



FISCAL AUTHORITY
PRINCIPALITY OF LIECHTENSTEIN

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FACT SHEET

on international mutual agreement procedures under the double taxation conventions with respect to taxes on income and on capital

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1. Introduction and general information on the fact sheet

Double taxation conventions (DTCs) are concluded to eliminate double taxation on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. As the terms of the Conventions cannot cover every possible case, tax disputes may occur despite the fact that DTCs have been concluded between countries. For example, the risk of double taxation exists in cases, where the countries involved interpret the terms of the Convention differently or establish the facts of the case differently. To counter such tax disputes, DTCs contain provisions which enable countries to contact each other directly in order to resolve the dispute by mutual agreement without placing them under an obligation to reach an agreement.

All of Liechtenstein's DTCs contain provisions on mutual agreement procedures. They are based on the OECD Model Tax Convention, which is why the following remarks are made with reference to the OECD Model Tax Convention. An overview of Liechtenstein's DTC network and the corresponding Convention texts can be accessed via the following link: <http://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf>.

This Fact Sheet relates to mutual agreement procedures which are initiated on request by the taxpayer ("Mutual agreement procedures in the narrow sense"). It provides an overview of the formal and substantive framework of this procedure in Liechtenstein and is intended to give taxpayers guidance on the process and workings of a mutual agreement procedure.

2. General information on international mutual agreement procedures

2.1 Types of international mutual agreement procedures

A distinction is made between:

- Mutual agreement procedures in the narrow sense (Art. 25 (1) and (2) of the OECD Model Tax Convention)

If a taxpayer considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the Convention, he may request the initiation of a mutual agreement procedure. The aim of this type of mutual agreement procedure is to avoid or eliminate taxation which is not in accordance with the Convention in a particular case.

This type of mutual agreement procedure is also relevant for situations of double taxation in the area of transfer pricing.

- Consultation procedures (Art. 25 (3) of the OECD Model Tax Convention)

Mutual agreement procedures can also be initiated by the competent authorities themselves to eliminate general difficulties or general doubts which affect or may affect a specific category of taxpayers and which arise from interpreting or applying the provisions of the Convention (“General consultation procedure”).

The competent authorities may also consult together on how double taxation can be avoided in cases not covered by the Convention (“Consultation procedure supplementing a DTC”).

Both types of consultation procedures may also be initiated by the competent authorities based on a specific taxpayer’s request for a mutual agreement procedure, which has been made in accordance with Art. 25 (1) and (2) of the OECD Model Tax Convention.

2.2 Legal nature, legal basis and subject of the mutual agreement procedure

International mutual agreement procedures are bilateral procedures with the purpose of avoiding or eliminating taxation which is not in accordance with the respective Convention. As a bilateral procedure, it is performed directly between the competent authorities of both Contracting States; the taxpayer is not a party to the procedure.

The legal basis is formed by the provisions on the mutual agreement procedure set out in Liechtenstein’s DTCs (cf. Art. 25 of the OECD Model Tax Convention).

The subject of a mutual agreement procedure is one Contracting State’s claim against the other Contracting State to comply with the provisions of the respective Convention. Specifically, it is claimed that the taxpayer shall be treated in conformity with the provisions of the Convention for tax purposes.

2.3 Objective

The objective of a mutual agreement procedure is for the competent authorities to reach an agreement which is in accordance with the respective Convention. The competent authorities shall endeavour to reach such an agreement; however, they are under no obligation to achieve a result that eliminates double taxation or taxation not in accordance with the respective Convention.

2.4 Jurisdiction

In Liechtenstein, the International Division of the Fiscal Authority is responsible for collecting the requests as well as for initiating, conducting and concluding mutual agreement procedures.

3. Initiating a mutual agreement procedure

3.1 Mutual agreement procedure on request

3.1.1 Request and eligibility to make a request

The Fiscal Authority initiates a mutual agreement procedure with the competent authority of the other Contracting State on the basis of a taxpayer's request. The request can be made by the taxpayer himself or by an authorised representative.

