Protecting values, entrusted to deliver excellence
Liechtenstein Foundation: Asset protection in a world of transparency
Overview

1. Liechtenstein Foundation
2. Privacy vs Transparency: development and status quo
3. Liechtenstein’ concept of ‘Economic Owner – Register
4. Blockchain Law
Liechtenstein Foundation - Scheme

- Founder
  - nomination Board/Protector
  - Foundation-documents (incl. Statutes, By-Laws)
  - Review/supervision
  - Management & Control
  - Board of Directors
  - Distributions
  - Beneficiaries (family, charity)
Liechtenstein Foundation: Features

- assets brought in by Founder become legally independent (asset protection!)
- Foundation has no “members“ but “beneficiaries“
- enjoyment of foundations assets and/or income
- New Liechtenstein Foundation law 2009 – gathering of 80 years of Foundation-experience
- most attractive in competition of Foundation law regimes
- “systematically and substantively first-rate, indeed as pioneering” (Prof. Dominique Jakob)
Liechtenstein Foundation – succession planning:

- Foundation arrangements lasting over generations as opposed to testamentary dispositions
- Monitoring of testamentary stipulations very difficult when
  - heirs live in various countries or
  - assets are spread over various jurisdictions
- last will of deceased can be deviated by heirs with unanimous vote (in many jurisdictions)
Liechtenstein Foundation - succession planning: no lengthy probate

- Foundations assets do not form Founders estate
- the Foundation owns assets as legal entity
- no probate proceedings on foundations assets after Founders death
- big advantage when assets (bank accounts, real estate, etc) are situated in different countries or the Founder has lived in different locations
- probate can be very time consuming and costly
- beneficial interests are not part of beneficiary’s estate
- successor beneficiaries become the Foundation’s new beneficiaries
Liechtenstein Foundation - advantages: asset protection

- Foundation protects personal assets from unjustified interference by third parties
- Liechtenstein has **NO** Enforcement of Foreign Civil Judgment Treaty

→ legal action against a FL-Foundation must be brought before Liechtenstein Courts

→ Liechtenstein Foundation = effective tool to protect Founder and beneficiaries against political turmoil in their home countries
Liechtenstein Foundation - advantages: preservation of family assets

- ensurance to keep family assets together across generations
- holding of companies shares according to family traditions, but flexible for future developments
- flexibility of any economic activity through subsidiaries
- Cost effective holding and separation of assets for descendants through ‘Protected Cell Company’ (PCC)
- Without Foundation - assets of deceased will be divided amongst heirs

→ Foundation as perfect tool to preserve family assets/family business under steady management over decades
Liechtenstein Foundation - advantages: decades of tradition of Foundation Law

- LIE Foundation has almost 100 years of experience
- many court decisions in Foundation Law → legal certainty
- in addition Foundation Articles may provide arbitral solution
- Foundation Law and practice are well known by legal practitioners (incl. courts and authorities)
- LIE Foundation served as model for other (even common-law) jurisdictions
2. Privacy vs Transparency: development and status quo
Privacy vs Transparency: development and status quo

• multilateral transparency rules:
  – FATF: ‘Anti Money Laundering’ (tax evasion as ‘predicate crime’)
    → ‘4b Europ. AML Guideline’: BO-Register
  – OECD: ‘Common Reporting Standards’ (‘CRS’) on ‘Automatic Exchange Of Information’ (AEOI)
  – OECD: ‘Base Erosion and Profit Shifting’ (BEPS)

• unilateral/bilateral transparency rules:
  – US imposing other jurisdictions to exchange information (FATCA)
  – Double Tax Treaties (‘DTT’) and Tax Information Exchange Agreements (‘TIEA’)
  – Controlled Foreign Companies (‘CFC’)
  – Currency Regulation and Control/Administrative Offences Code (by RUS Federation Council from Jan. 2018)
Privacy vs Transparency: outlook

On Venezuela, aid, Syria, tax, Mars, adjectives

Letters to the editor

Oct 15th 2016  |  From the print edition

Tax privacy

You are right to argue that tax evasion is out and that offshore countries should not drag their feet ("The holdout", September 10th). However, there are real concerns relating to the privacy and data-protection implications of the global automatic information-exchange system, known as the Common Reporting Standard.

A group of experts appointed to supervise implementation of the standard within the European Union has warned that in many respects it resembles a data-retention directive that has been ruled illegal by the European Court of Justice. The court has also held that "legislation permitting the public authorities to have access on a generalised basis to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life."

What is at stake here is not the right to privacy of tax evaders, in the same way as the Apple versus FBI smartphone case was not about the right to privacy of a dead terrorist. Instead, what is at stake is the right to privacy of compliant citizens who are concerned about the magnitude of (often irrelevant) information about them and their finances that will travel through the internet and may fall prey to hackers.

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Stop the taxman from invading privacy Filippo Noseda

Seniors judges in France ruled last month that a public register of trusts introduced in 2013 infringed the fundamental right to privacy and was therefore unconstitutional.

The French trust register had been introduced to fight tax evasion, but the judges on the country’s constitutional court held that the measure was disproportionate.

Two weeks later, the French data protection watchdog — the Centre National de la Nanotechnique — asked the government to suspend the implementation of a database that would hold the biometric details of 60 million people and to study “alternative techniques that are respectful of the rights and freedoms” of citizens.

