Liechtenstein Submission

In Support of the visit by the Independent Expert on foreign debt and human rights
to the Principality of Liechtenstein
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TAX JUSTICE NETWORK

Submission | Country visit by the Independent Expert on foreign debt and human rights to the Principality of Liechtenstein

Introduction

While Liechtenstein has a strong history of financial secrecy and tax havenry, the small yet wealthy nation has professed a newfound commitment to international financial transparency and tax cooperation in recent years. However, a thorough analysis of Liechtenstein's current policies and legal framework show that little has substantially changed from when the nation was listed as an uncooperative tax jurisdiction. The small state has taken the minimal steps required to meet OECD-set international standards, allowing it to maintain an image of compliance, but these OECD standards have proven ineffective and have done little to change the global order of wealthy, mostly OECD member states dominating the tax landscape.

Despite minimal reforms in line with other wealthy nations, Liechtenstein continues to benefit from financial secrecy policies and remains a barrier to international tax reform.

The Principality of Liechtenstein has used its unique governance structure to devise entity, secrecy and tax laws enabling its heads of state, residents, foreign individuals and entities to accumulate wealth at low or zero tax rates.[1] Ultimately this commitment to financial secrecy contributes to the concentration of low-taxed capital in the hands of high net worth individuals and entities, which contributes to increasing income inequality, both within and between countries.[2]

This submission begins with:

- An overview of Liechtenstein's history as a tax haven;
- Its current context regarding transparency and financial secrecy;
- The human rights principles underpinning tax and financial transparency;

and then responds to questions outlined in the call for submissions:

- The specific effects of Liechtenstein's policies, both within Liechtenstein and extra-territorially;

[1] Jan Fichtner, 'The Offshore-intensity Ratio: Identifying the Strongest Magnets for Foreign Capital' (City University London Political Economy Research Centre, 2015), 13, table 4 [Fichtner, 'Capital Magnets'].
[2] Facundo Alvaredo, Lucas Chancel, Thomas Piketty, Emmanuel Saez, and Gabriel Zucman, *World Inequality Report 2018* (Paris: World Inequality Lab, 2018), 40, 65, 67.

- Liechtenstein's position and collaboration with international tax transparency methods, notably the OECD's two-pillar solution and the initiative for a global UN tax convention;
- An evaluation of Liechtenstein's initiatives to combat illicit financial flows;
- A summary of Liechtenstein's positions and performance on the ABCs of tax justice;
- An outline of specific issues of financial secrecy and tax transparency that Liechtenstein should evaluate.

The submission also highlights some suggestions for increased tax and financial transparency that would enable Liechtenstein to comply more fully with tax transparency commitments and fulfil its duty to protect the human rights of its own citizens - and refrain from impeding the human rights of individuals in other states.

Liechtenstein's role in global profit shifting and ranking in key indices

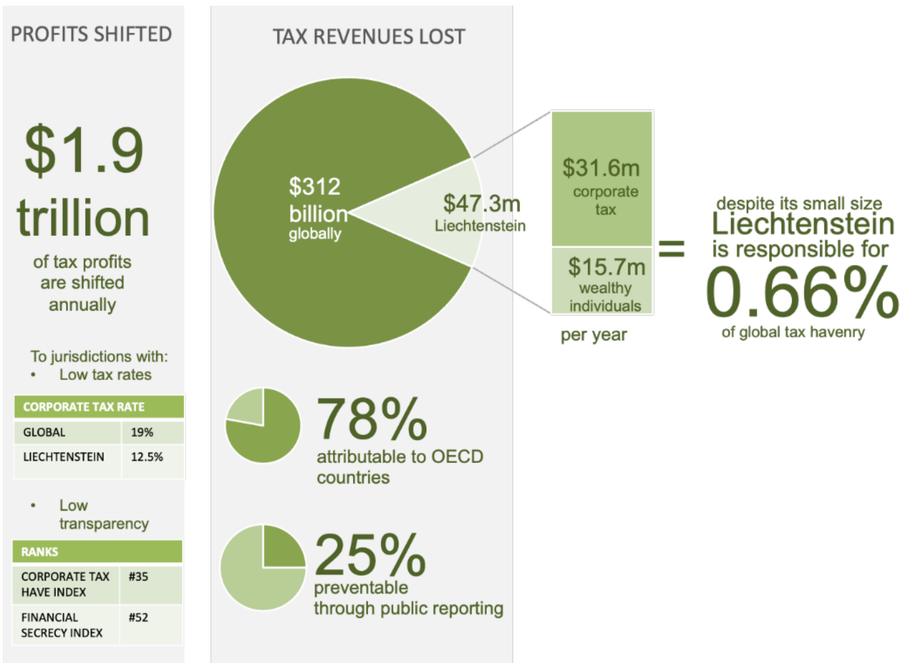

Figure 1: Profit shifting data from the State of Tax Justice 2021[3, 4]

