LIECHTENSTEIN
BANKERS ASSOCIATION

Valid from 1 November 2019 (in the updated version 2019)

Guideline on the due diligence obligations of banks with regard to their customers' tax compliance

I Preamble

1 Striving to protect the reputation of Liechtenstein as a financial and banking centre both at home and abroad,
2 intending to establish uniform and binding standards in dealing with the financial centre's customers on the basis of the Charter of Quality of the International Capital Market Association (ICMA) signed by the Liechtenstein Bankers Association on 17 December 2012,
3 taking into account the indicators of money laundering, organised crime and financing of terrorism listed in Annex 3, Section V of the Due Diligence Ordinance (SPV) as referred to in Article 26(4) SPV, and
4 recognising that the Principality of Liechtenstein has committed itself to automatic exchange of information (AEOI) as the new global standard,

the banks undertake not to deliberately aid and abet any unlawful behaviour on the part of their customers with regard to tax laws, and to keep untaxed assets out of the financial centre of Liechtenstein.

The banks undertake, in particular, to apply risk-based measures to clarify and ensure tax-compliant behaviour by their customers and to accept no assets from new customers on which they know tax has not been or will not be paid.

This Guideline has been issued by the LBA to support this aim and to ensure uniformity of action. The Guideline supports the tax compliance strategy of the Principality of Liechtenstein.

The Guideline does nothing to alter the duty to safeguard the privacy of customers; to fulfil obligations under the Liechtenstein due diligence requirements for combating money laundering, organised crime and the financing of terrorism; or to observe the LBA's Code of Conduct. The obligations of banks under Liechtenstein law always take precedence over the provisions of this Guideline. This applies in particular to the obligation to report suspected money laundering or a suspected predicate offence to money laundering as well as to the reporting obligations under the AEOI Act.

This Guideline is binding and applies to all LBA member banks. It should be regarded as a minimum standard. Member banks are obliged to adopt internal procedures / regulations to implement this Guideline. Branches outside Liechtenstein may not be used to circumvent the rules contained in this Guideline.

II Principles

1. General principles
   It is the responsibility of the account holder or controlling person, rather than that of the banks, to ensure the proper taxation of assets and investment income held and generated at Liechtenstein banks. Account holders and controlling persons are therefore responsible themselves to meet their tax obligations and to comply with the laws and regulations applicable to them. For that reason, banks are in principle entitled to assume that account holders and controlling persons meet their tax obligations and behave in conformity with the law. The banks are not obliged to systematically verify that assets have been duly taxed.

2. Combating behaviour contrary to tax law
   The banks do not deliberately aid and abet any behaviour on the part of their customers that is contrary to tax law. The banks undertake to take appropriate and verifiable measures for this purpose. The applicable legal provisions must be complied with, in particular with regard to the exchange of information in tax matters and the indicators of tax offences (Annex 3, Section V SPV).

3. Cooperation with other financial intermediaries
   Where assets are managed or administered by another regulated financial intermediary, the banks are in principle entitled to assume that these financial intermediaries comply with their due diligence obligations. However, this does not absolve the banks from complying with the obligations that apply to them under this Guideline.

4. Automatic exchange of information (AEOI)
   At the meeting of the Global Forum in Berlin on 29 October 2014, Liechtenstein signed the Multilateral Competent Authority Agreement (MCAA) to introduce AEOI. On the basis of this MCAA, AEOI notifications regarding financial accounts have been and will continue to be made. On 28 October 2015, Liechtenstein signed the Protocol of Amendment to the Agreement on Taxation of Savings Income (Liechtenstein Law Gazette LGBl. 2005 No. 111). This means that effective 1 January 2016, the AEOI agreement between Liechtenstein and the EU entered into force for Liechtenstein.

   Effective 1 January 2016, the AEOI Law on Compliance with and Implementation of the CRS Provisions on AEOI entered into force.

III Dealing with customers

1. Scope

   This chapter applies to all existing business relationships as well as to all acquisitions of business and newly established business relationships of a Liechtenstein bank.

