Liechtenstein

International Estate Planning Guide

Private Client Tax Committee

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Author's note

International estate planning is a crucial aspect for high-net-worth individuals and families with cross-border interests and assets. Liechtenstein, with its stable political environment, stringent privacy law and sophisticated financial services sector, is a pivotal jurisdiction for such planning. The principality's legal system is a unique fusion of local and foreign influences, primarily Austrian and Swiss law, due to its geographical location and historical ties. This overview is designed to provide a clear and straightforward introduction to the key principles of Liechtenstein's estate planning law. It focuses on the general rules and core concepts, aiming to avoid getting lost in the more intricate details and exceptions. Our goal is to make the basic framework of Liechtenstein's inheritance regulations understandable for our international colleagues. This should pave the way for more informed discussions about estate planning that involves Liechtenstein, especially when it intersects with international interests.

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

Liechtenstein's inheritance law, codified in Articles 531–824 of the General Civil Code (GCC) follows the framework set forth in the Austrian version of the code. This proximity to Austrian law facilitates the extensive application of Austrian legal literature and jurisprudence in the Liechtenstein context. The procedural handling of estate matters is governed by the Non-Contentious Proceedings Act.

1. THE FORM OF LAST WILL AND TESTAMENTS

The creation of a will in Liechtenstein is subject to stringent formal requirements designed to ensure the authenticity and reliability of the testator's final wishes. A handwritten and signed will (holographic will) is valid without the need for witnesses. Non-holographic wills, not entirely handwritten by the testator, require his or her signature and the presence of three fully competent witnesses, who must also sign the will. These witnesses must not be beneficiaries in the will to avoid conflicts of interest. Adherence to these formalities is crucial to ensure the effectiveness of the will. In the event that a person has not made any arrangements during his or her lifetime regarding the disposition of his or her estate on death, statutory inheritance law applies. However, this legal default often does not reflect the deceased's wishes.

2. CODICILS

A codicil is a testamentary disposition that does not include the appointment of an heir, but other dispositions. It generally adheres to the same formal requirements as a will.

3. POST-DEATH CHANGES

Changes to a will after the testator's death are generally impermissible as the will represents the testator's final declaration of intent. Exceptions or specific circumstances under which post-death changes might be allowed are strictly limited and necessitate an explicit legal examination.

4. THE HAGUE TESTAMENTARY DISPOSITIONS CONVENTION

Liechtenstein is a party to the Hague Convention on Testamentary Dispositions, which regulates the recognition of foreign wills. This convention allows for a will, validly made according to the laws of one signatory state, to be recognised as valid in other signatory states. The specific application of this convention in Liechtenstein's legal sphere requires precise analysis, particularly regarding the recognition and enforcement of foreign wills in Liechtenstein.

B. Will substitutes (revocable trusts or entities)

In addition to traditional wills, Liechtenstein law provides for the regulation of asset transfers through inheritance agreements, gifts and the administration of wills, or by altering the structure of one's assets and establishing autonomous entities for asset components, such as corporations, foundations and trusts. This approach to inheritance and estate planning encompasses both classic methods and the unique legal framework available in Liechtenstein, allowing for a comprehensive management and transfer of assets.

C. Powers of attorney, directives and similar disability documents

Powers of attorney and directives are key tools in disability planning. They allow one person to authorise another to act on his or her behalf if the person becomes incapacitated due to illness or accident. In Liechtenstein law, these documents must meet certain formal and substantive requirements to be legally effective. These include a precise definition of the scope of the power of attorney and adherence to specific formal requirements.

D. Consultation Report 2023 on the Planned Inheritance Law Reform

Neighbouring legal systems, such as Austria and Switzerland, inspired the latest adjustment to Liechtenstein's inheritance law, which aims to modernise and enhance the flexibility of the existing legal framework. These reforms are designed to allow decedents to freely dispose of a larger portion of their estate, notably through the abolition of compulsory portion rights for ancestors. A significant aspect of the reform includes the recognition of and compensation for care services within the estate process, enabling certain care services to be claimed as part of the estate proceedings. Additionally, it stipulates that wills made in favour of former spouses or registered partners are considered null and void on the dissolution of the marriage or partnership, a rule that also applies during ongoing divorce or dissolution proceedings. The adjustments also cover the revision of reasons for disinheritance and unworthiness to inherit, as well as the modification of limitation periods for inheritance claims to a relative period of three years and an absolute period of 30 years. Finally, the reform involves updating outdated terms and provisions or abolishing those that no longer have an application area, thereby making the inheritance law contemporary and practical.

E. Foreign judgment execution and discovery limitations

In Liechtenstein, the acknowledgment and execution of foreign judgments are contingent on international accords. Excluding arrangements with Switzerland and Austria, Liechtenstein has not formalised bilateral treaties with other nations for the acknowledgment and enforcement of foreign judgments. Moreover, Liechtenstein remains outside the scope of Regulation (EU) No 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the 'Brussels I Regulation') and the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 (the 'Lugano Convention'). Additionally, Liechtenstein participates in specific international conventions related to child support, child adoption and child protection. In the realm of arbitration, Liechtenstein acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention') in 2011, which pertains exclusively to the enforcement of arbitral decisions.

In the absence of enforcement agreements, a successful defendant in litigation, such as in a challenge proceeding, cannot readily enforce a cost reimbursement claim abroad. Consequently, the defendant can request, at the outset of the process, that the Liechtenstein court impose a requirement for the foreign plaintiff to provide security for the legal costs. This is referred to as a litigation security deposit, which can be prohibitively high, especially in cases involving significant dispute values and complex, cross-border evidence and circumstances

Another significant challenge in litigation processes, often to the disbelief of litigants and their lawyers from England, the United States, and other common-law countries, is the absence of 'discovery'. Discovery, the formal evidence procedure requiring the mutual obligation of the parties to produce evidence, is non-existent in Liechtenstein. This procedure can compel a party to present evidence that might be unfavourable to his or her case position, potentially

aiding the opposing party's success. Liechtenstein's civil procedure law does not provide for discovery, and the country would not even assist another state in such matters. On ratifying the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, Liechtenstein explicitly declared, in accordance with Article 23, that it would not fulfil such requests for legal assistance.

