

LIECHTENSTEIN
Thomas

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Questionnaire for National Reporters

Private Client and Immigration Working Session

**Movement of High Net Worth Individuals
Localisation et Délocalisation des Clients Privés Fortunés**

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Background

As certain governments around the world struggle with fiscal deficits, their attention has turned to international tax evasion (illegal) and the perceived shortcomings of the international tax system from the point of view of tax avoidance (legal). In other regions we have seen unsettled economies combined with civil unrest. Families are seeking safer, more stable jurisdictions not just for themselves but for future generations as they look for long term security and are increasingly looking overseas for a solution.

How do our immigration, legal and tax systems cope with the realities and complexities of 21st century aging family life and the demand for economic security/stability? What are the particular challenges for practitioners in assisting these families? How does increasing governmental exchange of information and compliance requirements affect strategies for investment, tax planning and personal security. How does the global citizen manage a world of overlapping, often conflicting regulation?

1. PRELIMINARY MATTERS

We would ask that you return completed the Questionnaire and your answers to the case studies below by **Friday, 28 February 2014** (earlier if possible please).

Prior to dealing with the legal problems thrown up by the case studies, could you please deal with the following questions with reference, where relevant, to any recent case law or general practice. If you need to clarify the answer to a question, please do so. If a question is not an issue in your country, please provide an explanation as to why it is not.

If you are a delegate responding as part of the Immigration Commission, please respond **only** to sections 1.1 and 2.1.

1.1 Immigration and Nationality [for Immigration Commission only]

- 1.1.1 Briefly outline any immigration, residency or citizenship programmes your jurisdiction has to attract high net-worth individuals (HNWIs).

Due to the fact that Liechtenstein is a small country with a population of 36'000 the law with regard to immigration, residency and citizenship is very strict. 28 green cards are drawn by lot every year. Only persons with a nationality of a EU or EEA member state do have the possibility to participate in the green card lottery.

There is no particular program to attract high not-worth individuals (HNWIs). However HNWIs might have to possibility the receive a special permission to take up residence.

- 1.1.2 Are there any proposed changes to the programmes outlined in 1.1.1?

The current administration communicated clearly that they do not have the intention to loosen the strict provisions with regard to immigration and residency.

- 1.1.3 Is there a dichotomy between your Government's wish to attract HNWIs as against public perception of immigration?

Immigration in general is a very sensitive topic in Liechtenstein. Political parties have different opinions. However the majority of the population has a strict attitude with regard to immigration. Representatives of the economy on the other hand constantly express their wish to loosen the strict provisions with regard to immigration in order to acquire more qualified employees.

1.2 Cross-border succession

- 1.2.1 Is testamentary freedom a right recognised by national law or public policy?

(A) Yes (B) No

- 1.2.2 Can those entitled to the reserved portion (heirship entitlement), during the life of the donor, waive their rights to a reserved share?

(A) Yes (B) No

§ 538 of the Liechtenstein Civil Code (ABGB) says that someone who waives his right to a heirship or a general legacy is no longer able to be an inheritor.

- 1.2.3 Can an individual resident in your country elect the law applicable to his/her succession? If relevant/applicable, please consider your answer

in the context of Brussels IV (Regulation (EU) 650/2012) and/or the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons.

(A) Yes (B) No

If yes, is this election limited to the law of the deceased's:

(A) Nationality (B) Habitual Residence (C) Other

1.3 Personal taxation and compliance

- 1.3.1 Please provide a brief summary on the current rules as to liability to tax (e.g. residence, nationality, domicile (if applicable)).

Whether a person has liability to tax in Liechtenstein is determined by their residence. A person who is not a resident of Liechtenstein might have liability to tax with regard to real estate property in Liechtenstein. Liability to tax of non-residents due to earned income in Liechtenstein is subject to various double taxation treaties with other countries.

- 1.3.2 Have there been any changes introduced in the last 24 months to the definition of who is a "taxpayer" e.g. "resident", "habitually resident" or "domiciled" in your country?

(A) Yes (B) No

If yes, please briefly summarise the changes.

- 1.3.3 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for residents?

(A) Yes (B) No

- 1.3.4 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for non-residents with assets located in your country?

(A) Yes (B) No

- 1.3.5 Has your country undertaken (or proposed the introduction of) any legislative steps in the last 24 months to promote transparency in tax reporting obligations and to combat international tax evasion in the context of private wealth?

(A) Yes (B) No

If yes, please briefly set out the key measures.

On 21 November 2013 Liechtenstein has signed the Convention on Mutual Administrative Assistance in Tax Matters. This is a signal to show the willingness of Liechtenstein to contribute to combat international tax evasion. The convention foresees several forms of mutual administrative assistance in tax matters. Liechtenstein hopes to participate in the development of an international standard with regard to the "Automatic Exchange of Information".