Context

Liechtenstein has a history of strong financial secrecy laws. The small European state was only removed from the European Union's list of non-cooperative tax

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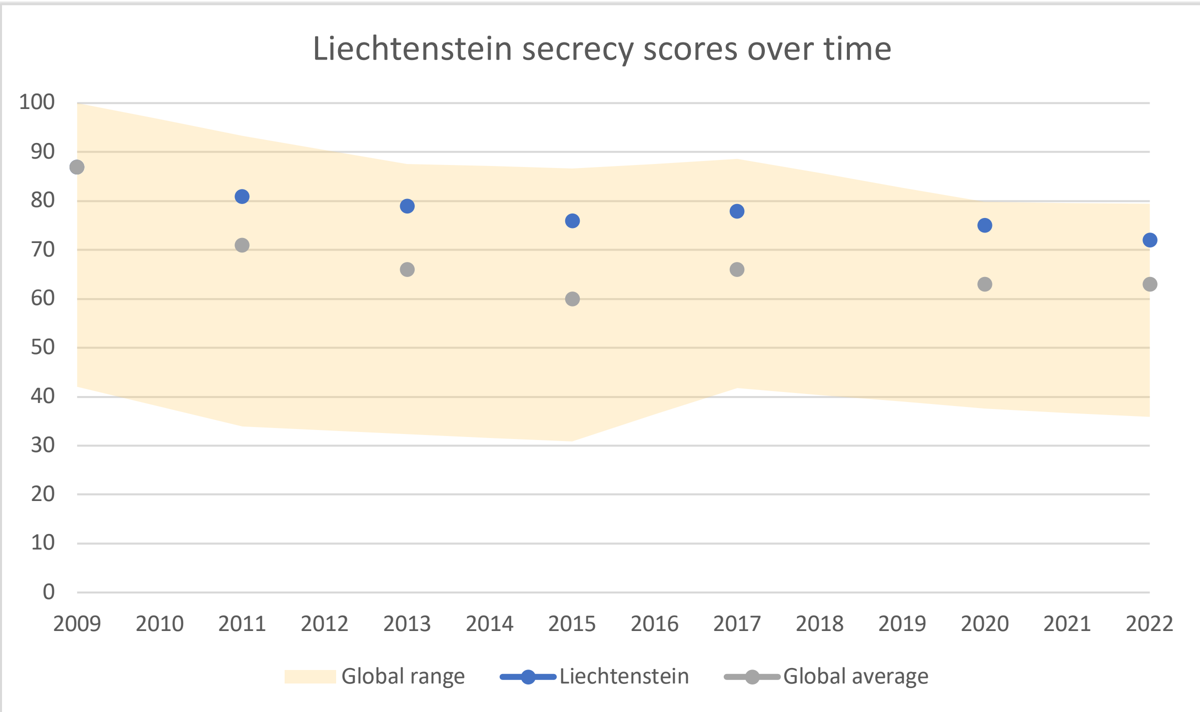
[3] 'Liechtenstein Country Profile', *Tax Justice Network* <https://taxjustice.net/country-profiles/liechtenstein/> [accessed 27 April 2023].
[4] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021* (16 November 2021) <https://taxjustice.net/reports/the-state-of-tax-justice-2021/> [accessed 7 May 2022].

jurisdictions in October of 2018, less than five years ago.[5] Liechtenstein was also listed for several years on the OECD's list of uncooperative tax havens.[6] While it has since been removed from these lists, analysis of its laws and regulations regarding financial secrecy and tax transparency does not show substantive improvement.

Liechtenstein's Secrecy Score of 72 on the Financial Secrecy Index is higher than Switzerland's (the highest level of secrecy is 100). Despite the small size of its economy, as of 2022, it is ranked 54th on the overall Financial Secrecy Index.

