

Private Client

Contributing editors

Anthony Thompson and Nicole Aubin-Parvu



2019

GETTING THE
DEAL THROUGH

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Forsters LLP

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Preface

Private Client 2019

Seventh edition

Getting the Deal Through is delighted to publish the seventh edition of *Private Client*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Andorra, Colombia, Ireland, Netherlands, Panama, Singapore and Spain.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
October 2018

Liechtenstein

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Tax

1 How does an individual become taxable in your jurisdiction?

The Liechtenstein tax system is based on a general wealth tax with supplementary income tax for individuals and an income tax for legal entities. Liechtenstein nationals are taxed on their worldwide income and assets if they are domiciled in Liechtenstein.

The Liechtenstein Tax Act is primarily applicable to natural persons who have their domicile in Liechtenstein or who reside in Liechtenstein for the purpose of employment.

The general tax rate is calculated based on the taxable income including the assets converted into an income and is calculated as follows:

- less than 15,000 Swiss francs per annum: zero per cent;
- between 15,001 and 20,000 Swiss francs: 1 per cent (minus 150 Swiss francs);
- between 20,001 and 40,000 Swiss francs: 3 per cent (minus 550 Swiss francs);
- between 40,001 and 70,000 Swiss francs: 4 per cent (minus 950 Swiss francs);
- between 70,001 and 100,000 Swiss francs: 5 per cent (minus 1,650 Swiss francs);
- between 100,001 and 130,000 Swiss francs: 6 per cent (minus 2,650 Swiss francs);
- between 130,001 and 160,000 Swiss francs: 6.5 per cent (minus 3,300 Swiss francs);
- between 160,001 and 200,000 Swiss francs: 7 per cent (minus 4,100 Swiss francs); and
- more than 200,000 Swiss francs: 8 per cent (minus 6,100 Swiss francs).

Note that single parents and spouses have different calculations. The tax rate shall be reduced by a specific tax-free amount as specified as follows: individuals are either taxed as a single person, a single parent or with their spouse as a married couple. Spouses have different tax levels and higher tax-free amounts than singles and single parents.

In addition to the state tax, each municipality imposes a municipal surcharge equal to a certain percentage of the state tax amount. The municipal supplement amounts between 150 and 250 per cent of the state tax amount (eg, for an income of 110,000 Swiss francs, domestic tax of 5 per cent, minus the tax-free amount of 1,950 Swiss francs = 3,550 Swiss francs, plus 150 per cent of 3,550 Swiss francs = total tax of 8,875 Swiss francs).

2 What, if any, taxes apply to an individual's income?

In Liechtenstein, individuals are subject to income and wealth tax. Income tax is calculated based on the taxable net income. Wealth tax applies to all kinds of assets, including moveable and immovable assets. With regard to income and profit taxation, Liechtenstein recognises the taxation of liquid funds and monetary gains. However, many proceeds are not subject to profit and income tax, though to wealth tax (no double taxation). For unlimited taxpayers, taxable income does not include, inter alia, income from the management of foreign land used for agricultural and forestry purposes or rental and leasing income from property located abroad. Net taxable income does not include, inter alia, capital obtained from inheritance, legacy or gifts.

3 What, if any, taxes apply to an individual's capital gains?

Net taxable income for unlimited taxpayers does not include, inter alia, capital gains obtained from inheritance, legacy or gifts, deposits in foundations or institutions similar to foundations. Limited taxpayers may claim such deductions in determining the taxable net income only to the extent that they are able to deduct domestic income in accordance with provisions stated in the Tax Act.

4 What, if any, taxes apply if an individual makes lifetime gifts?

Since 1 January 2011, gift tax no longer applies in Liechtenstein. There is still, however, a legal obligation to disclose the giving or receiving of gifts exceeding the value of 10,000 Swiss francs. Individuals are obliged to list all endowments and benefits given or received during the taxable year in their annual tax declaration (see article 96 of the Tax Act).

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

Liechtenstein abolished the inheritance tax with effect from 1 January 2011. There is still a legal obligation to disclose inherited assets. Heirs must include details of their inheritance in their annual tax declaration in case the inheritance exceeds 10,000 Swiss francs (see article 96 of the Tax Act).