Should foreign courts attempt to directly compel Liechtenstein parties to produce such evidence documents without legal assistance (eg, through a subpoena), it would likely contravene Article 2 of the State Protection Act. This often leaves plaintiffs and creditors at a disadvantage as they generally have no means of accessing evidence documents solely in the possession of the opposing party.

In Liechtenstein, an opponent in litigation can only demand the production of a document within the strict limits of Article 303 of the Code of Civil Procedure, required for their evidence. The applicant must not only specify the content of the document as precisely and completely as possible but also demonstrate and certify circumstances that make the possession of the document by the opponent probable. This provision is only helpful to the creditor if the existence of the evidence document is already known.

II. Estate administration

A. Overview of administration procedures

1. ADMINISTRATION OF THE ESTATE

The administration of an estate in Liechtenstein is a meticulous process that necessitates a thorough understanding of both legal and financial aspects. On the demise of an individual, it becomes imperative to undertake a detailed inventory of the deceased's assets. This includes, but is not limited to, bank accounts, real estate, investments and personal belongings. The estate administrator, whether an executor appointed by the deceased in his or her will or an administrator designated by the court in intestate cases, is entrusted with the responsibility of managing these assets. This role encompasses paying off any outstanding debts and taxes, a task that requires an accurate assessment of the estate's liabilities. Following this, the administrator orchestrates the distribution of the remaining assets to the rightful beneficiaries, as delineated in the will or per statutory succession law if no will exists.

2. CERTIFICATE OF INHERITANCE

The certificate of inheritance in Liechtenstein is a crucial legal document. It essentially acts as a testament to the rightful heirs of the deceased and their entitled share of the estate. This certificate is pivotal for legitimising the transfer of assets, especially when dealing with financial institutions and in the transfer of property titles. To obtain this certificate, heirs often need to provide proof of their relationship to the deceased, which can include birth certificates, marriage certificates and other legal documents that establish familial ties.

3. EXECUTOR AND ADMINISTRATOR

The selection of an executor or administrator is a critical decision in the estate administration process. An executor, named in the will, carries the responsibility of ensuring that the deceased's wishes, as articulated in his or her will, are honoured. By contrast, an administrator, often appointed by a court in the absence of a will or named executor, has the task of distributing the estate in accordance with Liechtenstein's intestate succession law. These roles

demand a high degree of diligence and integrity as these individuals are tasked with making decisions that can have lasting implications on the beneficiaries.

B. *Intestate succession and forced heirship*

1. Intestate succession

When an individual passes away without leaving a will, his or her estate is subject to intestate succession law in Liechtenstein. This law creates a hierarchy of heirs based on familial ties, starting with the closest kin, such as spouses and children, and extending to more distant relatives, if necessary. The intestate succession process ensures that the estate is distributed in a manner that reflects societal norms and familiar expectations, providing a legal framework for the equitable division of assets.

2. Statutory division

Liechtenstein's statutory division of estates serves as the legal framework for dividing assets among heirs in the absence of a will. This division is designed to reflect fairness and equity, taking into consideration the different familial relationships and corresponding entitlements. The process involves a careful evaluation of the estate's value and the legal entitlements of each heir, ensuring that the distribution aligns with statutory guidelines.

3. Forced heirship rights

Liechtenstein acknowledges the concept of forced heirship, which serves to protect certain family members from being completely disinherited. These rights ensure that spouses, children and, sometimes, other close relatives receive a minimum share of the estate, irrespective of the deceased's testamentary wishes. This aspect of Liechtenstein's inheritance law underscores the jurisdiction's commitment to protecting family rights and preventing undue hardship on dependent relatives. However, in a following section, how trusts and foundations operate within the framework of Liechtenstein's inheritance law is discussed, specifically considering forced heirship provisions.

4. Disinherited spouse

The law in Liechtenstein provides certain protections for a spouse who has been disinherited. Even in cases where the deceased's will explicitly omits the spouse, forced heirship law can entitle him or her to a portion of the estate. This provision upholds the principle of the marital partnership and seeks to prevent undue financial hardship on the surviving spouse.

C. *Marital property*

1. Community of property regime

In Liechtenstein, the default marital regime is the separation of property, where each spouse retains ownership and control over his or her assets. However, a married couple has the option to enter into a community of property regime, where assets acquired during the marriage are considered joint property. This decision has profound implications for estate planning and the distribution of assets on the dissolution of the marriage or the death of a spouse.

2. Marriage conditions

Couples in Liechtenstein can establish specific conditions regarding their marital property through legal agreements. These conditions can significantly alter the default property regime, allowing for tailored arrangements that suit individual marital situations. Such agreements often

play a crucial role in estate planning, providing clarity and certainty in the division of assets. Registered partnerships for same-sex couples are recognised in Liechtenstein. These partnerships grant same-sex couples rights and obligations similar to those of married couples, including in matters of inheritance and the distribution of marital property.

3. MATRIMONIAL AGREEMENTS

Matrimonial agreements in Liechtenstein, such as prenuptial and postnuptial agreements, are legal contracts that define the financial arrangements between spouses. These agreements can dictate how assets will be treated during the marriage and how they will be divided in the event of divorce or death, thereby playing a crucial role in estate planning.

