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Guidance Notes

The Private Asset Structure in Liechtenstein

Translation of the Information Sheet on
«Privatvermögensstrukturen» (Private Asset
Structures (PAS)) issued by the Liechtenstein tax
administration office



Preliminary Comments:

The provisions relating to private wealth structures (PAS) are set out in Article 64 of the Law of 23 September 2010 on State and Local Taxes (Tax Act, SteG, LR 640.0) and Articles 37 and 38 of the Ordinance of 21 December 2010 on the Land and local taxes (Tax Ordinance, SteV, LR 640.01).

The EFTA Surveillance Authority has examined these provisions to see whether they comply with the State aid rules under Article 61 of the EEA Agreement and, by decision of 15 February 2011 on Private Asset Structures (EFTA Surveillance Authority Decision of 15 February 2011 on Private Asset Structures No 44/11 / COL, ESA decision) confirming their conformity.

Art. 64 SteG and Art. 37 and 38 SteV are to be applied in the light of this ESA decision.

I. Requirements for private assets

For a legal person to be recognised as a Private Asset Structure (PAS), it must fulfill the following conditions:

1. No economic activity

According to Art. 64 para. 1 let. a SteG a legal entity registered as a PAS is not allowed to perform any economic activity in pursuit of its purpose. This is especially the case if it exclusively acquires, owns, manages and sells financial instruments pursuant to Art. 4 para. 1 let. g of the Law on Asset Management (Vermögensverwaltungsgesetz (VVG)) and participations in legal entities (see point I.7), liquid funds and bank account assets.

The ESA decision contains the following key messages concerning the interpretation of economic activity:

- ❑ Any offer of goods or services on the market constitutes an economic activity (see ESA Decision p.8)
- ❑ The acquisition, holding and sale of shares and other tradable securities does not constitute an economic activity per se (see ESA decision p. 8). While the mere exercise of ownership is permitted, commercial share dealing ("speculative trading") is an economic activity (see ESA decision p. 8);
- ❑ direct or indirect influence on the management of an investment company is not permitted (see ESA decision p.11)
- ❑ the term "economic activity" should be interpreted dynamically, taking into account current and future European case law and other developments in this field (see ESA Decision p.9)

Based on Art. 64 para. 1 let. a SteG and the statements in the ESA decision, a PAS can perform the following activities.



1.1 Area of activity

The activity of the PAS is limited to the mere (passive) exercise of ownership of the assets it holds in the interest of the authorized investors (see point I.2.).

In the context of the mere exercise of ownership, the acquisition, holding (possession), administration and sale of assets is permitted. It is thus possible to generate income from a PAS for investors by exercising ownership of the assets they hold.

It is also permissible for a PAS to make decisions on the appropriation of profits (see point I.1.3) and to implement specific requirements of the investor, if this does not subsequently lead to an economic activity. The PAS can also delegate tasks to independent third parties. The compensation due for this must be paid by the PAS from its own assets (see point I.5).

By contrast, it is inadmissible for a PAS to generate income from the use of its assets (see ECJ decision C-155/94, Wellcome Trust, point 30).

1.2 Type of assets

The nature of the assets is decisive only in so far as certain assets are generally passive in gaining (holding) income, while other assets generate revenue, in particular through their use. With regard to the most important assets of a PAS this means:

a) Bankable assets

The acquisition and disposal of financial instruments pursuant to Art. 4 para. 1 let. g VVG is permissible in the course of the exercise of ownership. The scope of a single transaction alone does not justify any economic activity (see ECJ decision C-155/94, Wellcome Trust, No. 37). However, the ESA decision (p. 8) shows that commercial share dealing (speculative trading) of financial instruments is an economic activity.

The holding of the assets does not constitute an economic activity, as any income such as dividends, interest and similar are obtained only from the passive position as owner of these assets and thus the mere exercise of ownership of the property.

b) Real estate

In the case of real estate, the PAS can only stipulate that parts of the assets are to be invested in real estate, but it can not make the decision in each case as to which property should be acquired. However, if, for example, an investor has provided the PVS with a certain amount of cash and cash equivalents on condition that a specifically designated property is to be acquired, this is just as permissible as the direct transfer of a property formerly held by the investor to a PAS.