6 What, if any, taxes apply to an individual's real property?

Liechtenstein recognises property gains tax, which shall be paid by individuals selling the whole or parts of their domestic property. Specific regulations exist to avoid double taxation.

The seller always bears that kind of tax because he or she receives the final profit of the disposal. The tax burden consists of the calculated tax amount plus a levy of 200 per cent of this calculated amount. Municipal tax is not applicable on real estate transactions.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Regarding taxation on imported products, Liechtenstein is subject to Swiss and European Economic Area (EEA) regulations because of its EEA membership. An individual is entitled to bring goods with a value of up to 300 Swiss francs across the border for personal use or as gifts, without paying any tax on imported products (duty-free limit). Each individual (including children) may use the duty-free limit once a day (eg, four persons may import goods with a value of 1,200 Swiss francs, which would be 300 Swiss francs each). Lower duty-free limits apply to alcohol, tobacco products and certain agricultural products (eg, meat). Value added tax (VAT) must be paid for all goods.

8 What, if any, other taxes may be particularly relevant to an individual?

In addition to above-mentioned taxes, motor vehicle tax may be relevant to individuals.

Concerning VAT, Swiss regulations are applicable. VAT is applicable in Liechtenstein at a general rate of 7.7 per cent. A reduced VAT rate of 2.5 per cent applies, for instance, to the delivery of goods such as water in pipes, livestock, poultry, fish or cereals. Some services are VAT-exempt, such as the transportation of items or medical treatment.

The tax on accommodation services is 3.7 per cent (special rate). Accommodation services include the provision of accommodation including breakfast, even if this is charged separately.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

According to article 44 of the Tax Act, all legal entities (in particular corporations, establishments, foundations, investment firms and registered trusts) are subject to income tax if they are domiciled in Liechtenstein or if their place of actual administration is in Liechtenstein (unlimited tax liability). Further, foreign legal entities and special dedications to assets without legal personality are subject to income tax with their domestic income (limited tax liability).

Income tax amounts to 12.5 per cent of the taxable net income. The minimum income tax is 1,800 Swiss francs. The minimum income tax is not levied on legal entities whose sole purpose is to operate a commercial business, so far as their total assets on average for the past three years have not exceeded 500,000 Swiss francs (see article 62 para. 3 of the Tax Act). Liechtenstein trusts are subject to the minimum income tax of 1,800 Swiss francs.

All legal entities (legal persons) that manage, exclusively, private assets in pursuit of their purpose and carry on no economic activity may be qualified as a private asset structure (PVS), which guarantees a favourable tax treatment. A legal entity that has received the status of PVS is subject merely to the minimum income tax in the amount of 1,800 Swiss francs.

In addition to the requirement of not performing any economic activity, the law requires, in essence, the fulfilment of the following additional prerequisites for classification of legal entities as a PVS:

- their stocks or shares are not permitted to be placed publicly and there are not traded on a stock exchange;
- they are not allowed to advertise for any shareholders or investors, nor receive from these latter or third parties, payments or reimbursements of costs for their non-economical activities; and
- the articles must show that they are subject to the restrictions for a PVS.

On application, which is usually made on the setting-up of the legal entity or before the start of a new tax year, the Liechtenstein tax authorities will, under the condition that all preconditions prescribed by law are fulfilled, grant the status of a PVS.

The transfer of assets to trusts or foundations or other asset-holding vehicles is not subject to tax in Liechtenstein.

10 How are charities taxed in your jurisdiction?

Charities are tax-exempt. Non-profit institutions, foundations or other non-profit organisations can apply for tax exemption if the main purpose of the organisation is non-profit oriented and for charitable objectives.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

Liechtenstein was the first and only country in continental Europe that has usurped the legal institute of trusts. Hence, lawyers need to be familiar with not only Liechtenstein trust law, but Anglo-Saxon trust law as well. In this context, Liechtenstein recognises:

- trust companies providing trustee services with a licence for extensive or restricted activities, granted by the Liechtenstein financial market authority; and
- trusts and trust reg., in case a trust is registered (trust reg.), is considered a legal entity whereas a 'classic' trust is not considered as an entity. Regarding Liechtenstein trust law, there are some significant similarities to the Anglo-Saxon trust laws.