D. Tenancies, survivorship accounts and payable on death accounts

In Liechtenstein, innovative financial instruments, such as joint tenancies with rights of survivorship, survivorship accounts and payable on death accounts, offer alternative mechanisms for transferring property and assets. These tools allow for the bypassing of the traditional probate process, providing a streamlined and often more expedient way of transferring assets on death. They serve as critical components in estate planning, allowing individuals to ensure that their assets are passed on to their intended beneficiaries in a manner that aligns with their wishes.

III. Trusts, foundations and other planning structures

In Liechtenstein, foundations and trusts are pivotal for effective estate planning, aiming to preserve family wealth, prevent asset dilution and secure family provision. Foundations provide privacy, asset protection and controlled distribution, adeptly balancing legal compliance with the settler's wishes, particularly under the principality's protective stance against external legal challenges. Trusts complement this by allowing for the separation of assets from the settler's personal wealth, offering a stable, long-term governance structure free from inheritance and creditor claims, without complex transfer or termination restrictions. With their ability to ensure long-term asset management and protection, both foundations and trusts in Liechtenstein represent a robust, flexible strategy for high-net-worth individuals and families, especially those with international relationships.

A. Trusts

Liechtenstein is recognised as a preferred location for trust administration, owing to its long history of managing substantial private wealth. Trusts are a key tool for efficient wealth management, aiding in governance, succession planning and asset protection. Introduced in 1926, Liechtenstein's trust law was inspired by the Anglo-American trust model, and has become important for clients from common-law jurisdictions. Over decades, Liechtenstein has developed a nuanced understanding and application of trust law, incorporating influences from major jurisdictions while adhering to the specifics of its legal framework and the Hague Convention on the Law Applicable to Trusts and on their Recognition, dated 1 July 1985 (the 'Hague Trust Convention'). Besides private wealth management, the law in Liechtenstein also accommodates business trusts and collective trusteeships as regulated fund vehicles, reflecting the country's adaptability to international financial structuring practices. Despite the varied terminology used in practice, the essence of trust law and its application remains a cornerstone of Liechtenstein's financial services sector.

1. Legal concept

In estate planning, the primary objectives usually include preserving private wealth within the family, preventing the fragmentation of assets through inheritance, and ensuring the care and protection of family members. Trusts facilitate the achievement of these goals by allowing the settler to separate assets from his or her private wealth for a specific purpose over the long term. Unlike corporations or partnerships, where control is exercised by current shareholders and statutory rights limitations are restricted, trusts enable the enduring definition of beneficiary rights and governance. Subject to legal challenges, the assets in a trust are protected from inheritance claims and creditor access, eliminating the need for complex transfer and termination restrictions.

Liechtenstein law acknowledges asset protection as a legitimate structuring objective, for which Liechtenstein trust law is particularly suited within legal boundaries. Depending on the design of influence and control rights, as well as the nature and timing of asset transfer, creditors' access to the trust assets is strictly limited. The limits of this design freedom are primarily legal challenges and criminal law. Effective asset protection involves relinquishing settler's control and revocation rights, establishing specific protector rights, selecting applicable law, structuring asset transfer and defining beneficiary rights.

Furthermore, foreign judgments are not readily enforceable in Liechtenstein, as neither Regulation (EU) No 1215/2012 nor the Lugano Convention applies. Additionally, Liechtenstein has exercised its right under Article 23 of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters to refuse requests for legal assistance with investigative characteristics ('pre-trial discovery'), meaning such requests are not fulfilled.

2. Fiduciary duties

In Liechtenstein, the fiduciary duties of trustees are crucial to the operation and integrity of trusts. These duties stem from the special relationship of trust and confidence between the settler and trustee, imposing various obligations, collectively known as fiduciary duties. Trustees are required to adhere to the stipulations of the trust deed and mandatory legal provisions, ensuring they do not undertake actions that would undermine the specific purpose of the trust.

The prohibition against the commingling of the trustee's personal assets with the trust assets is fundamental to preserving the rights of beneficiaries and maintaining the integrity of the trust. This separation is crucial for the protection of trust assets in legal proceedings, insolvency or enforcement actions against the trustee. Trustees are also obligated to maintain accurate records, and provide accounting and information to relevant parties. This ensures transparency and accountability in the management of trust assets.

Moreover, trustees are barred from engaging in self-dealing transactions, unless expressly allowed by the trust deed, ensuring they do not benefit personally at the expense of the trust's interests. They must also treat all beneficiaries equitably, unless the trust deed specifies otherwise, reflecting the settler's intentions without unjust discrimination.

Regarding investment decisions, trustees must act with the prudence of an ordinary businessperson, balancing risk and return in accordance with the purpose of the trust and the interests of the beneficiaries. Trustees are bound by the instructions provided in the trust deed and cannot be compelled by the settler to act against these instructions or legal provisions.

The liability of trustees for breach of their duties is a significant aspect of their role, highlighting the importance of their obligations to the trust and its beneficiaries. Trustees may be held personally liable for damages resulting from their actions or omissions that violate their fiduciary duties.

3. Establishment and incorporation

The establishment and operation of a trust in Liechtenstein are primarily governed by the Person and Company Act ('PCA'). A trust relationship, as defined under Article 897 of the PCA, arises between the trustee and settler when the settler transfers trust assets to the trustee. The trustee, who can be an individual, company or legal entity, is responsible for managing and utilising the trust assets in his or her own name for the benefit of one or more beneficiaries. The trust assets may consist of movable property, immovable property or rights.

For a trust to be legally constituted, a written agreement, known as the trust deed, is required between the settler and trustee. This document must clearly specify the trust assets (certainty of subject), the intention to create a trust (certainty of intention) and the beneficiaries or purpose of the trust (certainty of object). It suffices that the trust assets and beneficiaries can be determined.