In Liechtenstein, mutual agreement procedures can, in general, be requested irrespective of the remedies provided by domestic or foreign law.

The request must, in principle, be submitted to the competent authority of the Contracting State of which the taxpayer is a resident under the Convention (Art. 4 of the OECD Model Tax Convention). However, the DTCs between Liechtenstein/Iceland and Liechtenstein/Austria¹ allow a taxpayer to submit the request either to the competent authority of the country of which he is a resident or to the competent authority of the other Contracting State.

Where a taxpayer claims a violation of the principle of equal treatment according to Art. 24 (1) of the OECD Model Tax Convention, the request can be submitted to the competent authority of the country of which the taxpayer is a national.

It is also possible to submit the request to two or more competent authorities. In this case, the request must be submitted to all competent authorities at the same time.

In the event that more than one taxpayer is affected, each individual can submit a request for a mutual agreement procedure to be initiated to the competent authority in the respective country of residence. In cases concerning parent/subsidiary relationships, it is also possible to submit the request for the initiation of a mutual agreement procedure in the parent company's country of residence for both companies.

¹ The relevant Convention texts are available at: <http://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf>.

In Liechtenstein, the request must be submitted in writing in the form of a letter by post or electronically, in German or English, to the Liechtenstein Fiscal Authority:

Fiscal Authority
International Division
c/o Mr. Bernhard Canete
Aeulestrasse 38
PO Box 684
9490 Vaduz, Liechtenstein
E-mail: dba@llv.li

3.1.2 Time limit for submitting a request

Under all of Liechtenstein's DTCs, a request for the initiation of a mutual agreement procedure must be made within 3 years from the first notification of the action resulting in taxation not in accordance with the respective Convention. In general, the request should be made as soon as possible upon requiring knowledge of such action.

3.1.3 Content of the application

The request to initiate a mutual agreement procedure must contain the following:

- a) Details (e.g. name, address, tax identification number) regarding the identity of the taxpayer concerned;
- b) details (e.g. name, address, tax identification number) regarding the identity of any other directly affected persons (e.g. associated companies);
- c) if the taxpayer has an authorised representative, a valid power of attorney;
- d) the other country/countries concerned;
- e) description of the facts and circumstances of the specific case (including the tax amounts in question in Swiss francs and in the foreign currency, details of any relationships between the taxpayer making the request and others directly affected by the case as well as the annual financial statements for the tax periods concerned in the case of companies);
- f) the tax periods for which double taxation is claimed, is imminent or is to be avoided;
- g) if available, a copy of the tax assessment decisions issued in Liechtenstein and in the other country concerned for the tax periods in question;

- h) if available, a copy of the tax audit reports and adjustment proposals that led or will lead to the double taxation claimed;
- i) the reasons a person considers the actions of one or both of the Contracting States result or will result in taxation not accordance with the provisions of the respective Convention;
- j) detailed information on any steps taken in Liechtenstein or abroad to avoid or eliminate double taxation (correspondence with tax authorities, objection, etc.), particularly on any mutual agreement procedure request submitted to the competent authority abroad (indicating the date of the request as well as the name of the person and the authority to whom/which the application was submitted);
- k) if the subject of the request for a mutual agreement procedure was also submitted to another authority based on another international treaty with a dispute resolution mechanism, the date of this request, the name of the person and the authority to whom/which it was submitted; a copy of that other request and all enclosures is to be included if this mutual agreement procedure request is not identical to the other request;
- l) if available, detailed information on any legal remedies sought in Liechtenstein or abroad;
- m) if applicable, an indication that the object of the mutual agreement procedure request was already dealt with, e.g. in an advance ruling, an APA or a court ruling, together with a copy thereof;
- n) information on whether the mutual agreement procedure request is a so-called “protective MAP request”²;
- o) any other pertinent details or documents for resolving the case;
- p) a declaration confirming that all information and all documents in the mutual agreement procedure request are correct and that the taxpayer will assist the competent authority by diligently supplying any other pieces of information or any other document required by the authority.