Under Liechtenstein jurisdiction, trusts are well established and have a good and solid reputation. One can rely on detailed laws and judgments. Further, Liechtenstein is a signatory to the Hague Convention on the Law Applicable to trusts and on their Recognition (the Hague Trust Convention 1985).

12 Does your jurisdiction recognise private foundations?

Liechtenstein is well known for its sophisticated and highly recommended opportunities for investors. In essence, a distinction is made

between private-benefit purpose and common-benefit purposes. Liechtenstein foundations may also have mixed purposes. Both can be set up as discretionary foundations. The Liechtenstein foundation is formed by endowing assets for the benefit of a specific purpose. Upon formation, the foundation receives its own legal personality, forming a legally independent entity and therefore existing separately from the founder's fate. In contrast to a company, the foundation does not have any owners or shareholders but only beneficiaries to enjoy the foundation's income or assets. As a result of legal independence, the foundations assets remain outside the asset sphere of the founder, the beneficiaries and the prospective beneficiaries.

The Liechtenstein law on foundations does not contain any restrictions as to the possibility of the settlor to be a beneficiary at the same time. Further, there are no restrictions as to the possibility of being a board member. The settlor as well as beneficiaries can be members of the foundation board without any restrictions. Moreover, the settlor can reserve certain powers to influence the foundation (eg, the right to revoke the foundation or to amend the foundations documents).

Liechtenstein can rely on a detailed and well-established foundations act, as well as case law and various literature.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex relationships are recognised by the Laws of Liechtenstein. Liechtenstein recognises registered partnerships but not same-sex marriages. Provisions on registered partnerships, available in the Registered Partnership Act of 16 March 2011 and the registered Partnership Regulation of 16 August 2011, entered into force in 2011. Therefore, two persons of the same sex are entitled to register their partnership with mutual rights and obligations. The status of such a relationship is 'in registered partnership'. Registration of the partnership is applied for at the civil registry office. The written agreement regarding the registered partnership is signed by both partners and legalised by the civil registry office. Each partner owns his or her own property and assets and is liable for debts concerning his or her own property. Regarding tax law, registered partners are treated as spouses, therefore their property is added together for tax purposes. For succession purposes, registered partners are subject to the same rules as spouses.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Liechtenstein law does not provide any other legal relationship for heterosexual couples other than marriage.

Succession

15 What property constitutes an individual's estate for succession purposes?

All assets, movable and immovable, regardless of their location, as well as rights and duties fall into an individual's estate. Liechtenstein is aware of the concept of co-ownership or joint ownership. Such collective ownership plays a role in the succession procedure. As a result, heirs can only inherit the appropriate part of a jointly owned asset that belonged to the deceased.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Persons of legal capacity have the right of disposition over their whole estate in accordance with general applicable rules. Therefore, individuals can usually dispose freely of their estate during their lifetime without restrictions. Under certain circumstances, donations or gifts before the testator's death can be credited on the portion of the inheritance. Marriage alone does not constitute joint property between spouses. Therefore, spouses can enter into a joint property that, however, requires a special contract. Further, spouses may enter into an inheritance contract.

17 To what extent do individuals have freedom of disposition over their estate on death?

In general, individuals have the freedom of disposition over their estate upon death. Nonetheless, there are 'protected heirs'. For instance,

children and the spouse of the deceased are protected and are entitled to a compulsory portion. Depending on the specific circumstances among these persons, the compulsory portion varies.