Significantly, the formation of a trust does not require registration in the Commercial Register. However, if the trust operates for more than one year, it must be entered into the Commercial Register or a corresponding deposit must be made, as stipulated by Article 900 of the PCA. A trust is considered Liechtenstein-based if the trust deed explicitly selects Liechtenstein law as the governing law or, in the absence of such a selection, if it is managed by a Liechtenstein trustee or a majority of Liechtenstein trustees, according to Article 931 of the PCA. This provision also allows for the establishment of trusts under foreign law, wherein the internal relationship is governed by the foreign law selected, while the external relationship adheres to Liechtenstein law.

The settler's role is outlined as being capable of being either an individual or legal entity, with the ability to specify the trust's terms and objectives. Although settlers can issue a 'letter of wishes' to guide the trustee, they are prohibited from maintaining ongoing directive powers. The settler may also reserve the right to revoke the trust, with the possibility of amending the trust under specific conditions through a court process.

The trustee is responsible for managing the trust property according to the trust deed's stipulations, with the possibility of appointing multiple trustees. Unlike in Switzerland, trustees in Liechtenstein generally do not require a licence. The trust property, which can be diverse in nature, is managed for the benefit of the beneficiaries and is considered a separate estate from the trustee's personal assets.

Beneficiaries are typically identified or identifiable individuals or entities for whom the trust is established. The rights and roles of beneficiaries are primarily dictated by the trust deed, with legislation providing considerable flexibility in defining these roles, including limiting beneficiary rights to information and control.

A protector may be appointed within the trust structure, holding varying levels of authority, from decision-making powers to merely advisory roles, depending on the trust's specific provisions.

4. Dissolution

The dissolution of a trust may be initiated through a collective declaration of intent, requiring unanimity among all trustees, and both current and prospective beneficiaries. It is pertinent to note that, as previously elaborated, Liechtenstein legislation does not enforce the Rule against Perpetuities on trusts. Consequently, the expiration of a trust is not inherently tied to the lapse of time, barring any specific duration outlined within the trust deed by voluntary stipulation. Attention must be directed towards the designation of the ultimate beneficiary as it is common for trust deeds to incorporate stipulations regarding the allocation of trust assets on dissolution. In the absence of such a stipulation regarding the ultimate beneficiary within the trust deed, paragraph 4 of Article 906 of the PCA stipulates the formation of a resulting trust, which benefits either the settler, or his or her successors. Furthermore, a resulting trust is also established in scenarios in which the ultimate beneficiaries designated in the trust deed no longer exist. It is crucial to acknowledge that the *Saunders v Vautier* principle, which allows beneficiaries to dissolve the trust through unanimous agreement, is not applicable within the jurisdiction of Liechtenstein.

B. Foundations

Foundations in Liechtenstein provide a unique mechanism for separating assets from their owners to achieve specific, long-term goals more effectively and enduringly than if these assets remained tied to the personal fortunes of the founder and his or her successors. This separation is intended to ensure that the assets are dedicated to the founder’s declared intentions indefinitely.

On the establishment of a foundation, the assets effectively become ownerless and are bound to the purpose designated by the founder, thereby achieving a level of independence from the founder’s personal legal and financial circumstances. From the moment of the foundation’s establishment, the founder generally relinquishes access to these assets, cementing the foundation’s autonomy and dedication to the predetermined purpose.

The legislative intent behind the establishment of foundations in Liechtenstein was to provide a legal instrument that allows economically minded individuals to allocate a portion of their wealth for specific purposes during their prime productive years. These purposes may include providing for family members against life’s uncertainties, pursuing charitable or philanthropic goals, or ensuring that their name and efforts are associated with charitable acts and institutions beyond their death. This legal framework facilitates not only the preservation of wealth for future generations or charitable causes but also the legacy and values of the founder.

1. Legal concept

The legal concept of foundations in Liechtenstein is primarily designed as an institution for free private economic activity with limited public oversight. This concept was established in case law on 29 January 1990 (reference: U 29.01.1990, 02 C 264/87-29, LES 1991, 91), indicating that a foundation in Liechtenstein law is created as an independent legal entity, owning and being bound to the foundation’s assets. This legal structure allows for private-benefit foundations to operate outside public supervision, obtaining legal personality without the need for registration in the Commercial Register. Conversely, charitable foundations must be entered in the Commercial Register and are subject to public oversight.

On its creation through a unilateral legal act of foundation, donation and dedication, the foundation becomes legally separate from the founder. The founder's intent is crystallised in the foundation's statutes. If the founder does not secure influence as a civil law participant or as a member of the administration, which is at his or her discretion, the founder's will continues within the foundation, but otherwise, the founder loses any legal connection to it. The fact that someone is a founder becomes legally irrelevant as the foundation's assets have become independent, removed from the founder's estate, and now form the assets of the foundation, which appears as an independent legal entity.

The founder, once the foundation is established, cannot claim any rights or privileges over the foundation's assets any more than any third party. The statutes exclusively govern the rights concerning the foundation's assets, although the dedicated use of the assets remains under the founder's sovereign protection right. Actions taken by the founder after the establishment of the foundation can only be used to interpret the founder's will at the time of the foundation's creation or presumed will. Subsequent actions have no effect on the unchanged continuation, the specified organisation, and the purpose of the foundation, except for a later position of the founder as per the statutes.

Respect for the founder's will is of central importance in foundation law, serving as a guideline in applying the law. The foundational principle is that the foundation's assets cannot be alienated from its purpose, especially as an anticipated inheritance arrangement, in contradiction to an identifiable will of the founder. This principle is supported by various legal precedents, demonstrating the legal framework's emphasis on protecting and maintaining the founder's intent and ensuring the foundation's assets are used according to the dedicated purpose.