² A so-called “protective MAP request” is a request for a mutual agreement procedure to be initiated which is solely submitted to ensure that the time limit set in the respective Convention is met, but where the competent authority is advised by the taxpayer, either when the application is made or afterwards, that the request does not need to be examined more closely until further notice.

3.1.4 Cooperation on the part of the taxpayer

The taxpayer is obliged to set out the pertinent facts and circumstances regarding the case in question, to provide evidence, if necessary, and to generally provide all details required for a mutual agreement procedure to be conducted.

3.1.5 Review regarding the compliance with the requirements for the initiation of a mutual agreement procedure

When the Fiscal Authority receives a request to initiate a mutual agreement procedure, it examines whether the request is complete in respect of the details listed under 3.1.3. and, if necessary, asks the applicant to provide further information.

3.1.6 Initiating a mutual agreement procedure

A mutual agreement procedure requested by a taxpayer is initiated by the Fiscal Authority when all of the following requirements are met:

- A complete request (see 3.1.3.) to initiate a mutual agreement procedure has been submitted to the Fiscal Authority;
- the Fiscal Authority concludes that the request to initiate the mutual agreement procedure is justified, and
- no unilateral action can be taken to avoid or eliminate the taxation which is not in accordance with the Convention.

The initiation of a mutual agreement procedure can also be requested even if, after a tax audit in Liechtenstein, the taxpayer accepted the adjustments to which the request refers.

Furthermore, a mutual agreement procedure can also be initiated in cases where double taxation results from an adjustment made by a taxpayer himself in good faith to a previously submitted tax return, when the adjustment made related to the attribution of permanent establishment profits or transfer prices.³

The fact that a Liechtenstein court has passed judgement in the case covered in the request does not per se prevent a mutual agreement procedure from being initiated.

The taxpayer will be informed about any unilateral action taken to eliminate taxation which is not in accordance with the Convention, or about the initiation of a mutual agreement procedure with the authority of the other Contracting State. Correspondence between the competent authorities of the Contracting States is confidential and cannot be shared with the taxpayer.

³ These are known as “bona fide taxpayer-initiated foreign adjustments”.

3.2 Initiation of a mutual agreement procedure by foreign fiscal authorities

If the competent authority of the other Contracting State initiates a mutual agreement procedure, the Fiscal Authority examines whether the formal and substantive requirements are met. After completion of this examination, the Fiscal Authority informs the competent authority of the other Contracting State about Liechtenstein's point of view in writing.

4. Mutual agreement procedure

4.1 General principles of the procedure

The Fiscal Authority conducts a mutual agreement procedure in direct contact with the competent authority of the other Contracting State. All information obtained by the Fiscal Authority in the course of the mutual agreement procedure is subject to the duty of confidentiality laid down in Art. 83 SteG (Steuergesetz [Liechtenstein Tax Code]) and the provisions on confidentiality provided in Art. 26 of the OECD Model Tax Convention.

4.2 The taxpayer's rights

The mutual agreement procedure is a procedure between the Contracting States. The taxpayer is not directly involved; he is not a party to the procedure.

The taxpayer has the right to make requests, to be represented by an authorised party and to comment, in writing or verbally, on the relevant facts and legal issues relating to the procedure itself and the outcome of the procedure.

The Fiscal Authority will inform the taxpayer about the status, progress and result of the procedure.

The taxpayer does not have to comment on his willingness to suspend legal action or to withdraw appeals which are already underway unless a proposed solution has been presented to him. Furthermore, the taxpayer has the right to wait with his expression to accept the outcome reached in the mutual agreement procedure until any potential judicial decisions have been made with regard to the case covered in the MAP.