Liechtenstein succession law allows protected heirs to claw back gifts or legacies that are gifted to third parties in breach of their compulsory portion. Protected heirs may file a clawback claim to receive the balance of their compulsory portion if they receive less than their compulsory share in the estate.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Liechtenstein provides a legal order of succession in cases where no valid instruction is left by the deceased individual. The legal heirs are descendants, spouses or registered partners as well as the closest relatives. By law, there are four parentela. The first parentela contains the deceased's descendants. The children inherit in equal shares and predeceased children are represented by their own descendants. Alongside this first parentela, the spouse or registered partner is entitled to one-half of the heritage. If the deceased leaves no descendants, the second parentela is inheritable. Those are the deceased's parents, who inherit in equal shares, or if one or both of them are predeceased, their descendants represent them. The spouse or registered partner is entitled to two-thirds of the heritage alongside this line, as well as alongside the third parentela, who are the grandparents and their descendants. The third parentela inherits from the deceased if there is no remaining second-parentela relative. If there are no third-parentela relatives, inheritance passes to the fourth parentela, the great-grandparents (who if predeceased are not represented by their descendants); however, alongside the fourth parentela, the spouse or registered partner is entitled to the whole inheritance. In other words, the great-grandparents do not inherit any of the estate if the deceased is survived by a spouse or a registered partner. If the deceased leaves no spouse or registered partner and no relative in any of the four parentelas, there are no entitled legal heirs. In this case the estate falls to the state.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Regarding the law of succession, Liechtenstein does not distinguish between legitimate and illegitimate children. Adopted children are treated like natural legitimate children in relation to their adoptive parents and siblings, but they are not entitled to inherit from their adoptive parents' ancestors (grandparents and their descendants). A descendant shall be entitled to inherit from their natural ancestors, regardless of his or her adoption by third persons.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The applicable law of succession is determined by nationality. The laws of Liechtenstein are applicable unless the deceased was either a foreign national or a Liechtenstein national living abroad. Note that Liechtenstein is not subject to the European Succession Regulation. Nonetheless, the Liechtenstein International Private Law Act may apply.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

A valid will is required to be either written and signed by one's own hand, or signed by the testator and testified by three capable witnesses, who also need to sign the document if the last will is written by someone other than the testator, or written by the testator but not by hand. Additionally, there is the possibility of making either an oral or written will in court. If there is a direct risk of the testator dying or losing his or her capacity to make a valid will, it is possible to determine one's oral will attended by members of the court.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign wills are recognised if they meet the formal requirements either of the testator's country of origin or the testator's residence. If

the inheritance procedure is executed by a Liechtenstein court the will must comply with the formalities required by Liechtenstein law.

23 Who has the right to administer an estate?

Heirs accepting the succession have the right to administer the estate individually, or jointly if there is more than one heir. If the heirs are at odds with each other, or if the titles of inheritance are ambiguous, a curator will be appointed by the court.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The estate of a deceased person is to be considered as entity with a legal personality. Depending on their probate, heirs are liable with their entire assets or only to the extent of their inheritance. In general, the estate is transferred in accordance with the formal requirements for the transfer of assets under Liechtenstein law. Regarding the administration, after the declaration of acceptance, the heirs have the right to administer the estate together by making consensual decisions. In the case of conflict, the court appoints a trustee of the estate as a representative. Disposal of any part of the estate is not allowed without the approval of court.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Heirs may challenge the validity of a will. After the declaration of acceptance, Liechtenstein law provides a special succession proceeding against persons gaining the estate or a share of it. In this lawsuit any other person can claim a better or equal right to the estate. Someone who claims a single item of the estate shall only use the regular civil proceeding.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

The parents or a person entitled to custody hold and manage a minor's property, as the minor's representatives. They are obliged to manage the property prudently. They should preserve and increase the value of the property, if possible. The law also provides that it is the parents' duty to annually render an account to the court, if the property contains real estate or shares of entities, or if the revenues can provide the financial support of the child. The court can free parents of this duty if they administer the property prudently. However, contracts of substantial economic impact usually require approval by the family court.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

An individual attains full legal capacity for the purposes of holding and managing property at the age of 18. At the age of 14, individuals have limited legal capacity for holding and managing property.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

In the case where someone loses capacity to manage his or her affairs, these affairs should be managed by a legal representative or a relative. The law recognises a special power of attorney whereby someone gives directions as to how and by whom his or her affairs should be managed. If this option is not possible, the court may appoint a guardian to act on behalf of the person without capacity to contract.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

