

The foundation may be wound up by legal rescission, dissolution of the foundation in accordance with its statutes or by means of changing its legal form.

Current efforts are underway to extensively reform foundation law in Liechtenstein. While existing draft laws provide for extensive changes, the principle of anonymity, which was regularly criticised in the past, should not be substantially modified.

### **6.3. Tax Treatment of Foundations**

Foundations themselves enjoy very extensive tax advantages regarding foundation endowments, the regular taxation of foundation income, the distribution of income to the beneficiaries or in the case that the foundation is wound up.

#### **Tax treatment of foundation endowment**

A foundation fee is charged upon creation of a foundation. For foundations that pursue a trade in a commercial manner, this fee amounts to 1% of the capital. An application can be filed for a capital amount of more than CHF 5 m to have the fee reduced to 0.5%. For a capital amount of more than CHF 10 m, the fee can be reduced to 0.3%. For other foundations the fee amounts to 2‰ of the capital. The minimum amount is set at CHF 250.00; the maximum amount is CHF 250,000.

#### **Regular taxation of foundations in Liechtenstein**

##### **▪ Capital tax**

Foundations in Liechtenstein are subject to capital tax on the declared capital and the reserves, regardless of the foundation purpose. This tax is very moderate; the annual tax burden for the following amounts of assets can be seen in the table below.

Up to CHF 2 m	1 ‰
From CHF 2 m to 10 m	$\frac{3}{4}$ ‰
More than CHF 10 m	$\frac{1}{2}$ ‰

For the sake of completeness, mention is made that the annual minimum burden amounts to CHF 1,000.

##### **▪ Earnings tax**

Earnings tax is levied on the annual net earnings; these are all profits including capital gains and liquidation profits from which business-related expenses are deducted. The tax amounts

to a minimum of 7.5% and a maximum of 15% of the net earnings<sup>28</sup>. It increases by a further 1% to 5% if the distributions amount to more than 8% of the taxable capital.

Foundations that only have their seat in Liechtenstein, but which do not maintain an office and do not pursue any business or commercial activity there are however exempt from income taxation.

### **Taxation of beneficiaries of the foundation**

No taxes are levied on distributions to beneficiaries who have neither a domicile nor an ordinary residence in Liechtenstein.

### **Tax consequences in the event of liquidation of a foundation**

There are no particular tax consequences connected with the liquidation of a foundation in Liechtenstein.

### **The tax treatment of a Liechtenstein foundation from the point of view of the Austrian tax authorities**

The above-stated provisions are the domestic law in Liechtenstein. However, as a large part of foundations in Liechtenstein have foreign founders or foreign beneficiaries, inter-country regulations (or the regulations applicable in countries in which the founders and/or beneficiaries reside) are also of importance in this context. An overview of tax consequences for Austrian founders and beneficiaries in connection with the establishment of a foundation in Liechtenstein follows. As Liechtenstein is one of the few countries in Europe that is considered a tax haven, it comes as no surprise that Austria has not concluded any double taxation agreement with Liechtenstein.

As a general rule, Liechtenstein foundations are also recognised by the Austrian tax authorities. However, in many cases, the Austrian tax authorities examine whether a foundation is recognised as a legal person under the laws and regulations of Liechtenstein or whether the assets of the foundation may be attributed to the founder from a tax perspective. In this case, the profits of the foundation would be considered as taxable income at the level of the founder.<sup>29,30</sup> This often happens in connection with the so-called foundation with mandate agreement (Stiftung mit Mandatsvertrag). This type of foundation is a speciality of Liechtenstein. By means of a mandate agreement, which is normally concluded between the founder and a

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<sup>28</sup> Article 77 Tax Act. The tax rate amounts to half as many percent of the net profits as the net profits percent of the capital subject to tax, at least 7.5% and a maximum of 15%.

<sup>29</sup> Foundations recognised by the Austrian tax authorities are referred to as non-transparent foundations, while foundations the assets and income of which are assigned to the founders are referred to as transparent foundations.

<sup>30</sup> For the criteria that must be met in the case of a non-transparent foundation, see Hosp (2008).

Liechtenstein fiduciary, the creation of a foundation can be laid down by contract. Moreover, the mandate agreement regulates the delegation of the bodies, the day-to-day administration of the foundation and similar matters. Thus, in this situation, the founder can exercise factual control over the foundation without having to act as an executive body of the foundation. As a consequence, the foundation profits are attributed to the founder for tax purposes pursuant Sections 21 et seq. of the Austrian Federal Fiscal Code (Bundesabgabenordnung) according to which the beneficial ownership prevails over the legal ownership .

As of 1 January 2008, a foundation entrance tax in the amount of 25% is levied on an Austrian founder upon creation of a foundation in Liechtenstein. The lower foundation entrance tax rate of 2.5% levied on Austrian private foundations does not apply in that case because no administrative and enforcement assistance agreement was concluded between Austria and Liechtenstein. As regards the regular taxation of foundation profits, the Austrian tax authorities recognise the so-called non-transparent foundation; as a result, the profits of these foundations are, as a general rule, not subject to taxation in Austria. The case of transparent foundations is different. Here, the profits are generally attributed to the founder from an economic perspective and hence taxed in accordance with Austrian income tax regulations. In the case of non-transparent foundations, a 25% income tax rate at the level of the beneficiary is levied on payments to the beneficiary in Austria.

With regard to foundations created (or assets dedicated) on or after 1 August 2008, the distributions of assets (Substanzausschüttungen) are tax-exempt (as are distributions of assets by Austrian private foundations according to Austrian regulations). The same regulations are applicable if distributions are paid to the beneficiaries as part of the winding-up of a Liechtenstein foundation.

#### **6.4. Conclusion**

The Liechtenstein foundation has fallen in international disrepute – even more so as a result of the tax evasion cases discovered in Germany at the beginning of 2008. An examination of legal provisions shows that the Liechtenstein foundation does in fact provide extraordinary advantages. It enables pure family foundations to continue to remain largely anonymous externally. The foundation can be established very easily and supervision of these foundations remains weak. Establishing a foundation is not associated with any significant costs or duties, and regular income from foundations with a relationship outside Liechtenstein are virtually tax-exempt with the exception of a very moderate capital tax. In addition to this capital tax, taxes which largely correspond to the tax burden of an Austrian private foundation continue to be levied on Austrians who establish a foundation in Liechtenstein. Despite this, the Liechtenstein foundation remains very attractive from a tax-related point of view. Although a reform of foundation law is being drafted in Liechtenstein, it can be assumed that the general terms will not be significantly changed.