



REGIERUNG  
FÜRSTENTUM LIECHTENSTEIN

## INFORMATION

**Agreement between the Government of the Principality of Liechtenstein and the Government of the United States of America on Tax Cooperation and the Exchange of Information Relating to Taxes (TIEA) of 8 December 2008**

## **I. Key points**

- 1. The TIEA is an agreement between Liechtenstein and the United States of America. The object of the Agreement is mutual assistance through the exchange of information that is significant for the application and enforcement of the domestic tax provisions of the requesting State.**
- 2. Information is exchanged by way of administrative assistance, i.e., through cooperation between the competent tax authorities.**
- 3. Administrative assistance must be granted where a fraudulent tax offense according to US law arises. According to US law, a taxpayer who fails to fully declare his taxes commits a fraudulent act of tax evasion. In such cases, Liechtenstein must grant administrative assistance, even though such conduct does not constitute tax fraud under Liechtenstein law, but rather tax evasion to be prosecuted under administrative law.**
- 4. Information is not exchanged automatically, but rather only on the basis of a precisely formulated request. Inquiries not sufficiently specified are impermissible. Liechtenstein must only grant a request for administrative assistance if certain requirements are fulfilled, in particular:**
  - Detailed information on the identity of the US taxpayer, the underlying fact pattern, and the type, form, and time period of the requested information.**
  - A statement that the United States has pursued all reasonable means available in its territory to obtain the information.**
- 5. Implementation and application of the TIEA in Liechtenstein is only possible on the basis of national legislation. Liechtenstein has time until 31 December 2009 to develop this legislation. The TIEA enters into force on 1 January 2010 with effect for tax years 2009 and later, provided both sides have notified each other by then that the domestic preconditions for entry into force have are met.**
- 6. The envisaged Liechtenstein administrative assistance legislation will govern the preconditions and procedure for granting administrative assistance. The procedure will be efficient and fair in accordance with the legal protection demanded by the rule of law. If coercive measures are necessary to obtain the information, these shall be ordered by a judicial authority. The final decree on the granting of administrative assistance may be appealed.**

7. **With the signature of the TIEA, the preconditions for extending the QI status of Liechtenstein banks have been created. The QI status will be extended provisionally effective 1 January 2009 for one more year; once the TIEA enters into force on 1 January 2010, the QI status will be extended for six years.**

## **II. Commentary on the individual provisions**

### **Article 1**

Article 1 describes the general goals of information exchange. In principle, the exchange of all information is envisaged that is foreseeably relevant to the enforcement of domestic tax legislation, not only with respect to criminal tax matters.

### **Article 2**

Information exchange is not limited to persons resident or domiciled in one of the contracting parties, but is rather based on tax liability. However, a contracting party is not obliged to provide information which is not located within its territorial jurisdiction (e.g., foundation documents outside the country).

### **Article 3**

The Agreement is limited to national taxes (US: federal taxes; FL: taxes on the country wide level). Future, similarly situated taxes are also covered if the contracting parties so agree.

### **Article 4**

Article 4 defines various terms used in the Agreement.

Article 4, paragraph 3 is important for interpretation of the Agreement. Any term not defined in the Agreement, unless the context requires otherwise or the competent authorities agree to a common meaning, shall have the meaning which it has under the laws of the party applying the Agreement.

### **Article 5**

Article 5 is the key article of the Agreement. It specifies the conditions under which information shall be exchanged, and it makes clear that any obligation to exchange information may only take place pursuant to a specific request (exchange of information

upon request, no automatic exchange of information). John Doe summonses and fishing expeditions are impermissible.

The request must specify the identity of the US taxpayer whose tax or criminal liability is at issue. Article 5, paragraph 2 requires parties to meet other conditions, such as specifying the period of time with respect to which the information is requested, the nature of the information requested, the underlying matter, and the ground for believing that the information requested is in the possession or control of a person in the territory of Liechtenstein. Important in this connection is also that internal means of obtaining information must be exhausted before the request is made (subsidiarity of administrative assistance). Reciprocity must also be granted in individual cases.