2. Management duties

In the realm of estate planning and private client tax law in Liechtenstein, particularly within the context of the PCA, the principles surrounding the management of foundation assets are of paramount importance. These guidelines are enshrined within section 25 of Article 552 of the PCA, which mandates a comprehensive and prudent approach towards asset management and utilisation by foundation organs. Jurisprudence, notably decisions from the Liechtenstein courts, further elaborates on these principles, underlining a wide interpretation that encompasses a careful investment strategy prioritising return, security, liquidity, capital preservation and balanced risk distribution. The directives explicitly discourage speculative and high-risk investments, advocating for a diversified investment portfolio that aligns with the foundation's purpose, while securing its long-term sustainability.

The delegation of asset management responsibilities is a crucial aspect of these principles. The foundation council's decision to entrust asset management to an external expert, especially in cases where it lacks relevant expertise, is not only permissible but also recommended. This entails a meticulous process of selecting, informing and supervising the asset manager, which could significantly mitigate the council's liability for the foundation's investment decisions. Such delegation must be executed with due diligence, ensuring that the investments are made in accordance with the foundation's objectives.

When managing riskier investments, the foundation council is obligated to exercise heightened oversight. This includes conducting thorough due diligence when engaging third parties to handle such investments, thereby ensuring that the foundation's assets are managed responsibly and in alignment with its goals.

The legal framework also addresses the management of assets in the absence of explicit instructions from the settler. In such scenarios, the managing board is tasked with administering the foundation's assets judiciously, typically through a diversified securities portfolio. Conversely, when settler instructions are present, these directives significantly influence the foundation's investment strategy. Any deviation from these instructions could potentially result in the council's liability, underscoring the importance of adhering to the settler's expressed wishes.

Furthermore, legislation delineates the obligations and potential liabilities of foundation councils in managing the foundation's assets, especially concerning high-risk investments. Regardless of an economic settler's agreement with proposed investments, the foundation's organ must maintain its fiduciary duties, emphasising the necessity to prevent the loss of the foundation's assets.

3. Establishment and incorporation

The establishment of a foundation by a living person is not considered a donation but rather a unilateral, non-reception-dependent declaration of intent aimed at establishing a legally capable foundation. This specific legal stance underlines that the act of establishing a foundation is a unilateral legal transaction executed through the creation of a document. This document must bear the authenticated signatures of the founders, be established by last will or be formed through a contract of inheritance. Furthermore, for foundations that are required by law to be registered, such as charitable foundations and private benefit foundations operating a commercial business based on special statutory provisions, the registration in the Commercial Register is mandatory. However, even foundations exempt from the registration requirement may opt for entry into the Commercial Register if the founder so desires, as outlined in section 14, paragraph 5 of Article 552 of the PCA.

The application of Article 916 of the GCC, which pertains to bilateral legal transactions, is explicitly excluded in the context of foundation establishments. This exclusion clarifies that the establishment of a foundation can never constitute a sham transaction, even when a foundation is established by a Liechtenstein trustee on behalf of an economic beneficiary. This clarification is supported by a decision on 6 December 2001 (reference: 1 Cg 378/99-50). However, it's noteworthy that an earlier ruling by the Supreme Court on 29 January 1990 (reference: 02 C 264/87-29) considered the application of Article 916 of the GCC to foundations permissible, marking a significant legal evolution in the understanding and treatment of foundation establishments in Liechtenstein law. This historical perspective highlights the nuanced legal framework within which foundations operate in Liechtenstein, emphasising the jurisdiction's distinct approach to the creation and incorporation of foundations within the realm of international estate planning.

4. Dissolution

The reasons for the dissolution and liquidation of a foundation are detailed in section 39, paragraph 1 of Article 552 of the Liechtenstein PCA, empowering either the foundation's board or the court to initiate the dissolution process. Article 971 of the PCA outlines additional conditions under which a foundation may be dissolved and removed from the register by official order, including the absence of required organs or representatives in Liechtenstein; failure to appoint a representative despite lacking official authorisation; non-compliance with the conditions of Article 180a of the PCA; at the request of the tax authority due to unpaid public dues; or if a corporation harms Liechtenstein's interests or its international relations.

Specific reasons for dissolution include the absence of the required organs, as foundations lacking the necessary organs or not meeting the personal requirements of Article 180a of the PCA may be dissolved and liquidated. Similar to other entities, foundations can be removed from the Commercial Register if a bankruptcy petition is dismissed due to insufficient assets to cover the costs. If a foundation cannot fulfil its purpose due to insufficient assets, the foundation's board must pass a resolution to dissolve it. The absence of beneficiaries can also lead to the dissolution of a foundation.

Historically, foundations could dissolve themselves if all stakeholders agreed, although this practice might change under new legal interpretations to prevent the circumvention of statutory protections aimed at beneficiary and creditor protection. Founders retaining a revocation right in the statutes can dissolve the foundation at any time, necessitating a dissolution resolution by the foundation's board. Legal provisions accommodate the dissolution due to the achievement or unattainability of the foundation's purpose.

Foundations can also be dissolved through a court order, either on the grounds of a dissolution lawsuit or due to the voidability of the foundation's establishment. The liquidation process for foundations follows the general provisions for entities laid out in Article 130 onwards of the PCA, with specific adjustments made for foundations. This process includes creating a liquidation balance sheet, settling creditor claims and distributing assets according to the bankruptcy hierarchy.

The deletion of a foundation from the Commercial Register is declaratory; foundations retain their legal personality until the liquidation process is complete and all assets are liquidated. Even after deletion, a foundation may possess legal personality if assets, potentially in the form of claims against its organs or third parties, remain. Deleted foundations can still be subject to legal proceedings if represented appropriately, underscoring the need for a court-appointed representative in cases where the foundation's previous organs cannot represent it effectively.