(The secrecy score represents how much scope for financial secrecy a jurisdiction's laws allow, with a score of 0 meaning no scope and a score of 100 meaning unrestrained scope. It is calculated by grading a jurisdiction's financial and legal systems against 20 secrecy indicators that cover a range of laws, policies, and practices including banking secrecy, anti-money laundering safeguards, and beneficial ownership registration.[7])



Graph 1. Liechtenstein secrecy scores compared to global range and average

Liechtenstein's secrecy score improved slightly between 2020 and 2022, from 75 to 72, and its ranking improved from 52nd to 54th. However, analysis shows that this marginal improvement does not represent substantial change in the nation's policies..

[5] 'Timeline - EU List of Non-Cooperative Jurisdictions', 2023 <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/timeline-eu-list-of-non-cooperative-jurisdictions/> [accessed 12 April 2023].

[6] 'List of Unco-Operative Tax Havens - OECD' <https://www.oecd.org/ctp/harmful/list-of-unco-operative-tax-havens.htm> [accessed 12 April 2023].

[7] Tax Justice Network, 'Financial Secrecy Index 2022', *Tax Justice Network*, 2022 <https://fsi.taxjustice.net/> [accessed 21 September 2022].

It is evident from graph 1 that Liechtenstein's secrecy score has been consistently higher than the global average and has remained in the upper range of scores since the Financial Secrecy Index was first released in 2009. It has not made any substantive improvements that would represent a significant shift away from financial secrecy, other than following bare minimum global trends.

Liechtenstein's laws have allowed and continue to allow for a high degree of financial secrecy, which in turn facilitates tax abuse, enables money laundering and undermines the human rights of all.[8]

Liechtenstein has some of the lowest business and investment tax rates globally. Globally, the average corporate tax rate is 19 per cent and the highest is 24 per cent - both much higher than Liechtenstein's 12.5 per cent. Personal and consumption tax rates (including VAT) are also much lower than global averages, at a maximum rate of 7.7 per cent.[9] Liechtenstein's low tax rate regime is all the more notable because it has the second highest GDP per capita in the world.[10]

Liechtenstein is classed as an independent semi-democratic state.[11] Constitutionally, state powers are exercised by both the male hereditary Prince Regnant of the Princely House of Liechtenstein and the people. However, the Prince as head of state, is not subject to the courts, has final vetoes over new laws, judicial appointments, and constitutional amendments, can dismiss other governing bodies, and can issue emergency decrees.[12] Although voters could in theory abolish the monarchy, the explicit threat of losing substantial royal assets has likely diminished appetite for doing so.[13]

The governance framework has been used to maintain financial secrecy, to support tax laws that support accumulation of the Princely House's own assets, and to enable it to profit from wealth accumulation by third parties. Legislative amendments can only be effected if the Prince Regnant agrees, or at least does not veto them.[14]

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[8] Tax Justice Network, *Financial Secrecy Index 2022 – Tax Justice Network*, FSI (UK, 18 May 2022) <https://fsi.taxjustice.net/> [accessed 12 August 2022].
[9] PricewaterhouseCoopers, 'Liechtenstein Individual - Other Taxes', *PWC Worldwide Tax Summaries* <https://taxsummaries.pwc.com/liechtenstein/individual/other-taxes> [accessed 14 April 2023].
[10] Tax Justice Network, 'Financial Secrecy Index 2022'.
[11] Anders Wivel, Alyson J.K Bailes and Clive Archer, *Small States and International Security: Europe and Beyond* (London, 2014).
[12] 'Constitution of the Principality of Liechtenstein of 5 October 1921 as Amended, Chapters I, II, VIII, and XI'.
[13] Nick Meo, 'Prince of Liechtenstein Threatens to Leave after Vote on His Powers', *June 30, 2012* <https://www.telegraph.co.uk/news/worldnews/europe/liechtenstein/9366747/Prince-of-Liechtenstein-threatens-to-leave-after-vote-on-his-powers.html/> [accessed 26 April 2023].
[14] Devon Pendleton, 'The Richest Royal in Europe Just Keeps Getting Richer', *Bloomberg*, 26 October 2017 <https://www.bloomberg.com/news/articles/2017-10-26/europe-s-richest-royal-gets-richer-as-family-bank-lures-wealthy> [accessed 26 April 2023].

Human rights principles underpinning tax and financial transparency: Respect, protect and fulfil

Human rights obligations do not begin when human rights have been violated. They start at the root of systems, institutions, cultural norms, and governance.

The ratification of key United Nations human rights treaties and instruments – such as the Universal Declaration of Human Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Convention on Economic, Social, and Cultural Rights; and the Convention on the Elimination of All Forms of Discrimination Against Women – imposes on state parties an obligation to respect, protect, and fulfil the human rights of all.