- 1.3.6 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for holding structures with assets or "beneficiaries" located in your country?

(A) Yes (B) No

Legal entities that are qualified as structure for personal assets only pay the minimum rate of tax on earnings of CHF 1'200. The preconditions to be qualified as structure for personal assets are:

- *The legal entity must not conduct any commercial activities.*
- *Shares of the legal entity must not be listed on the stock exchange.*
- *The legal entity is not allowed to promote in order to attract investors*

This attractive model of taxation especially applies on foundations.

1.4 **Mental capacity of adults**

- 1.4.1 What system is in place in your country to deal with an individual who has lost capacity?

If a person of legal age loses the ability to manage their legal affairs due to a physical or mental disability the court appoints a curator either by request or ex officio. The field of competence of the curator depends on the extent of a person's disability. It can either be limited to specific affairs, the administration of the person's assets or cover all affairs of the disabled person.

- 1.4.2 Does your country provide for Powers of Representation/Lasting Powers of Attorney/Mandats de protection future in relation to an incapacitated adult's personal welfare and/or property and affairs?

(A) Personal welfare only (B) Property and affairs only (C) Both personal welfare and property and affairs

1.4.3 Will your country recognise and enforce a form of Power of Representation or Attorney intended to have effect after the onset of mental incapacity valid in the state in which it is prepared?

(A) Yes (B) No

1.4.4 Are there proposals for legislative change in the field of mental capacity?

(A) Yes (B) No

If yes, what are the proposals?

1.4.5 Is your country a party to the Hague Convention XXXV for the International Protection of Adults of 13 January 2000?

(A) Yes (B) No

1.4.6 Is your country a party to the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol 2006?

(A) Yes (B) No

QUESTIONS FOR CASE STUDIES

2. CASE STUDY A: ROBERTA AND PAUL

Roberta and Paul married in the Netherlands in 2008. Roberta is Brazilian and Paul is Dutch. Roberta, an IT specialist, was offered a job with Pear Inc in Silicon Valley and she and Paul moved to California (USA) in 2011. The family grows with twin boys and life is good.

Roberta's mother, Gloria, who is in her 70s, wants to live with Roberta (her only child) and Paul so that she can spend more time with her grandchildren. Interested in moving to your country, Roberta and Paul come to see you for advice.

2.1 Immigration law [for Immigration Commission only]

2.1.1 Roberta and Paul are exceptionally wealthy. What immigration categories (e.g. investor type programmes) might apply to HNWIs such as Roberta and Paul to:

(a) move firstly to the US (please omit this if you do not advise on US immigration law);

(b) and then secondly to your country?

If your advice would change if Paul was not a Dutch national, please explain.

There is no system of immigration categories in Liechtenstein. The only option to take up residence is to participate in the green card lottery. Greencards are drawn by lot. Only people with a nationality of an EU or EEA member state do have the possibility to participate in the green card lottery.

- 2.1.2 What immigration options does Gloria have to move to your country on a long term basis?

There are no immigration options for Roberta in Liechtenstein.

- 2.1.3 What, if any, are the residency requirements for a long term move to your country for Roberta, Paul and Gloria?

Being lucky in the green card lottery drawing.

- 2.1.4 Are there any long term requirements that the family should be aware of in order to maintain their immigration status in your country?

They face restrictions with regard to temporary changes of their domicile. Once they abandon the domicile in Liechtenstein they are not entitled to take up residence in Liechtenstein again. This aspect has to be considered if a child moves to another country for the purpose of studying.

- 2.1.5 Will any of the members of the family be able to acquire citizenship of your country?

They can acquire the citizenship of Liechtenstein after a period of 30 years of residence in Liechtenstein. Years until turning 20 are counted double.

After 10 years of residence they have the possibility to apply for the Liechtenstein citizenship. The citizens of the local community vote whether they should be receiving the citizenship or not.

Now settled into the hustle and bustle of life in your capital city, Roberta and Paul (who are very happy together and, incidentally, exceptionally wealthy), having purchased rental properties in Brazil and invested wisely in stocks and bonds, they are looking to buy a US\$ 20 million Penthouse Duplex in the hipster district of your capital city. They believe it is time to consider tax and estate planning opportunities and come to see you.

During the meeting you are also told that:

- Roberta is likely to inherit family assets - principally artwork - from Gloria. The family want to ensure that upon Gloria's death, the family assets will not

be considered a “matrimonial asset” and that the assets, to the extent possible, can pass to the grandchildren (**the Inheritance**).

- Paul’s father has been diagnosed with a degenerative medical condition, which may lead to a loss of mental capacity. Paul has been told that the condition is likely to be hereditary.