In contrast to bankable assets, holding (owning) real estate generally entails income from the use of the property (for example, through letting). As the leasing business thus regularly establishes an economic activity, the continued holding of a property transferred directly by the investor is also inadmissible. However, the holding of real estate remains admissible, in particular in the following cases:

- ❑ The PAS leaves the property free of charge to a beneficiary or shareholder; this represents a permissible use of profits;
- ❑ The PAS uses the property for its own purposes without incurring any revenue.

c) *Loans*

The granting of interest-bearing loans by a PAS is not permitted. By contrast, the granting of interest-free loans to a beneficiary or shareholder constitutes a permissible use of profits (see point I.1.3).

d) *Participations*

The holding of participations is permissible, provided that neither PAS nor its shareholders or beneficiaries (investors) exercise control by directly or indirectly influencing the management of an economically active investment company (see point I.7).

e) *Other assets*

The aforementioned criteria must be applied *mutatis mutandis* to other assets.

1.3 Use of profits and transactions with beneficiaries or shareholders

Decision as to the use of profits do not constitute economic activity, i.e. the making of distributions to beneficiaries. The decision on the use of profits can be made by the PAS itself. It can therefore decide if and how a beneficiaries should receive anything. It may also make donations to non-profit organisations, taking into account its own articles.

It is also permissible, for example, to make a property available to the beneficiaries free of charge as part of the use of profits or to grant interest-free loans to beneficiaries. On the other hand, the lending of a property for a consideration or, if appropriate, only in part interest-bearing loans may not be permitted in relation to beneficiaries or unitholders.

2. Investors of the private wealth structure

Investors (shareholders or beneficiaries) of a PAS can only be (Art. 64 (3) SteG):

- a) a natural person acting in the context of the management of his private assets;
- b) an asset structure that acts solely in the interest of the private assets of one or more natural persons; or
- c) an intermediary acting on behalf of investors in accordance with let. a or b.



Economically active companies can therefore not be investors in a PAS.

According to let. b a different asset structure can be interposed between the PAS and the investors. The intermediate asset structure must also be a legal entity that meets the requirements of a PAS. "PAS chains" are therefore permissible.

The various PAS in the PAS chain may be domestic or foreign legal entities. The prerequisite is that they meet the requirements of Art. 64 SteG. Domestic persons must themselves have the PAS status granted by the tax administration.

3. No advertising for shareholders and investors

The PAS may not advertise to shareholders and investors (Article 64 (1) (c) SteG).

4. No public placement of shares and shares

The shares or units of the PAS may not be publicly placed and may not be traded on a stock exchange (Article 64 (1) (b) SteG).

5. No compensation

A PAS may not receive remuneration or reimbursements from its shareholders, investors or third parties for its activities, i.e. the acquisition, holding (holding), administration and sale of assets (Article 64 (1) (c) SteG). In particular, the receipt of asset management fees by the PAS is thus excluded. The PVS may only earn income from the assets it holds.

6. The Articles

The articles of the PAS must show that they are subject to the restrictions for PAS (Article 64 (1) (d) StG).

In the case of legal entities established on or after 1 March 2011, it must be expressly stated in the articles of incorporation that the legal entity does not engage in any economic activity. Moreover, the articles of incorporation must state that the legal entity is subject to the restrictions set out in Art. 64 SteG. Instead of the reference to Art. 64 SteG, the requirements pursuant to Art. 64 SteG may also be listed.

In the case of legal persons who, before 1 March 2011, prior to the entry into force of the provisions on the PAS and the taxation pursuant to Art. 31 para. 1 let. c and Articles 83 and 84 of the old tax law (dated 1961), the articles of incorporation are not within the meaning of Article 64 (1) let. D SteG. It is sufficient if the articles of these legal entities exclude a commercial operation and these legal persons fulfill the other requirements of Art. 64 SteG, in particular, no exercise of economic activity (Article 158 (8) SteG).



7. No influence on the management of affiliated companies

A PAS may hold participations within the meaning of Art. 64 para. 1 let. a SteG only on the condition that they or their shareholders or beneficiaries (investors) do not exercise control by directly or indirectly influencing the management of these companies (Article 64 (2) SteG).

The PAS, their shareholders or beneficiaries (investors) must limit themselves to the exercise of their share rights in the General Meeting. Representation on the Board of Directors is generally not permitted.

By contrast, controlling an investment company by influencing it is permissible if the investee is not economically active, in particular if it is itself a PAS.

