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

Valid from 1 February 2015

PREAMBLE

- 1) In striving to protect the reputation of Liechtenstein as a financial and banking centre both at home and abroad,
- 2) with the intention of establishing 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, and
- 3) in the knowledge that the country of Liechtenstein has committed to Automatic Exchange of information 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 verify and ensure that their existing customers are tax-compliant 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 country 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 and the financing of terrorism, or to observe the LBA's Code of Conduct. The duties of banks under Liechtenstein law always take precedence over the provisions of this guideline. This concerns in particular the obligation to report any suspected case of money laundering or a predicate offence for money laundering.

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 these guidelines.

I. PRINCIPLES

1. General

It is the responsibility of customers rather than that of banks to ensure the proper taxation of assets and investment income held in Liechtenstein banks. Customers are therefore personally responsible for meeting their tax obligations and for complying with the laws and regulations that apply to them. Banks are therefore fundamentally entitled to assume that customers meet their tax obligations and behave in conformity with the law. They are not obliged to systematically verify that assets have been duly taxed. Where necessary, banks will support their customers along the path to being tax-compliant.

The terms "customer", "customer relationship" and "business relationship" refer, unless otherwise stipulated, to the contracting party and/or the beneficial owner, where this is different from the contracting party. Within the context of this guideline, classification as a "new customer" or "new customer relationship" refers to the bank's contractual partner.

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 laws. They undertake to take appropriate and verifiable measures against this. In particular, they undertake to accept no assets from new customers on which they know tax has not been or will not be paid.

3. Cooperation with other financial intermediaries

Where assets are managed or administered by a third-party regulated financial intermediary, the banks are fundamentally entitled to assume that the financial intermediary complies with their due diligence obligations. However, this does not absolve the banks from complying with the obligations that apply to them under this guideline.

II. DEALING WITH NEW CUSTOMERS

1. Scope

This chapter applies to business acquisition and the establishment of business relationships that occur after this guideline has entered into force.

If, in the case of such a business relationship, it should subsequently be suspected that there is an increased risk of behaviour contrary to tax law as per No. 3 of this chapter, investigations as described in No. 4 of this chapter must be conducted and further measures determined on the basis of the financial institution's own risk-based approach and in accordance with the rules specifically applicable in the individual case (related to civil, criminal, tax and regulatory law), particularly as they apply in the customer's country of residence.

New customers who wish to make use of existing special treaty agreements regarding the regularisation of previously undeclared assets (e.g. Liechtenstein Disclosure Facility) are excluded from this chapter.

2. Investigation obligations on the part of the bank

If, in the case of a new customer relationship, the bank recognises an increased risk of behaviour contrary to tax law, the bank will investigate the matter in a manner that it believes to be appropriate and expedient. The bank may seek to do so by obtaining, inter alia, verbal or written information and confirmation from the customer or any other person. The scope of the investigation is determined by the circumstances of the individual case.

3. Increased risk of behaviour contrary to tax law

The criteria listed below provide advice on new customer relationships or planned transactions with an increased risk of behaviour contrary to tax law. Based on these risk factors in the context of business acquisition or the establishment of new customer relationships, banks carry out a risk assessment of the business relationship. In general, individual criteria do not alone constitute sufficient suspicion of dishonest tax behaviour.

The following criteria, in particular, allow banks (depending on their business activity) to identify an increased risk of dishonest tax behaviour:

- evident lack of a legitimate purpose for a transaction or for action on the part of the customer or for a structure;
- the services or products provided by the bank are used for an unlawful purpose;
- the customer wishes, without a plausible motive, to deposit funds in cash when opening the account or to make regular large cash deposits inconsistent with their profile, their economic activity or the nature of the business relationship;
- complexity of the desired structures coupled with lack of plausible information provided by the bank's customer;
- the bank is aware of criminal tax proceedings against the customer or the beneficial owner or of pending legal assistance proceedings with regard to tax matters at the place of residence of the customer or the beneficial owner.

4. Risk-based approach to investigations

Individual circumstances may permit the conclusion that the assets that the customer wishes to transfer to the bank 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 customer is resident in Liechtenstein and transfers the assets from another bank;
- the customer wishes to receive correspondence from the bank or year-end statements of accounts/securities accounts;
- the customer intends to make electronic transfers as principal under his own name to banks in his country of residence or to receive transfers from banks in that country as beneficiary in his own name;
- the customer declares to the bank that tax has been duly paid on the assets or capital receipts to be transferred, or that the beneficial owner has confirmed to them that tax has been duly paid on the assets or capital receipts to be transferred;
- the customer signs a declaration thereby authorising the bank to submit his name and, where appropriate, that of the beneficial owner to the competent tax authority where this is provided for in an agreement such as the Savings Tax Agreement or in bilateral agreements, in the agreement on qualified intermediary status or in the Foreign Account Tax Compliance Act (FATCA);
- the customer chooses to preserve their anonymity in accordance with bilateral agreements on withholding tax and tax is deducted in accordance with the agreement;
- the customer provides a declaration from a tax consultant, stating that the assets held at the bank have been taxed and will continue to be taxed;
- the customer is resident in a country that does not levy income or wealth taxes.

5. Escalation and approval process

Banks regulate escalation and approval processes for new customers on the basis of the structure of their organisation and the bank's own risk-based approach.

6. Measures in the event of implausible investigation findings

If the bank's investigations do not result in a plausible outcome, the bank will decline to establish a business relationship and will reject the transfer of assets.

