



## Implementation of the Spontaneous Information Exchange in Liechtenstein

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By amending the Act on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act; SteAHG) a **legal basis for executing the spontaneous information exchange** will be created in Liechtenstein. This newsletter is intended to provide a first overview of the planned amendments to the law. The details of the bill are set out in the Report and Motion (BuA) no. 51/2017.

### *Background of the bill*

Liechtenstein has already committed itself to the global standards in the field of information exchange through the Liechtenstein Declaration of 12 March 2009 and the Government Declaration of 14 November 2013. The spontaneous information exchange is compulsory under article 7 of the Convention on Mutual Administrative Assistance in Tax Matters (MAK), which has been in force in Liechtenstein since 1 December 2016 and applicable from 1 January 2017. As a member of the so-called Inclusive Framework of the OECD, Liechtenstein has also undertaken to implement the BEPS minimum standards, including the spontaneous information exchange of tax rulings. Now, by amending the Tax Administrative Assistance Act, the national procedural provisions for the implementation of the spontaneous information exchange are to be enacted.

### *Which changes to the SteAHG are planned?*

The provisions of the SteAHG, in particular, the purpose, the subject and the scope as well as the definitions of terms shall be supplemented by the spontaneous information exchange. **The spontaneous information exchange** is defined as **unsolicited** exchange of **available information** from the Tax Administration which is foreseeably relevant for the competent foreign authority. Moreover, provisions for the implementation of the spontaneous information exchange and the execution of national procedures, in particular, the non-regular procedure with subsequent notification to af-

ected persons as well transitional provisions shall be introduced.

### *What information shall be exchanged?*

Any information which is foreseeably relevant for the administration or enforcement of the national law of the recipient state regarding certain taxes, shall be spontaneously exchanged (article 4 (1) MAK). From the Liechtenstein perspective, the following tax types are relevant: the wealth tax and the personal income tax, the corporate income tax as well as the real estate capital gains tax. The spontaneous information exchange shall generally be applied in the cases below, but the list is not exhaustive (article 29a (1) SteAHG draft in conjunction with article 7 (1) MAK):

- on the assumption of tax evasion of the other contracting party;
- in the case of tax reduction or tax exemption, which would result in a tax increase for another contracting party;
- in the case of business relations conducted in a manner which could lead to tax savings;
- on the assumption of tax savings through artificial transfers of profits;
- if, on the basis of information obtained, a situation has been identified which may be relevant to the tax assessment of the other contracting party.

In accordance with the OECD guidelines for action item 5, the spontaneous information exchange shall include tax rulings related to (article 29a (2) SteAHG-E):

- favoring tax regimes;
- transfer pricing;
- reduction of taxable profits;
- determination of the existence/non-existence of a permanent business establishment;
- forming cash flows through intermediary entities.

Binding information and approvals are defined as **tax rulings** (article 3 (h) SteAHG-E in conjunction with article 93a SteG). Legal information by the Tax Administration, which is given in writing on the written request of a taxpayer before or even after the realization of a specific factual situation, is considered to be binding. General information, on the other hand, which contains some interpretation of laws or administrative practice, is non-binding. General correspondence with the Tax Administration by e-mail without an application is generally not regarded as binding information/approval within the meaning of article 93a Tax Act (SteG). Oral information is also non-binding, even if it relates to a specific factual situation. Furthermore, article 93a SteG does not deal with settlements achieved in tax assessment proceedings.

Further details on the spontaneous information exchange, in particular, the recipient states, and the manner of transmission of information to be exchanged shall be defined by the government by means of an ordinance. In the case of tax rulings, the recipient states shall also include the country of domicile of the direct parent company and the country of domicile of the group parent company. A two-stage process is provided for the exchange of tax rulings according to the BEPS minimum standard:

1. firstly, basic information about the tax ruling must be provided by means of a standardized form;
2. a copy of the tax ruling shall be sent only after request of the recipient state.

#### ***Will affected persons be notified?***

As a rule, affected persons, if any, shall be notified on the intended spontaneous information exchange as well as the legal remedies available to them by the Tax Administration **before the transmission of information**. Generally, the notification shall be sent by post. If this is not possible because, for example, the affected person is not available, the notification shall be made by publication in the electronic official gazette. The affected persons will then be entitled to participate in the domestic proceedings within a period of ten days and, if necessary, to appoint a domestic authorized recipient.

In exceptional cases, the affected persons shall be notified only after the spontaneous information exchange has been executed. The **non-regular procedure with deferred notification** to the affected persons shall be carried out, if it is to be assumed that advance notification will frustrate the success of the foreign investigation procedure. In the non-regular procedure, the Tax Administration will be required to transmit the information to the relevant foreign authority only after the approval by the competent judge of the administrative court. Without such approval, the procedure shall be carried out with advance notification. The details of the non-regular procedure regarding the spontaneous information exchange are specified in article 29c to 29g SteAHG-E.

#### ***When shall the spontaneous information exchange be applied?***

The amendments to the SteAHG-E are expected to enter into force on January 1, 2018. That is, transmission of information to competent foreign authorities can only occur as from 1 January 2018. Regarding tax rulings, January 1, 2017 will be the reference date. It is thus intended to spontaneously exchange tax rulings issued after 1 January 2017. In the case of tax rulings which were issued before 31 December 2016, it will be decisive whether they are still applied for taxation from 1 January 2017. If tax rulings are terminated with effect of December 31, 2016, they shall not be affected by the spontaneous information exchange. Tax rulings issued before 1 January 2012 will also be excluded from the spontaneous information exchange.

#### ***From Parliament***

The amendment to the Tax Administrative Assistance Act (BuA 51/2017) was discussed in the first reading on the occasion of the Parliament's September session. In the brief discussion, concerns about the non-regular procedure with deferred notification to the affected persons and questions concerning tax rulings were raised. Until the second reading, the government will provide a more detailed explanation of the term "tax rulings" as well as answer questions on who requires tax rulings in Liechtenstein and might be affected by the new regulation. The second reading will be held by the end of this year. It can be assumed that the planned amendments to the Tax Administrative Assistance Act, as explained here, will be implemented.

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