II. Application for the status of a private wealth structure

1. Start-ups

If a legal entity (Applicant), when it is established, applies for a status as a Private Asset Structure (PAS status), it must attach the following documents to the application:

- a) Articles;
- a) Confirmation that:
 - the applicant does not engage in any economic activity;
 - the shares or shares of the applicant are not placed in public and are not traded on a stock exchange and that these are only traded by investors within the meaning of Art. 64 para. 3
 - SteG be held or that only such are favored;
 - the Applicant neither solicits nor solicits reimbursements or reimbursements from those third parties for their activities;
 - the applicant or its shareholders or beneficiaries (investors) exercise no control by direct or indirect influence on the management of the investment company.
- c) Description of the specific planned activity of the applicant, in particular:
 - what types of assets are held;
 - to what extent the decisions on the acquisition and sale of assets are taken by the PAS or to what extent these decisions are transferred to independent third parties.
- d) Statement whether the applicant intends to acquire equity securities representing a shareholding of more than 20%.



2. Existing legal persons

2.1 Legal persons without participations

If, after its establishment, a legal person applies for PAS status, it must enclose with the application the following documents:

- a) Articles;
- b) For the last completed financial year:
 - Applicants who keep an annual financial statement: Annual financial statements of the last completed financial year;
 - Applicants who prepare a statement of assets pursuant to Art. 182b (1) PGR: statement of assets at the end of the last completed financial year;
 - other applicants: specific information on the nature of the income and assets.
- c) Confirmation that:
 - the applicant does not engage in any economic activity;
 - the shares or shares of the applicant have not been publicly placed and are not traded on a stock exchange and that these are only traded by investors within the meaning of Art. 64 Abs. 3 SteG or that only such are favored;
 - The Applicant neither solicits nor solicits reimbursements or reimbursements
- d) description of the specific activity of the applicant, in particular details of:
 - what types of assets are held;
 - to what extent the decisions on the acquisition and sale of assets are taken by the PAS or to what extent these decisions are transferred to independent third parties.
- e) Statement as to whether the applicant intends to acquire equity securities in the future that represent an interest of more than 20%.

2.2 Legal entities with participations

If the applicant holds participations, it must submit the following additional documents in addition to the documents pursuant to point 2.1:

With participation rate up to 20%:

- Confirmation by the applicant that neither they nor their shareholders or beneficiaries (investors) exercise control by directly or indirectly influencing the management of the investee.



With participation of 20% to 50%:

- Confirmation by the applicant that neither she nor her shareholders or beneficiaries (investors) exercise control by direct or indirect influence on the management of the investee;
- Confirmation by the applicant that no members of the administrative body of the applicant or its shareholders or beneficiaries (investors) are represented on the management body of the investee.

Participation rate over 50%:

- Confirmation by the applicant that neither she nor her shareholders or beneficiaries (investors) are in control by direct or indirect influence on the administration of the investment company;
- Confirmation by the applicant that no members of the administrative body of the applicant or its shareholders or beneficiaries (investors) are represented on the management body of the investee;
- Confirmation by the management company of the investment company that it decides independently of the applicant, its shareholders or beneficiaries (investors) and that the applicant limits itself to the exercise of shareholder rights.

The PAS status is granted at the beginning of each new fiscal year (fiscal year). The application for granting the PAS status must be submitted to the tax administration no later than 3 months before the start of the new tax year (fiscal year) (Art. 37 para. 4 SteV).

III. Communication concerning significant changes

Legal persons who have been granted PAS status must notify the tax administration of significant changes. Suletantial changes are in particular:

- Change of business activity;
- Amendment of the Articles of Association;
- Change from non-economic activity to economic activity;
- Change in participation rates (up to 20%, from 20% to 50%, over 50%).

VI. Oversight

The tax administration is responsible for checking that PAS comply with the requirements of Art. 64 SteG. The tax administration may require the verification of compliance with these conditions to third parties, e.g. independent auditors (Article 64 (6) SteG).

In particular, if the tax administration or a third party commissioned by it carries out the audit, they check that the confirmations submitted to the tax administration were correct.

For this purpose, the third party may inspect (Art. 37 para. 3 SteV):

- a) minutes of meetings of the Management Board, the Foundation Council or any other administrative organs of the PAS;



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- b) Public register extracts or corresponding register extracts:
 - 1. of the subsidiaries;
 - 2. the shareholders or beneficiaries (investors);
 - c) documents proving that the shareholders or beneficiaries are investors within the meaning of Article 64 (3) SteG;
 - d) documents showing the activities of the shareholders and the beneficiaries (investors);
 - e) other suitable documents proving compliance with the legal requirements.