2.2 Real estate planning

What structuring and/or tax planning opportunities should Paul and Roberta consider with respect to the purchase of the Penthouse Duplex (i.e. to mitigate taxation in your country)?

Taxation on real estate is very attractive in Liechtenstein. The basis of calculation for real estate tax is well below the actual market value. Rental revenues are tax-exempt. With regard to taxation it is therefore advisable to purchase real estate objects.

2.3 Succession law and mental capacity

2.3.1 What would you advise with respect to the Inheritance?

In Liechtenstein inheritance is exempted from tax. The inheritance is not considered as matrimonial asset unless it is explicitly stipulated in the matrimonial agreement.

2.3.2 What steps can Paul take to ensure that Roberta has full authority to take decisions on his behalf and deal with their assets in the event that Paul loses his mental capacity?

In possession of his full mental capacity Paul can dispose that Roberta shall become his curator for the event that he loses his mental capacity. The court has to follow this disposal provided that it contributes to the welfare of Paul.

2.3.3 More generally, with a shared wish to keep matters “simple”, what estate and succession planning opportunities should Roberta and Paul consider?

Hast du eine Idee?

3. QUESTIONS FOR CASE STUDY B

3.1 Case Study B: Bruce and Megan

Bruce, who has been given your contact details from an AIJA member, comes to see you for advice. Bruce gives you his background:

- 30 years old;

- Australian resident, national (and, if relevant to your country) “domiciled in a state of Australia”;
- Single;
- Commodities trader;
- Family wealth from mining opals;
- Bruce has an Aus\$15 M portfolio in Switzerland;
- Bruce also has shares in family mining company in Australia.

Bruce is looking to move to your country for 3-5 years.

3.2 Pre-arrival planning

3.2.1 What pre-arrival tax planning opportunities would you advise?

3.2.2 What are Bruce’s tax, residence or other reporting obligations upon becoming resident in your country?

Bruce has the possibility to come into the favour of a specific tax privilege called “Aufwandbesteuerung”. Persons with foreign citizenships who take up residence in Liechtenstein for the first time can be taxed by their expenses provided that they do not have any gainful occupation and only benefit from investment income of their assets abroad. This model of taxation is highly attractive for “High Net Worth Individuals”.

When you next meet Bruce 3 years later, life is looking good. He has met fellow Australian Kylie and they are expecting their first child (Jason). Bruce is looking to start his own commodities business and wants to know whether he can invest part of his foreign income or gains in the target company.

Bruce also tells you that his grandfather died in 2011 and that he (together with his 3 cousins) is a beneficiary of a trust structure with a bank account in a sun kissed jurisdiction. The bank account has not been reported in his tax return and he now wonders whether it should have been.

3.3 Lifetime matters

3.3.1 With respect to the commodities business, how would you advise Bruce in relation to:

- (a) the most tax efficient way to make the inward investment?

Liechtenstein has an attractive and competitive system of taxation. Bruce has the possibility to benefit from different tax privileges which aim to support business with cross border activities.

- (b) any planning and structuring opportunities (including the use of double tax treaties) that Bruce should consider in order to minimise any tax leakage?

So far Liechtenstein has double tax treaties with 7 different countries. The double taxation treaties satisfy the need of internationally oriented businesses which are domiciled in Liechtenstein. Hugh efforts are made in order to arrange further double tax treaties with strategically important countries. Liechtenstein is currently negotiating a double tax treaty with Switzerland.

- (c) Eventually exiting the business. In particular, are there any structuring or other opportunities that Bruce should consider either at the inception of the business or in the run-up to an exit?

In Liechtenstein legal persons who are taxable in Liechtenstein and engaged in economic activity are only subject to corporate income tax and supplementary tax on gains from transfer of real property. No capital tax is levied. The corporate income tax does not depend on the size of the profit and its distributions. It is levied at a uniform rate of 12.5 % of a company's income. The corporate income tax does not depend on the size of the profit and its distributions.

3.3.2 As to the unreported bank account:

- (a) what would you advise Bruce?
(b) what are the Trustee's reporting obligations in your country?

The received benefit of the trust is subject to income tax. Therefore the bank account should have been reported. Probably Paul has the possibility to participate in a voluntary disclosure programme or to make use of an upcoming tax amnesty.

Tragically, some years later still resident - and wealthy - in your country, Bruce dies without making a Will.

3.4 Succession law

3.4.1 Do Kylie and Jason have a financial claim against Bruce's estate?

His son Jason is the sole heir of Bruce's estate. Since Kyle and Bruce have not been married Kylie has no claim against Bruce's estate.

3.4.2 What inheritance or estate tax (if any) is to be paid and by whom? What steps could Bruce and Kylie have taken in order to mitigate/reduce this tax charge?

There is no inheritance tax in Liechtenstein.

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