Information must also be exchanged if the requested State does not need the information for its own tax purposes (article 5, paragraphs 3 and 4).

Article 5, paragraph 6 expressly requires the parties to have the necessary powers to enforce information exchange with respect to banks, other financial institutions, and so on.

## **Article 6**

Article 6 contains provisions on cross-border cooperation of tax authorities, including the possibility of sending officials to participate in tax audits and interviews and to take investigative steps, if permitted by the law of the requested State and if the request is approved by the competent domestic authority. Such cross-border cooperation may be in the interest of both parties, and depending on the case even in the interest of the affected taxpayer. This provision will also be applied in accordance with the Liechtenstein legal foundation to be created.

## **Article 7**

The competent authority of the requested State may decline requests under certain conditions, e.g., if the conditions of the Agreement (article 5) are not met (non-specific request, etc.). Requests may also be declined if they are contrary to public policy.

Business secrets and attorney-client privilege protect against the obligation to transmit information, unless the business secret does not refer exclusively to the financial service itself. Administrative measures must be in compliance with the laws and administrative practices of the parties, without however affecting the information obligations under article 5, paragraph 6.

Article 7, paragraph 5 specifies that the statutes of limitations of the requested State do not apply with respect to requests by the requesting State. This corresponds to a principle already recognized in mutual legal assistance.

**Article 8**

Article 8 specifies provisions for the confidential treatment of transmitted information. These include the principle of specialty, i.e., the prohibition of forwarding information to domestic authorities not competent within the scope of the Agreement, as well as the prohibition of forwarding the information to a third country, unless the requested party provides explicit written consent that the information be forwarded.

However, confidentiality is restricted by publicity provisions under US procedural law.

**Article 9**

Unless extraordinary costs arise, costs are borne by the requested State; extraordinary costs are borne by the requesting State.

**Article 10**

This provision generally determines cooperation of the competent authorities where problems of application arise. Additionally, a paragraph requested by Liechtenstein was included that permits further tax cooperation of the competent authorities (see also item 8 of the Annex).

**Article 11**

Article 11 covers more technical cooperation of the tax authorities in enforcing their tax laws.

**Article 12**

As requested by Liechtenstein, an article was included that envisages broader tax cooperation.

**Article 13**

Article 13 makes clear that the legislation necessary to comply with and give effect to the terms of the Agreement need only be enacted after signature, but at the latest by 31 December 2009.

**Article 14**

The Annex constitutes an integral part of the Agreement.

**Article 15**

The Agreement enters into force after mutual notification. It only applies to tax cases starting with the 2009 tax year. Ongoing investigations or proceedings are not affected by entry into force, and hence no information requirements are triggered prior to the 2009 tax year.

### **Article 16**

The Agreement provides for a three-month termination period.

### **Annex**

The Annex constitutes an integral part of the main Agreement and hence has the same obligatory character under international law as the main Agreement.

The Annex further specifies certain provisions, such as with respect to article 4 (foundations and establishments), article 5 (exchange of information upon request), and article 8 (confidentiality). It also contains several side agreements important from a Liechtenstein perspective:

- further tax cooperation including the possibility of cooperation relating to transfer pricing between linked companies; Advance Pricing Agreement Program of the IRS (item 7)
- clearly delineated grandfather clause (item 8)
- possibility of voluntary disclosure according to IRS practice; Voluntary Disclosure Procedure of the IRS (item 9)

According to item 10, the United States guarantees the QI status for Liechtenstein with the signature of the Agreement (provisional extension by one year until the end of 2009; definite extension by six years upon entry into force of the TIEA).

**AGREEMENT  
BETWEEN THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN  
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
ON TAX COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATING TO TAXES**

Preamble

Whereas the Government of the Principality of Liechtenstein and the Government of the United States of America ("the parties") recognize that the well-developed economic ties between the parties call for further cooperation;

Whereas the parties wish to develop their relationship further by cooperating to their mutual benefits in the field of taxation;

Whereas the parties wish to strengthen the ability of both parties to enforce their respective tax laws; and

Whereas the parties wish to establish the terms and conditions governing the exchange of information relating to taxes.