- The duty to **respect** requires states to abstain from any action that would undermine human rights.
- The duty to **protect** means that states must prevent third parties – such as private businesses, international organisations, or even individuals – from taking actions that would undermine the enjoyment of other's human rights.
- The duty to **fulfil** means that governments must take all possible steps – whether legal, budgetary, administrative or other – to create the conditions necessary for the progressive realisation of human rights.

An effective tax system that allows for the respect, protection, and fulfilment of fundamental human rights must deliver on the "R's" of tax justice and human rights:

- **Revenue** to fund public services;
- **Redistribution** to reverse inequalities;
- **Repricing** to adjust for public harms such as fossil fuel extraction; and
- Political **Representation** by ensuring that states are accountable to the public for delivering on their obligations.[15]
- **Reparations.** Just as tax served as the vehicle for much of the extraction from former colonies, it will ultimately be the source of funds to make good on some of the damage inflicted.[16]

The Obligation to Maximise Available Resources

The obligation to devote maximum available resources for the realisation of economic, social, and cultural rights is enshrined in three important human rights treaties:

[15] Liz Nelson, *Tax Justice & Human Rights: The 4 Rs and the Realisation of Rights* (6 July 2021) <https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/> [accessed 8 September 2021].
[16] 'Tax, Reparations and "Plan B" for the UK's Tax Haven Web', *Tax Justice Network*, 2020 <https://taxjustice.net/2020/06/11/tax-reparations-and-plan-b-for-the-uks-tax-haven-web/> [accessed 27 April 2023].

- **International Covenant on Economic, Social, and Cultural Rights** (Article 2.1): "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the *maximum of its available resources*, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." [17]
- **Convention on the Rights of the Child** (Article 4): "With regard to economic, social and cultural rights, States Parties shall undertake such measures to the *maximum extent of their available resources* and, where needed, within the framework of international co-operation."[18]
- **Convention on the Rights of Persons with Disabilities** (Article 4.2): "With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realisation of these rights, without prejudice."[19]

The practical ability of states to fulfil their human rights obligations under these various international instruments depends on revenue mobilisation and tax collections – which in turn is only possible through national and international tax and financial transparency policies and laws. The inability to collect all taxes that are due results in an inability to fund government programs – and in particular to fund the delivery of governments' obligations to respect, protect and fulfil the various fundamental rights those very governments committed to. Without these there cannot be the fulfilment of human rights obligations or addressing inequality both among and between nations.[20]

This is not only true for the individual country at play. The obligations to respect, protect and fulfil impose a duty of care on states to also assess the impact that their policies and actions have on the ability of other states to fund and deliver on their human rights obligations.

The scale of tax abuse shows no sign of slowing down. The continuing in-country and extraterritorial harm to economic and social rights means that governments are failing in their human rights obligations. Low income countries who have lower levels of tax abuse in real terms, are disproportionately burdened by the consequences.

The State of Tax Justice Report 2021, which uses aggregate country by country reporting published by the OECD, demonstrates that multinational corporations

[17] UN OHRHC, 'OHCHR | International Covenant on Economic, Social and Cultural Rights', *Human Rights OHRHC*, 1976 <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> [accessed 8 September 2021].
[18] UN OHRHC, 'Convention on the Rights of the Child' (1990) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.
[19] UN OHRHC, 'Convention on the Rights of Persons with Disabilities' (2008) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.
[20] Nelson, *Tax Justice & Human Rights*.

are shifting US$1.19 trillion worth of profit into tax havens a year, causing governments around the world to lose US$312 billion a year in direct tax revenue.[21] The loss of these revenues has a direct impact on the various global ongoing human rights failures: debt distress, poverty, the climate crisis, and health insecurity, which are built upon and exacerbated by financial systems that are programmed to benefit wealthy elites, high income countries, and multinational corporations.

To counter these enormous losses, legal and policy frameworks should reflect the fundamental core principles of transparency, accountability, social justice, equality and non-retrogression.[22]

Human rights impact of economic and financial policies in Liechtenstein

Liechtenstein has ratified nine core United Nations human rights treaties, including the International Convention on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child[23] and is currently in the process of ratifying the Convention on the Rights of Persons with Disabilities.[24]

Consequently, there is an obligation on it to respect, protect and fulfil the fundamental human rights of others; and to apply the maximum available resources, by all appropriate means, and through international cooperation. This includes an assessment of government efforts to generate revenue through taxation.[25]

Liechtenstein has historically been recognised as a tax haven and is still considered a nation with a high level of financial secrecy. Financial secrecy facilitates tax abuse, enables money laundering and undermines the human rights of all.[26] A tax system like that of Liechtenstein, that is riddled with financial secrecy and loopholes that permit corporate tax abuse and illicit financial flows, fails demonstrably to deliver on the "5 Rs" of tax and human rights: revenue, redistribution, repricing, political representation, and reparations.

