of tax cooperation and the implementation of international standards have led to Liechtenstein presenting a European law-compliant, internationally recognized, financing- and legal-form-neutral, and attractive tax system for over a decade.

In the field of international tax cooperation, Liechtenstein has been an "early adopter" of automatic exchange of information and is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Rating: largely compliant). Furthermore, Liechtenstein also complies with the international tax standards of the OECD and EU, is a member of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and will implement the global minimum tax (GloBE/Pillar 2) according to the OECD guidelines with effect from January 1, 2024. Finally, in June 2022, Liechtenstein achieved one of the top five assessment results in the field of anti-money laundering measures by the Financial Action Task Force (FATF).

Special case: Spain

Contrary to European standards for such lists and the European fundamental freedoms, which also apply to Liechtenstein through the EEA Agreement, Spain maintained its own List of Non-Cooperative Jurisdictions for Tax Purposes ("Blacklist") based on its own criteria.

Although Liechtenstein was never included on the European Council's "Blacklist" and was also removed from the so-called Grey List (jurisdictions under increased EU surveillance) in 2018, Spain imposed a series of significant tax sanctions on economic relations with Liechtenstein through its own national list, which will now be eliminated through the reform. These sanctions were based on Royal Decree 1080/1991 of July 5, 1991, and were only excluded if the state concerned had an agreement on the exchange of tax information or a double taxation agreement with an appropriate information exchange clause in force.

The new list is based on the Decree of the Ministry of Finance and Public Administration (Orden HFP/115/2023) of February 9, 2023, as well as Act 11/2021 of July 9, 2023, on measures to prevent and combat tax fraud. It should be noted that no uniform application period has been set for the new list, so it needs to be examined for each individual case from which point in time the previous sanctions are eliminated. Although the new list came into effect on February 11, 2023, it applies, regarding taxes with a tax period, for the first time to tax periods that begin after this date. For all taxes without a tax period, the new list applies from February 11, 2023. In special cases, the new regulation will only apply six months after its publication.

Further EU Special Cases

Apart from Spain, Portugal has also maintained a non-EU-compliant national "Blacklist" for tax purposes that is still not amended. Tax sanctions include an increased withholding tax rate and a higher property tax rate for properties owned by companies from a listed jurisdiction. Additionally, an exemption for foreign dividends, among other criteria, is granted only if the foreign distributing company is subject to taxation of at least 12.6%. Whether Portugal will follow neighbouring Spain soon remains to be seen.

Furthermore, Denmark also discriminates against dividend payments to Liechtenstein parent companies by imposing a withholding tax burden of 22%, while dividend payments within domestic and European relations are not subject to withholding tax. Although the Danish Tax Administration does not see this as an unjustified violation of the freedom of establishment (Binding information of November 4, 2020), such a violation seems to exist, given the consistent case law of the CJEU (including C-170/05 Denkavit, C-379/05 Amurta, C-480/16 Fidelity Fund).

Recommended course of action for EU matters

Since income taxes within the EU are largely not harmonized, and even in the few areas that have already been harmonized (e.g., through the EU Anti-Tax Avoidance Directive I and II), national, to some extent significant differences can regularly be observed, a detailed case-by-case analysis that considers national peculiarities is always recommended.

In cases where unjustified discrimination against a Liechtenstein legal entity by an EU member state seems to exist, it should be examined whether relevant tax proceedings can be suspended until a final ruling is reached or whether an active enforcement of fundamental freedoms should be considered based on the case law of the CJEU or the EFTA Court.

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