III. DEALING WITH EXISTING CUSTOMERS

1. Introduction

On 29 October 2014, at the meeting of the Global Forum in Berlin, Liechtenstein signed the Multilateral Competent Authority Agreement (MCAA) on the introduction of Automatic Exchange of Information. Additional concrete implementing agreements will be concluded in future on the basis of the MCAA.

In order to lend force to the commitment made by Liechtenstein and the related obligation to introduce Automatic Exchange of Information and implement the strategy adopted by the financial centre, the banks undertake to take appropriate and transparent measures in the transitional period leading up to the date on which the planned implementing agreements come into force to prevent any business relationships being removed from the reach of the tax authorities of the customer's country of domicile.

Based on current Liechtenstein law, customers remain principally free to decide to withdraw their assets from Liechtenstein both prior to and subsequent to the entry into force of the agreement.

2. Codes of conduct

Each bank regulates the acceptance of new money from existing customers on the basis of its own risk-based approach.

Furthermore, the banks undertake to review the tax compliance of their existing customers using a risk-based approach, especially with a view to the planned implementation of Automatic Exchange of Information on 1 January 2016, and, where applicable, have their tax compliance certified and, if necessary, help their customers to become tax-compliant within a reasonable period.

Tax compliance can be verified by the customer signing a declaration of tax compliance using the template provided by the Liechtenstein Bankers Association, signing a declaration of consent to the disclosure procedure under the EU savings taxation, or submitting a tax opinion from a professional tax advisor or tax attorney or an equivalent form of verification.

Whilst bilateral negotiations or talks are underway and prior to the entry into force of planned or foreseeable implementing agreements between Liechtenstein and another country, neither the bank nor its employees should actively encourage the removal of assets so that they no longer fall within the scope of the planned implementing agreements.

This particularly applies also to any active advice given to affected persons by customer advisers and other employees with respect to transferring assets held at Liechtenstein banks to foreign locations, booking centres or companies within the same group, or to third-party financial institutions abroad.

Furthermore, when terminating business relationships with customers whose tax domicile is in a country with a planned or foreseeable implementation agreement, no transactions may be carried out if it is apparent to the bank and/or to its employees that the purpose of such transactions is to transfer the business relationship without appropriate verification of tax compliance to a country that has not committed to the OECD standard on Automatic Exchange of Information (see OECD list) and thus to remove the assets from the reach of the tax laws of the customer's country of domicile.

Cash withdrawals for the benefit of persons falling within the scope of the planned implementing agreements as a rule must be treated restrictively. Cash withdrawals are never permitted when carrying out a closure instruction relating to the termination of a business relationship for the benefit of persons falling within the scope of the planned implementation agreements; this applies also to cash withdrawals equivalent to closure transactions.

Banks may set a de minimis limit up to which it is permissible for these principles not to be applied.

3. Scope

Based on its knowledge of the status of planned or foreseeable implementing agreements between Liechtenstein and another country, the Board of the LBA will, at its own discretion, determine the countries to which the provisions of this chapter should be applied.

The internal codes of conduct of individual banks should apply from the date on which they are adopted and at least until Automatic Exchange of Information with the relevant other country takes effect.

IV. CASH WITHDRAWALS

1. Introduction

Cash transactions, i.e. the payment of notes or coins or the physical delivery of securities or precious metals, may potentially be used to assist tax evasion, tax fraud or 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 generally be restricted in order to protect the bank and its employees. Customers should be recommended to transfer funds and securities by electronic means.

2. Codes of conduct

Cash withdrawals equivalent to a value of more than CHF 100,000 may be approved only if the background to the transaction, the purpose, necessity and meaningfulness of the cash withdrawal are plausibly explained by the customer and the desired cash withdrawal fits in with the business profile of the customer. Cash withdrawals equivalent to more than CHF 100,000 are permitted if the bank or its employees consider 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 equivalent to more than CHF 100,000, member banks have special control mechanisms in their internal procedures/regulations (e.g. four-eyes principle, authorisation requirement, etc.). The applicable due diligence and money laundering regulations must be complied with at all times.

V. IMPLEMENTATION

The LBA will conduct specific checks for the purposes of implementing this guideline. These checks will be carried out by the LBA secretariat. The secretariat will report to the Board of the LBA and will have the following exhaustive authority and tasks:

1. It will require member banks to confirm in writing that the requirements indicated in this guideline are being implemented. In cases where the guideline is not implemented or is only being implemented in part, the bank in question must disclose and justify its deviation to the LBA ("comply or explain" principle).
2. If no confirmation is submitted and no justification is provided for its absence or the confirmation is incomplete, the secretariat of the LBA will warn the bank in question and will set a new deadline for a short time into the future by which time the bank must submit its confirmation, provide justification for its absence or complete the confirmation.

Should the time limit expire to no avail, the secretariat will inform the Executive Board of the LBA. After checking the facts of the matter, the Board will then generally inform the external auditor of the bank in question without delay. The Board may refrain from doing so in cases of minor importance.

3. The secretariat of the LBA is available to member banks on a non-committal basis with regard to issues concerning the implementation of this guideline, as well as the adoption of internal procedures/regulations.

VI. ENTRY INTO FORCE

This guideline will enter into force on 1 February 2015 and will replace the guideline of the same name dated 27 August 2013. The guideline has to be implemented by 1 April 2015 at the latest.

Vaduz, 21 January 2015