5. Forced Heirship in Foundation Law

The concept of forced heirship in relation to foundations in Liechtenstein is notably influenced by both the historical and current legal frameworks governing the interaction of estate planning and foundation laws. Prior to the enactment of the Liechtenstein Private International Law Act (PILA) on 1 January 1997, the legal landscape was navigated through the application of old collision law principles, wherein the determination of applicable law, especially in cases of gift contestation, was essential. This period was governed by the Austrian GCC (AGCC) paragraphs 34–37, which, although providing a basis for international contractual law, lacked specific provisions for inheritance matters involving foreign elements. The legal void was addressed by applying the provisions of the Austrian PILA by analogy, ensuring that succession by death was regulated by the deceased's personal statute at the time of death, typically determined by nationality (paragraph 1 of Article 29 of the PILA). In cases involving international circumstances, matters such as an increase in compulsory portion or contestation of donation due to reduction of compulsory portion were not considered part of the foundation statute but rather the estate statute, emphasising the significance of the deceased's nationality in determining the applicable law for inheritance disputes.

The implementation of the PILA did not fundamentally alter this stance; foundations established under Liechtenstein law can still be challenged by compulsory heirs asserting their supplemental compulsory portion claims. These claims are adjudicated according to the estate statute, tied to the natural person's nationality, highlighting continuity in the legal assessment

of claims against foundations by compulsory heirs based on the deceased founder's nationality. Remarkably, this evaluation often involves the economic settler, who utilised a Liechtenstein trust company, underscoring the pivotal role of the settler's nationality in disputes regarding the allocation of assets to foundations or trusts in the context of forced heirship rights.

Post-PILA, the legal framework continues to honour the principles of assessing claims against foundations or trusts through the lens of the deceased's national law, supplemented by the application of the law governing the act of conveyance. This dual filter, initially considering the estate statute and then the contract statute relevant to the conveyance act, reflects a nuanced approach to handling forced heirship claims in the realm of foundation law. The notable amendment of paragraph 4 of Article 29 of the PILA, introduced during the foundation law reform, signifies a critical shift aimed at balancing the rights of compulsory heirs against the autonomy of foundations by prescribing that claims against third parties who received assets from the deceased during his or her lifetime are governed by the law applicable to succession. Additionally, the allowance of such claims is contingent on their permissibility under the law governing the acquisition process, thereby introducing a legal safeguard against the circumvention of compulsory portion rights through the strategic use of foundations.

This intricate legal construct, underscored by paragraph 785 of the AGCC, illustrates Liechtenstein's commitment to ensuring that the principles of forced heirship are integrated harmoniously within the framework of foundation law, thereby safeguarding the intended balance between protecting compulsory heirs and facilitating estate planning through foundations. This integration exemplifies the principality's nuanced approach to addressing the complexities inherent in international estate planning in the realm of foundations, ensuring that the rights of compulsory heirs are duly recognised and protected within this sophisticated legal landscape.

C. Treatment of foreign trusts and foundations

In Liechtenstein, the Hague Trust Convention came into effect on 1 April 2006. It's important to note that the Hague Trust Convention does not contain substantive trust law itself. Instead, it ties the applicable law to the closest connection, allowing for the choice of law under Article 6 of the Hague Trust Convention. The ratification of the convention served more as a symbolic gesture, positioning Liechtenstein within the international community of trust law jurisdictions. According to Article 931 of the PCA, it has been possible to establish a trust under foreign law in Liechtenstein, including its transfer to Liechtenstein. Disputes involving a trust established under foreign law are generally to be decided by arbitration as per Article 931 of the PCA. A Liechtenstein trustee can act as a trustee of a trust governed by foreign law.

A significant change occurred when Liechtenstein, following Switzerland's example (paragraph 1 of Article 154 of the Swiss Private International Law Act), adopted the foundation or incorporation theory. This approach determines the applicable law for a legal entity based on whether it is organised under foreign or domestic law, fulfilling respective publication or registration requirements, or if such requirements do not exist, is otherwise organised according to foreign or domestic law. If these conditions are not met, the entity is subject to the law of the state where it is actually managed. The incorporation statute thus determines the legal nexus for the applicable law on the entity or foundation. Only if the entity does not meet the conditions of paragraph 1 is it subject to the law of the state in which it is actually managed.

Regarding the recognition of Liechtenstein foundations abroad, the situation varies by country. In Germany, a capital company founded in the European Economic Area (EEA, Europäischer Wirtschaftsraum or EWR) Member State, Liechtenstein according to its law is to be recognised based on the EWR Agreement's guaranteed freedom of establishment, regardless of its actual administrative seat. Liechtenstein foundations are thus entitled to assert their contractual rights in Germany and to pursue them through legal channels. The Federal Court of Justice (Bundesgerichtshof or BGH) applies the law of the statutory seat to foreign foundations; the personal statute of the foundation is then decisive for the legal status of beneficiaries and the resulting claims. However, Liechtenstein foundations are not recognised unconditionally in Germany. In certain cases, the provision of assets to a foundation by an economic founder, retaining extensive directive rights and a right of revocation, has been deemed a sham transaction under German law, leading to challenges in the effectiveness of such endowments.

In Austria, Liechtenstein foundations are generally recognised, though there have been critical judgments regarding the characterisation of Liechtenstein as a 'tax haven' and its foundations as 'letterbox companies' for bank accounts or securities portfolios. Such perceptions have influenced legal proceedings concerning the foundations, particularly regarding the challenges of asset transfers intended to evade creditors.

Switzerland also generally recognises Liechtenstein foundations, even those making discretionary distributions to beneficiaries, which would be prohibited under Swiss law due to the prohibition of family endowments. However, the Swiss Federal Court has ruled that the interest of heirs in information about possible payments to Liechtenstein foundations prevails over the foundation's interest in confidentiality.