Now, therefore, the parties have agreed as follows:

Article 1

Scope of the Agreement

The parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the parties concerning the taxes covered by this Agreement, including information concerning the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or the investigation or prosecution of criminal tax matters.

Article 2

Jurisdiction

Information shall be exchanged in accordance with this Agreement by the competent authority of the requested party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a party. However, a requested party is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all government agencies, political subdivisions, and local authorities.

Article 3

Taxes Covered

1. This Agreement shall apply only to the following taxes imposed by the parties:

- (a) in the case of the United States, all federal taxes,

- (b) in the case of the Principality of Liechtenstein, all taxes imposed on the countrywide level.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes only if the parties so agree. The competent authority of each party shall notify the other of changes in laws which may affect the obligations of that party pursuant to this Agreement.

#### Article 4 Definitions

##### 1. In this Agreement:

“competent authority” means, for the United States, the Secretary of the Treasury or his delegate, and for Liechtenstein, the Government or its authorized representative.

“criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;

“criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether contained in the tax laws, the criminal code or other statutes;

“information” means any fact, statement, document or record in whatever form;

“person” means a natural or legal person, an estate, a trust, a partnership, a company, and any other body of persons;

“requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“tax” means any tax covered by this Agreement that is imposed at the national or federal level by a party, not including customs duties.

2. For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “United States” means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory.

For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “Liechtenstein” means the Principality of Liechtenstein.

3. As regards the application of this Agreement at any time by a party, any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, shall have the meaning which it has under the laws of that party, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.



Article 5  
Exchange of Information Upon Request

1. The competent authority of the requested party shall provide upon request by the requesting party information for the purposes referred to in Article 1 of this Agreement and in accordance with its further provisions.

2. Any request for information made by a party shall be framed with the greatest degree of specificity possible. In all cases, such requests shall specify in writing the following:

- (a) the identity of the taxpayer whose tax or criminal liability is at issue;
- (b) the period of time with respect to which the information is requested;
- (c) the nature of the information requested and the form in which the requesting party would prefer to receive it;
- (d) the matter under the requesting party's tax law with respect to which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested party or is in the possession or control of a person within the jurisdiction of the requested party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a statement that the requesting party would be able to obtain and provide the requested information if a similar request were made by the requested party;
- (i) a statement that the requesting party has pursued all reasonable means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

3. Information shall be obtained and exchanged under this Agreement without regard to whether the requested party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested party if it had occurred in the territory of the requested party. The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

4. If the information in the possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for information, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not, at that time, need such information for its own tax purposes. Privileges under the laws and practices of the requesting party shall not apply in the execution of a request by the requested party and such matters shall be reserved for resolution by the requesting party.

5. Each party shall take all necessary measures to compel production of the information requested, and if specifically requested, the information shall be provided in the form specified by the competent authority of the requesting party, including depositions of witnesses and authenticated copies of original documents.

6. Each party shall ensure that it has the authority, for the purposes referred to in Article 1 of this Agreement and subject to Article 2 of this Agreement, to obtain and provide, through its competent authority and upon a request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) (i) information regarding the ownership of companies and other legal entities, including within the constraints of Article 2 of this Agreement, information on all persons in an ownership chain; (ii) in the case of partnerships, information regarding the identities of the members of the partnership; (iii) in the case of trusts, information on the settlors, trustees and beneficiaries; and (iv) in the case of foundations, information on the founders, members of the foundation council, and beneficiaries.

#### Article 6

##### Tax Investigations Abroad

1. By reasonable notice given in advance, the authorities of the requested party may allow officials of the requesting party to enter the territory of the requested party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals concerned. The competent authority of the requesting party shall notify the competent authority of the requested party of the time and place of the intended meeting with the individuals concerned. At the option of the requested party, an official of the requested party may attend such meeting.

2. At the request of the competent authority of the requesting party, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to attend a tax examination in the territory of the requested party, in which case the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorized to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination.