2. Code of conduct pursuant to risk-based approach

   If, in the case of a customer relationship and pursuant to the risk-based approach and/or the existing due diligence obligations under law, the bank identifies a risk of behaviour contrary to tax law, the bank shall carry out all investigations that it believes to be useful and appropriate. For that purpose, the bank may obtain written or verbal information and confirmations from the account holder or other persons. The scope of the investigations depends on the circumstances of the individual case.

   Proof of tax compliance can be furnished by the account holder by signing a declaration of tax compliance in accordance with the template provided by the Liechtenstein Bankers Association; by signing a declaration authorising a reporting procedure under an agreement for tax cooperation between the Principality of Liechtenstein and a third country; by reporting under the provisions of AEOI to the country of domicile of the account holder and controlling person; by submitting a tax opinion of a tax lawyer/tax expert; or other equivalent proof. It must be noted, however, that generalised statements by the contracting party or the beneficial owner(s) are not sufficient where doubts exist regarding tax compliance. If there are indications of facts or conduct which require investigation on the basis of legal provisions, in particular relating to the exchange of information in tax matters and the indicators of tax offences (Annex 3, Section V SPV), such investigations must be carried out on a basis specific to the individual case.

3. Indicators of a situation contrary to tax law

   On the basis of the legally defined indicators of conduct contrary to tax law (Annex 3, Section V SPV) as well as pursuant to the institution-specific, risk-based approach, the banks assess the risk of the business relationship.

   The following indicators, in particular, allow banks to identify an increased risk of dishonest tax behaviour:

   - wish by the account holder or controlling person, without a plausible motive, to deposit assets in cash when opening an account or to carry out regular cash transactions of high value that are inconsistent with the profile of the account holder or controlling person, their economic activity, or the nature of the business relationship;
   - complexity of the desired structures or overall structure involving the legal entity with which the bank has a business relationship, coupled with a lack of

plausible information provided to the bank by the account holder or the controlling person and without any discernible economic purpose;
- no proof of tax conformity provided by the contracting party, even though the contracting party has been requested and reminded to do so by the person subject to due diligence.

As a rule, the individual indicators in isolation do not give rise to any suspicion of a criminal offence. However, the combination of several indicators or the absence of plausible explanations may indicate conduct that is potentially contrary to tax law.

4. Risk-based approach to investigations

Following an institution-specific, risk-based approach, individual circumstances may permit the conclusion that the assets have been disclosed to the competent tax authority and duly taxed. The following circumstances, in particular, may encourage an assessment that there is a reduced risk or no risk at all:
- the account holder and the controlling person have their residence or registered office in Liechtenstein and transfer the assets from another bank;
- according to their self-certification, the tax domiciles of the account holder and the controlling person are only in countries that are deemed AEOI partner countries under the Liechtenstein AEOI Ordinance;
- the account holder makes electronic transfers as the originator under the account holder's own name to banks in the account holder's country of residence or to bank accounts in the country of residence of the controlling person in the name of the controlling person, or the account holder receives transfers under the account holder's own name as the beneficiary from banks with registered offices in that country;
- the account holder declares to the bank that tax has been duly paid on the assets or capital income to be deposited, or that the controlling person has confirmed to the account holder that tax has been duly paid on the assets or capital income to be deposited;
- a report is made to the country of domicile of the account holder or controlling person by virtue of an agreement, or the account holder signs a declaration authorising the bank to forward the name of the account holder and, if applicable, of the controlling person to the competent tax authority, if this is provided for in a bilateral agreement (e.g. the agreement between the Principality of Liechtenstein and the Republic of Austria on tax cooperation);
- the account holder chooses anonymity as provided under the agreement between the Principality of Liechtenstein and the Republic of Austria on tax cooperation, and the taxes are paid in accordance with that agreement;
- the account holder provides a declaration by a tax advisor / tax expert that all tax obligations relating to the assets deposited at the bank have been and will continue to be met.

In these cases, the bank may in principle assume tax compliance without additional proof.

5. Escalation and approval process

Banks regulate escalation and approval processes on the basis of their organisational structure and an institution-specific, risk-based approach.

6. Measures in the event of implausible investigation findings

If the bank's investigations do not result in a plausible finding and if a concrete suspicion therefore arises of conduct that is potentially contrary to tax law, the bank shall decline to establish a business relationship and to receive the assets and shall meet the legal reporting obligations.