States also have an obligation to devote the maximum available resources to fulfilling human rights obligations. Tax abuse not only results in lost tax revenues,

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[21] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021*.
[22] Dayana Blanco and others, 'Principles for Human Rights in Fiscal Policy', *CESR*, 2021 <https://www.cesr.org/principles-human-rights-fiscal-policy> [accessed 20 June 2021].
[23] 'UN Treaty Body Database - Liechtenstein', *United Nations Human Rights Treaty Bodies* <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=100&Lang=EN> [accessed 26 April 2023].
[24] 'National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21 - Liechtenstein (A/HRC/WG.6/43/LIE/1)' (2023) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/029/24/PDF/G2302924.pdf?OpenElement>.
[25] Committee on Economic, Social and Cultural Rights, 'An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant', 2007. See also: Radhika Balakrishnan et al., 'Maximum Available Resources & Human Rights: Analytical Report', accessed 23 February 2023, https://www.cwgl.rutgers.edu/economic-a-social-rights/380-maximum-available-resources-a-human-rights-analytical-report-.
[26] Tax Justice Network, 'Financial Secrecy Index 2022'.

minimizing the resources available to the state, but also undermines the state's ability to redistribute and reprice, and erodes the trust and accountability required for effective political representation.[27]

Liechtenstein's fiscal policies allow for high levels of secrecy, create significant risks for illicit financial flows, and enable tax abuse. With greater transparency and more comprehensive tax justice policies, Liechtenstein could clearly mobilise more resources for the protection of fundamental human rights and more fully comply with its obligations to protect, respect, and fulfil human rights.

Extra-territorial human rights impact of economic and financial policies, in particular on people in situation of poverty, vulnerability and marginalization.

Liechtenstein's policies of financial secrecy not only affect the 5 "R's" of tax at home but across borders, in direct threat to its extraterritorial human rights obligations.

Just as states have an obligation to raise the maximum available resources for domestic rights protections, states are similarly obligated to not infringe upon the rights of other states to mobilise their own available resources. Available resources are not limited to those available within a state but include those available from the international community via international cooperation and assistance. These duties are outlined in the following international treaties and instruments:

1. **United Nations Charter** (Articles 55 & 56)[28]
2. I**nternational Covenant on Economic, Social, and Cultural Rights** (Articles 2.1 & 11)[29]
3. **Convention on the Rights of the Child** (Article 4)[30]
4. **Convention on the Rights of Persons with Disabilities** (Article 32)[31]

The European Charter on Human Rights provides some guidance in respect of international assistance and cooperation. Article 1 of the Charter arguably implies an intergovernmental obligation to cooperate across borders and to protect human rights extraterritorially, and not just within their own state. Article 2 of the Charter could also be interpreted to require states to take measures to protect individuals, including in other states, from harm.[32]

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[27] Tax Justice Network, 'State of Tax Justice 2022', *Tax Justice Network*, 2022 <https://taxjustice.net/reports/state-of-tax-justice-2022/> [accessed 6 February 2023].
[28] United Nations, 'Charter of the United Nations, "1 UNTS XVI."', 1945 <https://www.un.org/en/about-us/un-charter>.
[29] UN OHRHC, 'International Covenant on Economic, Social and Cultural Rights' (1976) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [accessed 12 December 2020].[29]
[30] UN OHRHC, 'Convention on the Rights of the Child'.
[31] UN OHRHC, 'Convention on the Rights of Persons with Disabilities'.
[32] Council of Europe, *European Convention on Human Rights*, 1950 <https://www.echr.coe.int/documents/convention_eng.pdf> [accessed 19 April 2023].

Liechtenstein's policies enable the loss of $47.3 million USD worth of tax revenue from other countries in one year.[33] This represents a direct loss of revenue for other states, diminishing the resources available for fulfilling human rights within their own borders.

Reforms on fiscal affairs, banking and finance

Information and impact analysis related to the international taxation reforms (Two Pillar solution: Pillar I and Pillar II, UN global tax convention)

International tax rules are set by the OECD both by and for its member countries but – in the absence of another global policy making body – in practice also effectively for all non-member countries. OECD member states are dominated by global north countries and consequently the expression 'the rich countries' club' is often used as shorthand to describe the OECD and its role in establishing a global financial and tax architecture. It is neither representative, nor has a positive impact for low income countries in general, or low and middle income countries in the global south in particular.