#### Article 7

##### Possibility of Declining a Request

1. The competent authority of the requested party may decline to assist:

- (a) where the request is not made in conformity with this Agreement and, in particular, where the requirements of Article 5 are not met;
- (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or

- (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.

2. This Agreement shall not impose upon a party any obligation:

- (a) to provide information that under the laws of the requested party is (i) subject to legal privilege or (ii) contains any trade, business, industrial, commercial or professional secret, or trade process, provided that information that would not otherwise constitute a trade, business, industrial, commercial or professional secret or trade process, shall not be treated as such merely because it is held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; or
- (b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a party under paragraph 6 of Article 5 of this Agreement.

For purposes of paragraph 2(a), the term "information subject to legal privilege" means information that would reveal confidential communications between a client and an attorney, where such communications are made for the purpose of seeking or providing legal advice or for the purpose of use in existing or contemplated legal proceedings.

3. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

4. The requested party shall not be required to obtain and provide information which the requesting party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the requested party under this Agreement.

5. Notwithstanding paragraph 4, the statute of limitations of the requesting party pertaining to the taxes described in paragraph 1 of Article 3 of this Agreement shall govern a request for information. The expiration of a statute of limitations for taxes of the requested party shall not preclude the requested party from obtaining and providing the requested information.

## Article 8 Confidentiality

Any information received by the requesting party under this Agreement shall be treated as confidential and may only be disclosed to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement, or to supervisory bodies, and only to the extent necessary for those persons, authorities or supervisory bodies to perform their respective responsibilities. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information shall not be disclosed to any other person, entity, or authority, or used for any purpose other than for the purposes stated in Article 1, except in cases where the requested party provides prior, written consent that the information may also be used for purposes allowed under the provisions of the existing Treaty on Mutual Legal Assistance in Criminal Matters between the parties, signed July 8, 2002, that allows for the exchange of certain tax information. In no event shall information provided under this Agreement be disclosed to another country without the express written consent of the competent authority of the

requested party. Information received by the requested party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the requested party.

#### Article 9 Costs

Unless the competent authorities of the parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested party and extraordinary costs incurred in providing assistance shall be borne by the requesting party.

#### Article 10 Mutual Agreement Procedure

1. Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. The competent authorities may adopt and implement procedures to facilitate the implementation of this Agreement.
3. The competent authorities of the parties may consult and exchange information as necessary regarding this Agreement or any related matter.

#### Article 11 Mutual Assistance Procedure

If both competent authorities of the parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

#### Article 12 Dialogue on further Cooperation

The parties shall continue the dialogue on the possibilities for further cooperation in the taxation area. The parties have the right to submit proposals for discussion and to ask for a meeting with the other party to address such proposals. In the context of such discussions the parties may inform each other of possible changes to their internal tax legislation and they may take into account any such changes.

#### Article 13 Implementing Legislation

Legislation necessary to comply with and give effect to the terms of this Agreement shall be enacted by December 31, 2009, to the extent necessary.

Article 14  
Appendix

The Appendix to this Agreement constitutes an integral part thereof.

Article 15  
Entry into Force

This Agreement shall enter into force when each party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon entry into force, it shall have effect for requests made on or after the date of entry into force with regard to tax years beginning on or after January 1, 2009. This agreement is not intended to prejudice or interfere with any investigations or other proceedings that are in process as of the date of entry into force of this Agreement.

Article 16  
Termination

1. This Agreement shall remain in force until terminated by either party.
2. Either party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party.
3. If a party terminates this Agreement, notwithstanding such terminations, both parties shall remain bound by the provisions of Article 8 of this Agreement with respect to any information obtained under this Agreement.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Vaduz, in duplicate, in the English and German languages, each text being equally authentic, this 8th day of December, 2008.

