

Liechtenstein – The Location for Asset Protection

The Attraction of Private Asset Structures

Liechtenstein's new tax law has created a tax-privileged institution for asset management and asset protection. Private Asset Structures (PAS, in German PVS), which do not conduct any commercial activity but serve exclusively asset management and asset protection, are only subject to minimum income tax. Furthermore, Liechtenstein waives a tax return for a PAS, thus significantly reducing administration.



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The reform of taxation policy and the total revision of the tax law resulted in a law which complies with the OECD international tax cooperation standards on cross-border tax-information exchange. The tax law was designed to comply with Liechtenstein's membership of the European Economic Area (EEA) and with European law. The special capital duty, originally introduced as privileged taxation for domicile and holding companies, was abolished. The reason for the abolition was the latent risk that this tax could be considered a violation of the EEA agreement, which includes a ban on state aid. However, so

that Liechtenstein does not lose its attraction as a location for asset management, the tax law has created a new instrument for Private Asset Structures (PAS). These asset management structures are only subject to a base tax of currently 1,800 francs per annum and are exempt from regular income tax. Before the introduction of the tax-privileged PAS, Liechtenstein asked the EFTA Surveillance Authority to confirm that such PAS status companies do not constitute a breach of the state aid ban. The requirement of the financial center for internationally competitive taxation on asset-managed structures

was thereby fulfilled. In addition, EEA-compliant taxation contributes to the legal certainty of wealthy individuals who have a part of their assets managed in an independent legal entity and have chosen a private wealth structure model for their investment. However, such legal entities can only qualify as PAS, if they exclusively manage assets for private individuals and do not engage in any commercial activity.

EFTA Surveillance Authority interprets "commercial activity"

Taxation of a PAS, which can be established in the form of a corporation or a private-benefit foundation, is based on the Luxemburg model. In order to clarify the qualification as a PAS, the EFTA Surveillance Authority in its statement has undertaken to interpret "commercially active". Fundamentally, offering goods and services on the open market falls under the auspices of commercial activity. In contrast, the mere acquisition, holding and sale of shares and other tradable papers does not qualify as a commercial activity – however a regularly active trade of such papers does. In its interpretation EFTA does not permit a direct or indirect influence on the administration of an investment company.

Permitted activities of Private Asset Structures

In principal, the activity of a PAS is limited to the passive exercise of ownership of the assets held. The administration and sale of assets which create income

is permitted. Correspondingly, it is also permissible for a PAS to decide on the use of profits gained. Furthermore, exact instructions of the investor can be exercised in as far as these instructions do not lead to a commercial activity. Under the guidelines of the tax administration, a PAS can delegate tasks to an independent third party; however, any incurred fees must be paid directly from the assets of the PAS. On the other hand, according to a decision of the European Court of Justice (ECJ), it is not permissible to derive income from the use of assets held by a PAS.

“Bankable Assets” are permitted for PAS

Contrary to these limited activities, which basically exclude trade and services, the tax law gives a description of permissible PAS “bankable assets”. The acquisition and sale of financial instruments, in accordance with the regulations set out in the asset administration law, and the participation in legal entities as well as acquisition and ownership, the administration and sale of liquid and bankable assets are permitted.

However, there is a limitation: According to the EFTA Surveillance Authority, a regular active trade of financial instruments represents a non-permissible commercial activity. Similarly, law makers have defined the area of loans: The issuing of interest-bearing loans by a PAS is not permitted, whereas interest-free loans to beneficiaries or participators are considered to be a permissible use of profits.

A PAS may invest a part of its assets in property. Thereby, a PAS investor may allocate a designated amount of liquid assets, so that a stipulated property can be acquired. It is also permissible for an investor to transfer proprietorship of a previously owned property to a PAS. Renting or leasing property to third persons is not permitted, because such action is defined as a commercial activity, in which case the PAS would lose its PAS status. The tax laws, however, do foresee that a property can be used for private purposes or let rent-free to a beneficiary or a participator, as this represents a permissible use of profits.

A PAS may, according to the tax law, participate in other companies, e.g.

public limited companies. A PAS may only act within the terms of a private asset administration; consequently, participation is only allowed providing that neither the PAS, a participator nor a beneficiary has any influence on the administration of that company. With respect to public limited companies, this means that a PAS as well as a participator or beneficiary may only be a stockholder; however they may still exercise their unlimited rights as stockholders.

PAS chains comprised of various legal entities

Investors – participators or beneficiaries – of a PAS can be natural persons acting within the framework of administration of their private assets. An asset structure can also act as an investor which represents the interest of one or more individuals in the administration of their private assets. In addition, it is also possible to have an intermediary working on the account of the investors. If required, an additional asset structure can interface between the PAS and the investors, which must act as a legal entity corresponding to the PAS requirements. The tax laws also permit, according to details provided by the tax authorities, “PAS chains”, whereby each PAS in a PAS chain can be a domicile or foreign legal entity.

The use of profits or a transaction for beneficiaries or participators does not fall into the category of prohibited activities. Dividend payments to beneficiaries are also permitted. Furthermore, a PAS can determine the use of profits, either by paying a profit share to beneficiaries or contributions to charitable organisations. The allocation of property without payment or the granting of interest-free loans to beneficiaries is also considered to be profit distribution.

Legal requirement on PAS status

Private-benefit foundations must fulfil various conditions in order to gain PAS status with privileged taxation. These vary depending on whether it is the formation of a new legal entity or the transformation of an existing one. The tax authorities, in the case of a new foundation, demand the statutes of the foundation in addition to confirmation that no commercial activity will be exercised.

Proof is also required that stocks and shares are not publicly offered and are not traded on a stock exchange. The applicant must prove that no recruitment of either participators or investors will be undertaken. The tax authorities also demand a description of the type of assets that are to be held.

If the application for PAS status is for an existing legal entity, then the tax authorities will require, in addition to the statutes, details of the last financial year, including a list of assets, as well as proof that no commercial activity will be undertaken. As with a new foundation, confirmation of shares, stock trading and investors are required, complemented by a description of its actual activities. In the case of participating legal entities, it is necessary to provide documentation on the varying degree of participation, thereby ensuring that the PAS itself is not commercially active and no commercially active units participate in the PAS.

Liechtenstein – An attractive location for private assets

An attractive location is of utmost importance to a finance market offering asset-administered structures. Particular importance is placed on the taxation of such structures. Liechtenstein has created its own category in taxation law for non-commercially active asset-investment structures for natural persons, which are currently only taxed at 1,800 francs per annum.

In implementing international standards, within the terms of a global taxation discussion, Liechtenstein has established itself as a tax location and offers a tax system which is attractive and competitive, internationally recognised and in compliance with European law. Numerous bilateral double-taxation and tax-information-exchange agreements flank the tax system, rendering Liechtenstein a reliable partner to world states and, at the same time, offering international clients an all-important, ever-increasing legal certainty. The simplicity and transparency of taxation are major contributors accompanied by international compatibility and conformity with European law.

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