At the European and EEA levels, the freedom of capital movement within the EEA, which includes Liechtenstein, facilitates the acquisition of property and company shares by EEA citizens and companies across Member States. Liechtenstein foundations are generally able to acquire assets throughout the European Union and EEA area. Nonetheless, national laws that impose different tax treatments based on the company's statutory seat within or outside the EU/EEA can affect Liechtenstein entities, potentially leading to justified discrimination under certain circumstances.

In the US, Liechtenstein foundations are recognised as separate legal personalities and are not classified as trusts. However, for US tax purposes, they are treated similarly to trusts, highlighting the distinction in treatment between civil and tax law perspectives.

IV. Taxation

Liechtenstein's tax law, enacted on 23 September 2010, represents a comprehensive revision and significant update of the 1961 tax legislation. This evolution reflects both the principality's response to international tax developments and its internal policy shifts. Despite minimal changes from 1961 to 2010, recent years have seen substantial amendments driven by global trends, anti-abuse measures and the need for clarification in tax matters. These adaptations underscore Liechtenstein's commitment to maintaining a competitive yet compliant tax regime.

The tax revenue overview for the years 1990 to 2018 highlights the economic and legislative transformations within Liechtenstein, notably the abolition of certain taxes following the 2011 tax law overhaul. This period also witnessed the successful integration of specific corporate taxes into the general corporate income tax, illustrating the principality's fiscal strategy's effectiveness. Moreover, Liechtenstein's tax revenue composition is uniquely influenced by its

customs treaty with Switzerland, with over 35 per cent of tax revenue derived from Swiss legislation, underscoring the interconnectedness of the two countries' fiscal policies.

Liechtenstein's legal and administrative tax framework is characterised by its conciseness and clarity, complemented by a practical approach to legislation interpretation through guidelines and directives from the tax authorities. This setup not only facilitates understanding and compliance but also highlights the challenges and discussions prevalent in tax advisory services, particularly regarding the interpretation and application of tax laws.

The principality's engagement with international tax initiatives, such as the base erosion and profit shifting (BEPS) project by the Organisation for Economic Co-operation and Development (OECD) and G20, along with its adherence to EU directives aimed at preventing tax avoidance, reflects Liechtenstein's active participation in shaping a transparent, fair and effective global tax environment. This backdrop provides a nuanced understanding of Liechtenstein's tax landscape, essential for navigating the complexities of international estate planning and tax consultation within the private client advisory context.

A. Domicile and residency

The taxation of individuals in Liechtenstein, specifically regarding asset and income tax, is governed uniformly under paragraph 1 of Article 6 of the Tax Act (TA). Individuals are subject to unlimited tax liability on their worldwide assets and income if they have their domicile or habitual residence in Liechtenstein. The term 'domicile' is legally defined in paragraph 1, letter b of Article 2 of the TA as the place where a person stays with the intention of permanent residence. Ownership of a dwelling is not a prerequisite for establishing a domicile; it suffices if the dwelling is rented or made available free of charge. Conversely, a dwelling in Liechtenstein owned but offered for rent does not establish a domicile, as it lacks the element of permanent residence. The presence of multiple domiciles is permissible under this definition.

In Liechtenstein, habitual residence, as another criterion for unlimited tax liability, is determined by a stay exceeding six months, considering the intent to return repeatedly to a specific location. Short interruptions for vacations or business trips are not included in the calculation of this period.

Limited tax liability applies to natural persons who neither have their domicile nor habitual residence in Liechtenstein, being taxed only on their domestic assets and income. Domestic assets include real estate and business establishments located within the country, with domestic income defined as earnings from agricultural and forestry activities on domestic land; income from domestic business establishments; income from employment within the country; and other specified sources.

The commencement and termination of tax liability are detailed in Article 7 of the TA, beginning with the establishment of domicile or habitual residence in Liechtenstein, or the acquisition of domestic assets or income, and ending with the individual's death or relocation abroad for those with unlimited tax liability. Limited tax liability concludes with the disposal of domestic assets or cessation of domestic income.

Paragraph 1 of Article 4 of the TA outlines specific exemptions from tax liability, including the Hereditary Prince, the princely domain and foundations serving the sovereign's duties, reflecting the absence of state funding for the sovereign's official functions. This provision also extends tax exemptions to the country, municipalities, their funds, associations and non-commercial public enterprises, aligning with EEA requirements.

B. *Gift, estate and inheritance taxes*

With the comprehensive revision of the Tax Law on 23 September 2010, Liechtenstein abolished the gift and inheritance tax. In this context, paragraph 2, letter c of Article 15 of the Tax Law stipulates that one-time capital gains in the form of inheritances, legacies and gifts, as well as from the division of marital property, are exempt from income tax.

C. *Taxes on income and capital*

1. Corporate income tax

Under the TA, legal entities are subject to unlimited tax liability according to paragraph 1 of Article 44 if their registered office or the place of their actual management is located in Liechtenstein. This provision encompasses a broad range of legal entities, including corporations, foundations, investment companies and trust enterprises with legal personality. It is important to note that this list is illustrative and not exhaustive, with tax subject status tied to the legal personality as defined by company law.

The place of actual management is defined as the location where the centre of the entrepreneurial senior management is situated. This includes places where strategic management decisions are made that have a determining effect on the company. The Liechtenstein Government has clarified that not every structure administered from Liechtenstein has its actual place of management within the country, especially when the overarching investment strategy is provided externally. Furthermore, a legal entity is also considered to have unlimited tax liability if its registered office is in Liechtenstein, as defined by law, articles of association or similar documents, according to paragraph 1, letter e of Article 2 of the TA.