The right to privacy — enshrined in the European Convention of Human Rights — applies to all aspects of everyday life. However, when it comes to tax collecting, governments seem oblivious to the principles that the French constitutional court and data protection watchdog sought to uphold.

Closer to home, the UK has implemented a fully public register on the beneficial ownership of companies that bears a striking resemblance to the French trust register.

In addition, the EU is about to implement an automated system under which the names, dates and places of birth, tax-identification number, account balances and deposits and withdrawals, will be collected and communicated to the tax authorities of countries that have signed up to the common reporting standard. To date, 103 countries have signed up to the standard to fight tax evasion.

How do tax questions differ in essence from other, more prominent disputes over privacy? For instance, Apple’s dispute with the FBI over allowing it to "seed" the iPhone of the San Bernardino assailant Syed Rizwan Farook, or Max Schrems’ case against data transfers between the EU and the US, which led to the scuttling of the "safe harbor" data exchange agreement. Both of these cases were about fighting to shield criminals, but about preserving the privacy rights of us all.

The French challenge to public trust registers is to be welcomed, as it confronted the growing trend for governments to impose mechanisms to collect, exchange and even publicly display financial information, regardless of any actual risk of tax evasion.

The issue of the lack of proportionality of the common reporting standard has already been raised by the European data protection supervisory and other European data protection bodies. However, it is not merely the privacy of millions of compliant taxpayers that is at stake; data security is also a key issue. Samples of large-scale data breaches are numerous, most recently including Taxco Bank and FriendFinder Network, but there are other examples of governments losing the sensitive data of their citizens.

The French court decision is an important first step in directing the removal of automatic, indiscriminate information gathering. What is needed next is a UK test case to test the register and delay implementation of the common reporting standard until these risks can be properly examined.

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3. LIE’s concept of ‘Economic Owner – Register’
LIE’s concept of ‘Economic Owner – Register’

• 'Law on Register of Economic Owner' (compare: 'beneficial owner')
• Logic of 'Economic Owner' - Register follows Due-Diligence-Rules (e.g. also using the 'Form C' and 'Form T')
• In force: August 1st 2019 (transition period: Feb. 1st 2020)
• ‘Economic Owner’ of legal entities:
  – LIE corporations ('Annex 1'):
    • Ltd. Company (Public-'Aktiengesellschaft', Private-'GmbH')
    • Establishment ('with Founders’ rights')
  – LIE entities/structures ('Annex 2'):
    • Trust
    • Foundation
    • Establishment ('without Founders’ rights'; ‘foundation like’)
• Information deposited at LIE Trade Registry (Amt für Justiz)
Definition ‘Economic Owner’: Control!

- Compared to LIE Due Diligence Law/Order the term ‘Economic Owner’ is limited!
- Background: LIE Constitutional Rights would be effected
- Owner or person with “controlling powers” such as ...
  1. power to dispose of the funds of the legal entity
  2. power to amend the governing provisions of the legal entity
  3. power to change the beneficial entitlements
  4. possibility to control the exercise of the powers of # 1-3
‘Economic Owner’ of corporations (Annex 1)

1. Individual who ultimately owns or controls, either directly or indirectly, *shares, voting rights or ownership interests* of *more than 25%* in this entity or who is entitled to *more than 25%* of the entity’s *profits*

2. Individual who *ultimately owns or controls* an entity through some other means

3. Individual who is a member of the executive body if – after having exhausted all possible of # 1. and # 2. and provided that there are no grounds for suspicion
‘Economic Owner’ of legal entities/structures (Annex 2)

Person with “controlling powers”, such as
• Settlor
• Trustee
• Protector/Curator
• Beneficiary/-ies

If no person with controlling powers existing:
• members of the managing organ (directors, board members)

→ discretionary Foundation/Trust/Establishment: Out of Scope!
Access to ‘Economic Owner – Register’ - restrictions

• LIE Authorities (FIU, FMA and Prosecution): Annex 1 and Annex 2
  – Restricted for special objects
  – No warning of affected person necessary
• Persons/Entities subject to due-dil-duties (e.g. banks): Annex 1
  – restricted to scope of their due diligence duties
  – consent of the affected person necessary
  – denial of consent in special cases
• Third Parties (foreign Authorities, journalists etc): Annex 1
  – demonstration of a legitimate interest
  – approval of demand is subject to examination by independent commission

→ `Annex 2‘ /discretionary Structures only accessible by LIE Auth.
4. Liechtenstein Blockchain Act
**Liechtenstein Blockchain Act**

- Blockchain Act (“Token and Trusteed Technologies Act”)
- Effective Jan 1\(^{st}\) 2020
- Worldwide first fully integrated Blockchain Law
- Tokenisation of Assets (currency, securities, commodities, IP etc)
- Basis for a stronger blockchain ecosystem in Liechtenstein
- Enforcement of legal certainty for all involved parties
  - No formal requisites for transfer of securities (civil law)
  - Dematerialized securities (corporate law)
  - Clear rules for Service Providers (due diligence law)
- Service Providers
- Disposal over the token results in disposal over the right
It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change.

Charles Darwin (1809 – 1882)
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