4.3 Agreement

In general, a mutual agreement procedure is concluded in writing, for example, by way of a final exchange of letters between the competent authorities of the two Contracting States. For an outcome in a mutual agreement procedure to become effective, it is usually required that the taxpayer expresses his

approval to the agreement and to be willing to refrain from taking any legal action or to suspend any legal actions which are already underway. The taxpayer will be informed about the outcome of the mutual agreement procedure. If no rejection to the outcome is made within 30 days, the outcome is assumed to be approved by the taxpayer.

5. Implementation of agreements

5.1 Information of the outcome

The taxpayer and the division responsible for the taxpayer within the Fiscal Authority will be informed about the outcome of the mutual agreement procedure.

The division responsible for the taxpayer within the Fiscal Authority is in charge of the implementation of the agreement reached. Before an amended assessment is issued, it must be ensured that the taxpayer has expressed his approval to the outcome and the implementation in writing, that legal procedures which are already underway have been suspended and that the taxpayer refrained from taking further legal action, provided that the outcome of the mutual agreement procedure is implemented correctly.

5.2 Procedural aspects of implementation

The agreement must be implemented irrespective of the time limits set by the domestic law of the Contracting States (Art. 25 (2), last sentence, of the OECD Model Tax Convention). Therefore, neither the legal force of the tax assessment nor the statute of limitation of the fiscal obligation is an obstacle to the implementation of an outcome reached in the mutual agreement procedure.⁴

6. Consequences of an unsuccessful mutual agreement procedure

If the competent authorities cannot reach an agreement, the mutual agreement procedure will fail. The taxpayer has no legal entitlement to an agreement between the competent authorities of the two Contracting States. In this case, the taxpayer and the division in charge within the Fiscal Authority will be informed about the failure of the mutual agreement procedure.

⁴ In accordance with Swiss agreement policy, the agreement between Liechtenstein and Switzerland does not contain a provision corresponding to Art. 25 (2) of the OECD Model Tax Convention, according to which an agreed solution must be implemented irrespective of domestic time limits. In Liechtenstein, the domestic time limits set in Art. 124 (2) SteG must be observed: A change of assessment has to be requested within 90 days after a mutual agreement has been reached or an arbitration decision has been made but no longer than 10 years after the assessment was rendered.

In those cases in which the competent authorities cannot reach an agreement but the underlying DTC contains an arbitration clause,⁵ the settlement of the tax conflict is guaranteed by way of arbitration proceedings.

7. Costs of a mutual agreement procedure

In principle, the Contracting States themselves bear the costs incurred in connection with a mutual agreement procedure. The costs which incur at the level of the taxpayer (particularly any tax adviser's fees) are not reimbursed.

⁵ Appendix 2 contains a list of Liechtenstein's DTCs which contain an arbitration clause.

Appendix 1: Art. 25 OECD Model Convention

Article 25

Mutual agreement procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result in a taxation for him which is not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those countries, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in a taxation which is not in accordance with the provisions of the Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives.

(5) Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the 24 Contracting States have resulted in a taxation for them which is not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either country. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these Contracting States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Appendix 2: Arbitration clauses in Liechtenstein DTCs

as of 1 January 2024

The following Liechtenstein DTCs contain arbitration clauses:⁶

- Germany: Art. 25 (5) to (7)
- Georgia: Art. 24 (5)
- Guernsey: Art. 24 (5)
- Hong Kong: Art. 24 (5)
- Iceland: Art. 24 (5)
- Jersey: Art. 24 (5)
- Luxembourg: Art. 24 (5)
- Malta: Art. 24 (5)
- Monaco: Art. 24 (5)
- Netherlands: Art. 24 (5)
- San Marino: Art. 25 (5)
- Switzerland: Art. 25 (5) to (6)
- Uruguay: Art. 25 (5)
- United Kingdom: Art. 24 (5) to (6)

⁶ The convention texts can be accessed via <http://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf>.

Appendix 3: List of abbreviations

APA Advance Pricing Agreement

Art. Article

DTC Double Taxation Convention

MAP Mutual agreement procedure

OECD Organisation for Economic Co-operation and Development

SteG Steuergesetz [Liechtenstein tax law]

cf. confer