

Mr Baker has relevant capital of GBP 48,748,062. His tax rate according to the formula is 23.4%. Thus he has to pay a total tax burden of GBP 11,402,066. Penalties and late payment interest are not owed under this agreement. As was shown in 2.4.4, under normal disclosure Mr Baker would face a tax burden of GBP 13,395,534 or 27.5% of the total assets. Thus the Swiss-UK tax agreement would be cheaper for him.

3.6 Impact on Legal Entities from Liechtenstein

Since the Swiss-UK tax agreement regulates the assets on Swiss accounts, some Liechtenstein entities and foundations or their beneficiaries, shareholder or settlors might also be affected by this agreement, because some of them use Swiss bank accounts. Only tax transparent foundations and structures with fixed beneficiaries without ordinary taxation are affected.⁴⁵⁰ This means that discretionary foundations, which do not have fixed beneficiaries according to the due diligence regulations, are not affected. An important issue is that this discretionary design must be abided by during everyday work.⁴⁵¹

The second group of affected entities are those without an ordinary taxation. The agreement does not provide a definition of ordinary taxation. However, based on the definition of ordinary taxation given in Council Directive 2003/48/EC, Hosp & Langer state that domiciliary companies which are taxed with a fixed tax burden under the former tax regime until 2014 and private asset structures⁴⁵² cannot be seen as ordinarily taxable. The situation appears different for entities and foundations that are ordinarily taxed under the current tax law. They are liable to unlimited tax on their earnings and gains. According to Hosp & Langer, the exclusion of dividends or gains on shareholdings, for example, or the use of the notional capital interest deduction is not harmful. These exclusions are used to avoid double taxation and to ensure financial neutrality between equity and debt.⁴⁵³

In practice, determining whether a foundation is discretionary or not is not as simple as it might sound. Many foundations are designed to be discretionary from a legal point of view if the statutes are taken as evidence. However, it is common for the beneficiary or settlor to ask for a distribution of a certain amount at a certain time and the foundation board often agrees. It is debatable whether such a foundation can be treated as discretionary from a tax perspective.⁴⁵⁴ In addition, some years ago when due diligence became increasingly important, banks asked foundations for details of their beneficiaries. In order to satisfy the banks, many trustees sent information about beneficiaries even when the discre-

⁴⁵⁰ CH-UK Tax Agreement, 2011, art. 2, letter h, sec. 3.

⁴⁵¹ Hosp & Langer, 2012 (1), p. 49.

⁴⁵² Special tax regime under tax act, 2010, Art. 64.

⁴⁵³ Hosp & Langer, 2012 (1), p. 50.

⁴⁵⁴ Liechtensteinische Steuerverwaltung, 2012, p. 3.