Limited tax liability, as outlined in paragraph 2 of Article 44 of the TA, applies to legal entities that do not have either their registered office or place of actual management in Liechtenstein but generate domestic income. Such domestic income includes, for example, revenue from the management of agricultural and forestry land, rental and lease income from properties located in the country, and the taxable net income of domestic permanent establishments.

The tax liability for legal entities begins either with the establishment or relocation of their registered office or place of their actual management to Liechtenstein and ends accordingly with liquidation or relocation abroad. For entities with limited tax liability, the obligation begins and ends with the generation or loss of domestic income, or the registration or deletion of the permanent establishment in the commercial register.

The Liechtenstein tax law adheres to the principle of relevance, whereby the taxable net income is determined based on the annual financial statements prepared in accordance with company and partnership law, considering tax adjustments. Following a legal amendment in 2018, only financial statements prepared according to PCA regulations are now permissible for determining taxable income.

Finally, the tax law specifies requirements for the accounting of legal entities, depending on whether they are obliged to maintain proper accounting records under the PCA. Taxable net income comprises the total income reduced by business-related expenses.

2. Personal income tax

Income tax encompasses all monetary and monetary value incomes, including those from agriculture and forestry, independent professional activities, employment and other specified

categories. A notable feature is the standard taxation of assets as income through a deemed return rate, addressing international compatibility while preserving historical tax principles.

The tax-free income principle aims to avoid double taxation, distinguishing between assets subject to asset tax and those subject to income tax, ensuring that an income source is taxed under only one category to prevent simultaneous liability for both taxes.

3. Taxation of the assets of a trust or foundation

In Liechtenstein, the taxation of trusts and foundations is subject to specific regulations under the TA. Legal entities, including corporations, institutions and foundations, are subject to unlimited tax liability on their total income if their registered office or actual administration is located in Liechtenstein. Trusts, while similar in function to foundations, lack legal personality and organisational structure, distinguishing them from other legal entities. As such, they do not fall under the provisions of paragraph 1 of Article 44 of the TA. However, to prevent tax discrimination against foundations and ensure equitable treatment, trusts are taxed under Article 65 of the TA.

Special asset allocations without legal personality, established under domestic law or whose actual administration is in Liechtenstein, are subject to a minimum income tax as per paragraphs 1 and 2 of Article 62 of the TA, without being assessed for tax. This ensures that the taxation of a foundation as a special asset allocation has the same tax consequences as the taxation of a trust. Trusts and special asset allocations are also treated equally in terms of their obligation to declare taxes.

Furthermore, paragraph 2 of Article 65 of the TA specifies that trusts are subject to limited tax liability in Liechtenstein if they generate domestic income as defined in paragraph 2 of Article 44 of the TA, such as rental and lease income from property located in Liechtenstein or the taxable net income of a business establishment located within the country.

For revocable foundations, the transfer of assets to such foundations by a natural person subject to unlimited tax liability in Liechtenstein does not trigger donation tax as the assets are still attributed to the founder and thus subject to wealth tax.

By contrast, for irrevocable foundations with determinable beneficiaries, the introduction of assets by a person subject to unlimited tax liability in Liechtenstein does not incur donation tax if the beneficiaries are domestic as the benefits remain subject to wealth tax.

Lastly, for irrevocable foundations with a discretionary circle of beneficiaries, the introduction of assets by a person subject to unlimited tax liability may result in donation tax if the benefits no longer fall under wealth tax in Liechtenstein.

4. Double taxation treaties

Liechtenstein’s approach to source taxation involves the collection of income and wealth taxes mainly through assessment procedures. For residents, earnings from employment and certain replacement incomes, such as benefits paid by employers under various insurance schemes, are subject to withholding tax according to paragraph 1 of Article 24 of the TA. The Liechtenstein tax authority has set out specific withholding tax rates for residents and non-residents, except where double taxation agreements (DTAs) provide for different arrangements. Notably, students, apprentices and pupils with local residence are exempt from withholding tax on gross income up to CHF 24,000, although their earnings must still be reported.

Employers bear the responsibility for correctly deducting these taxes, with liability extending to any under-deduction, necessitating supplemental payments to the tax authorities, and providing corrected statements to employees. Conversely, over-deductions can be reclaimed by the employee from the tax administration, provided the over-deduction is officially acknowledged.

Entities, particularly private wealth structures, often find their eligibility for treaty benefits limited. Liechtenstein's DTAs with countries like Germany, Austria and Switzerland explicitly state that entities subject solely to minimum income tax are not considered residents for treaty purposes. As a result, these entities cannot benefit from DTA protections.

Furthermore, Liechtenstein has established a detailed overview of maximum allowable foreign withholding taxes for residents, facilitated by its network of bilateral and multilateral agreements, including the EEA Agreement. This framework ensures the equal treatment for Liechtenstein residents in other states under comparable circumstances.

Liechtenstein's comprehensive list of DTAs and tax information exchange agreements demonstrates its global engagement in tax cooperation, offering legal certainty and promoting cross-border investments. The recent paraphrasing of a DTA with Ireland on 21 February 2024 underscores Liechtenstein's commitment to expanding its network of DTAs, enhancing legal certainty for cross-border investments. This agreement incorporates OECD standards and the OECD/G20 BEPS project's requirements, aiming to prevent tax base erosion and profit shifting.

The implementation of the EU Savings Directive, leading to withholding taxes on interest earnings paid to EU residents, showcases Liechtenstein's adherence to international tax standards while maintaining its banking secrecy through the option of voluntary disclosure.

Overall, Liechtenstein's tax treaties and agreements reflect its proactive stance in international tax cooperation, enhancing the principality's attractiveness as a financial centre, and safeguarding against tax evasion and avoidance.