Whether or not a foreign national requires a visa to visit Liechtenstein depends on the citizenship of such person. There are no border controls between Switzerland and Liechtenstein, and the same requirements as in Switzerland apply to travellers in Liechtenstein. Like Switzerland, Liechtenstein is a signatory to the Schengen agreement; therefore, visas are required only from certain countries. In essence, nationals of a Schengen member state do not need a visa to visit. They may enter

Liechtenstein for up to 90 days for tourist or business purposes without a visa. Their passport, however, must be valid for at least three months beyond the period of their stay and anyone may be questioned by border guards about the purpose of the visit. As Liechtenstein and Switzerland share a customs and monetary union (*Zoll- und Währungsunion*), reference should be made to Swiss provisions as provisions on persons subject to visa requirements are largely the same (deviating regulations based on bilateral or multilateral agreements remain reserved). Whether there is a visa requirement can be found on the internet (www.sem.admin.ch) or in the *Liechtenstein National Law Gazette* LGBL.2011 No. 572.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A visitors' visa, category C (also referred to as a Schengen visa application) is for stays in the entire Schengen area lasting up to 90 days within 180 days. Nationals of Schengen agreement member states can enter with a valid passport.

31 Is there a visa programme targeted specifically at high net worth individuals?

There is no visa programme targeted at high net worth individuals in Liechtenstein, but there are different ways to receive a residence permit to stay. A short-term permit allows the holder to stay in Liechtenstein, in employment, for up to one year. A long-term permit allows the individual to stay for more than one year, either in or out of employment. These permits are generally limited to a period of five years for EEA and Swiss nationals, and one year for nationals of third countries. The permit can be extended if certain legal prerequisites have been met. The requirements for an employment permit are stricter for third-country nationals (eg, the requirements include an application by the employer and job qualifications). One of the requirements for a third-country national to obtain a non-employment permit is, for instance, that Liechtenstein takes an interest in offering the particular individual residence in the country. Owing to its EEA membership, Liechtenstein issues a certain number of residence permits (direct issue). Further, Liechtenstein offers a biannual lottery for residence permits for EEA nationals only, which is similar to the US Green Card Lottery.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

A valid residence permit allows the holder of the permit to bring family members with him or her. Under Liechtenstein jurisdiction, EEA and Swiss nationals are allowed to bring their spouses or registered partners, children under the age of 21, as well as first-line ancestors who are supported financially by the individual in possession of the respective permit if certain prerequisites have been met.

For third-country nationals, conditions are stricter. They are not allowed to bring their relatives with them on a short-term permit, and they are only allowed to bring their spouse or registered partner and their mutual children under 18 years of age on a long-term permit.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Permanent residency may be granted if certain prerequisites were met. Depending on the individuals' origin (EEA, Switzerland or a third country), different regulations apply. For instance, an EEA national is entitled to file a request for a permanent residence permit after living in the country with a valid residence permit for five years, whereas third-country nationals have to fulfil additional criteria such as passing a civic education exam and proving their knowledge of the German language. They may get their permanent residence permit granted if they are in sufficient funds and have not committed any crime in the past five years.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

There are six ways to obtain Liechtenstein citizenship, as follows:

- by birth: children of a Liechtenstein mother or father obtain Liechtenstein citizenship;
- naturalisation in the ordinary procedure: the applicant must have been domiciled in Liechtenstein for 10 years and must renounce his or her previous citizenship. The citizenship in this ordinary procedure is granted by the municipal citizens in a vote;
- naturalisation as a result of marriage: the applicant has to be married to a Liechtenstein national for at least five years, has his or her place of residence in Liechtenstein and renounce his or her previous citizenship;
- naturalisation as a result of registered partnership: the applicant has to be living in a registered partnership with a Liechtenstein national for at least five years, has his or her place of residence in Liechtenstein and renounce his or her previous citizenship;
- naturalisation as a result of long-term residence: this form of naturalisation requires a regular residence in Liechtenstein for 30 years, whereby the years up to the age of 20 are counted twice. Further, the applicant must renounce his or her previous citizenship; or
- naturalisation due to statelessness: this way to naturalisation requires a regular residence in Liechtenstein for five years.

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