FOR THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

**APPENDIX**

At the signing of the Agreement between the Government of the Principality of Liechtenstein and the Government of the United States of America on Tax Cooperation and the Exchange of Information Relating to Taxes (hereinafter referred to as "the Agreement"), the Government of the Principality of Liechtenstein and the Government of the United States have agreed to the following provisions:

1. With respect to Article 4 of the Agreement (Definitions), the term "person" also includes foundations ("Stiftungen") and "Anstalten."
2. For purposes of paragraph 3 of Article 5 of the Agreement (Exchange of Information Upon Request), the requesting party shall look only to domestic recourse in determining disproportionate difficulty, and it is not contemplated that the requesting party pursue the requested information through extraterritorial measures beyond those measures specified in the Agreement in determining disproportionate difficulty.
3. For purposes of paragraph 4 of Article 5 of the Agreement (Exchange of Information Upon Request), the term "information gathering measures" includes measures such as requiring the presentation of records for examination; gaining direct access to records; copying such records; and interviewing persons having knowledge, possession, control, or custody of pertinent information.
4. With respect to paragraph 5 of Article 5 of the Agreement (Exchange of Information Upon Request), the requested party shall have procedures and enforcement mechanisms under its domestic laws permitting the competent authority of the requested party to obtain the following information from or perform the following acts on all persons on behalf of the requesting party:
  - (a) specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;
  - (b) place the individual giving testimony or producing books, papers, records and other tangible property under oath;
  - (c) permit the presence of individuals designated by the competent authority of the requesting party as being involved in or affected by execution of the request, including an accused, counsel for the accused, individuals charged with the administration and enforcement of the domestic laws of the requesting party covered by the Agreement, or a commissioner or magistrate for the purpose of rendering evidentiary rulings or determining issues of privilege under the laws of the requesting party;
  - (d) provide individuals permitted to be present with an opportunity to question, directly or through the executing authority, the individual giving testimony or producing books, papers, records and other tangible property;
  - (e) secure original and unedited books, papers, and records, and other tangible property;
  - (f) secure or produce true and correct copies of original and unedited books, papers and records;
  - (g) determine the authenticity of books, papers, records and other tangible property produced, and provide authenticated copies of original records;

- (h) examine the individual producing books, papers, records and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;
- (i) permit the competent authority of the requesting party to provide written questions to which the individual producing books, papers, records and other tangible property is to respond regarding the items produced;
- (j) perform any other act not in violation of the laws or at variance with the administrative practice of the requested party;
- (k) certify either that procedures requested by the competent authority of the requesting party were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor.

5. Pursuant to Article 8 of the Agreement (Confidentiality), any information received pursuant to the Agreement is confidential and the parties shall take appropriate measures to safeguard the confidentiality of information received pursuant to the Agreement.

6. If an information request under the Agreement is believed to be deficient in some respect, but other parts of the request meet the requirements of the Agreement, the competent authority of the requested party shall provide any information that is responsive to that part of the request that meets the requirements of the Agreement.

7. The parties express their wish to further their cooperation in tax matters beyond this Agreement. In particular, the parties intend to explore whether additional agreements or actions, such as agreements related to transfer pricing, may be undertaken.

8. Although the Agreement allows only for requests for information with regard to tax years beginning on or after January 1, 2009, the Agreement provides for exchange of documents or information created in or derived from a date preceding January 1, 2009, that are foreseeably relevant to a request relating to tax years beginning on or after January 1, 2009. Such information may be used only if there is an ongoing investigation or examination with respect to a tax year that begins on or after January 1, 2009. For example, if assistance is requested with respect to a taxpayer's bank transactions occurring after December 31, 2008, and documents such as, but not limited to, a signature card for the account in question were executed prior to January 1, 2009, the parties would exchange the documents.

9. The parties acknowledge the availability of programs generally applicable to taxpayers, including the voluntary disclosure practice of the Internal Revenue Service.

10. Upon signature of the Agreement, the United States is extending Liechtenstein's treatment as an eligible Qualified Intermediary (QI) jurisdiction until December 31, 2009. Following agreement by the competent authorities that Liechtenstein has taken the steps necessary to implement fully the Agreement, the United States shall extend Liechtenstein's eligibility as a QI jurisdiction for the same period and subject to the same restrictions, that the United States extends QI eligibility generally, with the understanding that, under applicable regulatory and administrative rules, the terms of a QI agreement between the Internal Revenue Service and any individual financial institution may vary depending on the needs of sound tax administration.