

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.

Therefore, it also comes as no surprise that as of 12 September 2008, there were 1.565 registered foundations and 45.839 so-called deposited foundations (hinterlegte Stiftungen) in Liechtenstein³¹. No official figures on the assets held by these foundations exist, however the figure of CHF 100 billion occasionally batted around does not seem in any case too high³².

³¹ http://www.llv.li/llv-gboera-oera-amts-geschaefte-hinterlegung_im_oeffentlichkeitsregister.htm

³² Eiselsberg (2008), p. 43 et seq.