7. Closing of a business relationship

Pursuant to the applicable Liechtenstein law, account holders are in principle free to withdraw their assets from Liechtenstein.

Cash closures and cash withdrawals that are equivalent to a cash closure (see Section 8, Cash withdrawals) are in principle not permitted.

Upon the closing of a business relationship, transfers may not be executed if they are intended for a country that is not listed as an AEOI partner country in the Liechtenstein AEOI Ordinance or if they are not intended for the country of domicile of the account holder or controlling person.

Banks may set a *de minimis* limit up to which these principles may be deviated from.

These principles do not apply to transactions made upon the closing of a business relationship where

- the tax domiciles of the account holder (and of all controlling persons in the case of a legal entity) are only in countries deemed AEOI partner countries under the AEOI Ordinance, and no report is made by virtue of the legal provisions relating to an AEOI agreement (e.g. the multilateral AEOI agreement between Liechtenstein and the EU) or solely by virtue of a legal exemption provided in the AEOI Act or Ordinance (e.g. exempt accounts);
- taxation or reporting occurs on the basis of a written declaration by the account holder authorising the bank to forward the name of the account holder and, if applicable, of the controlling person(s) of the business relationship to the competent tax authority or authorities pursuant to a bilateral agreement (e.g. the agreement between the Principality of Liechtenstein and the Republic of Austria on tax cooperation);
- a report is made for this business relationship by virtue of the legal provisions relating to the Foreign Account Tax Compliance Act (FATCA) agreements;
- the account holder has provided proof of tax compliance under this Guideline, or
- the account holder and any controlling persons have their sole tax domicile in Liechtenstein.

8. Cash withdrawals

Cash transactions, i.e. the withdrawal of banknotes or coins or the physical delivery of transferable securities or precious metals, may potentially be used to facilitate tax evasion, tax fraud, and other tax offences. Large cash withdrawals carry the risk for the bank and its employees that they might be accused of aiding or abetting an offence. For the reasons mentioned, large cash withdrawals should in principle be dealt with on a restrictive basis in order to protect the bank and its employees. Account holders should be recommended to transfer money and securities by electronic means.

Cash withdrawals in the amount of more than CHF 100,000 or the equivalent may be approved only if the background to the transaction, the purpose, the necessity and the reasonableness of the cash withdrawal are plausibly explained by the account holder and if the desired cash withdrawal is compatible with the business profile of the account holder. Cash withdrawals in the amount of more than CHF 100,000 or the equivalent are permitted if the bank considers it plausible that

- a cash withdrawal is necessary or appropriate for the purpose stated and
- no tax offence is to be committed or continued by means of the cash withdrawal.

In the case of cash withdrawals in the amount of more than CHF 100,000 or the equivalent, member banks must have special control mechanisms in their internal procedures / regulations as part of their institution-specific, risk-based approach (e.g. dual control, authorisation requirement, etc.).

The applicable due diligence and money laundering provisions must be complied with at all times.

IV Implementation

The LBA performs specific inspections for the purposes of implementing this Guideline. These inspections are carried out by the LBA Secretariat. The Secretariat reports to the Board of the LBA and has the following exhaustive authority and tasks:

1 The Secretariat requires member banks to confirm in writing that the requirements set out in this Guideline have been implemented. To the extent that the Guideline has not been implemented or has been implemented only in part, the bank in question must disclose and justify the deviations to the LBA ("comply or explain" principle).

2 If no confirmation is submitted and no justification is provided for its absence or if the confirmation is incomplete, the LBA Secretariat warns the bank in question and sets a new deadline in the near future by which time the bank must submit its confirmation, provide justification for its absence, or complete the confirmation.
If the deadline passes without the above requirements being met, the Secretariat informs the Board of the LBA. After examining the situation, the external auditor of the bank will in general be informed without delay. In cases of minor importance, this step may be waived.

3 The LBA Secretariat is available to member banks on a non-committal basis with regard to questions concerning implementation of this Guideline as well as the enactment of internal procedures/regulations.

V Entry into force

This Guideline enters into force on 1 November 2019, replacing the guideline of the same name dated 1 June 2018. This Guideline must be implemented by 1 February 2020 at the latest.

Vaduz, 30 October 2019