Civil society, and in particular the global tax justice movement, has campaigned hard for greater financial transparency and fairness in the rules for taxing multinational companies.[34] In 2013 the OECD was mandated by the G20 to collect and publish country by country reporting data. It was however not until July 2020 that the first set of reporting data was published.[35]

The G20 mandate had three key elements. The first was for the OECD to develop a standard for country by country reporting by multinational corporations, including the collection and timely publication of the data.

The proper execution of the reporting standard and the publication of data was a necessary prerequisite for the effectiveness of the other two elements of the mandate: the development of a global minimum tax rate; and the base erosion and profit shifting project (to develop proposals to bring fairness to international tax rules by reducing the misalignment between where multinational corporations declare their profits and the location of their real economic activity). The impact of the base erosion and profit shifting project has only served to intensify the disparities between global north and global south countries, or more so, between OECD member countries and non-OECD member countries.

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[33] Tax Justice Network. "Liechtenstein Country Profile." Accessed April 27, 2023. <https://taxjustice.net/country-profiles/liechtenstein/>

[34] Alex Cobham, Petr Janský and Markus Meinzer, 'A Half-Century of Resistance to Corporate Disclosure', *Transnational Corporations - Investment and Development*, Special Issue on Investment and International Taxation. Part 2, 25/3 (2018), 160.

[35] OECD, *Corporate Tax Statistics SECOND EDITION*, Corporate Tax Statistics, July 2020 <https://www.oecd.org/tax/taxpolicy/corporate-tax-statistics-second-edition.pdf>.

The available country by country reporting data published in 2020 and 2021 shows no reduction in the scale of profit shifting.[36] A more fundamental criticism levelled at the OECD is the 'concession' engineered into the standard which allows multinational corporations to disclose their country by country reporting privately to tax authorities, instead of disclosing them 'publicly as originally proposed by proponents of the transparency measure; and for only making the data available in an aggregated, anonymised manner.[37]

UN global tax convention

In December 2022 the United Nations marked a historic moment for financial and tax transparency, and the full enjoyment and protection of human rights for all, with the unanimous adoption of the UN resolution on the "Promotion of inclusive and effective international tax cooperation at the United Nations" by all UN member states at the General Assembly.[38]

Support and sponsorship for a more inclusive UN-governed tax cooperation mechanism has emerged from low and middle income countries located primarily in the global south, while opposition to the idea has come largely from global north and high income countries - a group to which Liechtenstein belongs.

While Liechtenstein voted in favour of the resolution at the General Assembly, they did so with reservations and have made several statements and taken actions that seek to weaken the call for change. Liechtenstein supported an amendment that would have significantly weakened the original resolution by seeking to remove the phrase "including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process".[39]

They submitted an explanation of their position after the vote that established that although "[t]he strengthening of international cooperation on taxation matters has been a longstanding priority for Liechtenstein", they believe that current efforts at the OECD have delivered "tangible results in improving international taxation standards" and urge any new efforts from within the UN to "build upon already existing initiatives" and "avoid duplicative processes".[40]

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[36] Sol Picciotto, 'The METR, a Minimum Effective Tax Rate for Multinationals', *Tax Justice Network*, 2021 <https://taxjustice.net/2021/04/15/the-metr-a-minimum-effective-tax-rate-for-multinationals/> [accessed 13 April 2023].
[37] Cobham, Alex, 'Open Letter to G20: OECD Failure to Deliver on G20 Mandates', *Tax Justice Network*, 2022 <https://taxjustice.net/2022/11/15/open-letter-to-g20-oecd-failure-to-deliver-on-g20-mandates/> [accessed 3 February 2023].
[38] Tax Justice Network, '● Live Blog: UN Vote on New Tax Leadership Role', *Tax Justice Network*, 2022 <https://taxjustice.net/2022/11/22/🔴-live-blog-un-vote-on-new-tax-leadership-role/> [accessed 3 February 2023].
[39] 'United States: Amendment to Draft Resolution A/C.2/77/L.11/Rev.1, Promotion of Inclusive and Effective International Tax Cooperation at the United Nations', 2022 <https://www.un.org/en/ga/second/77/docs/A-C2-77-CRP.2.pdf>.
[40] Liechtenstein, 'Explanation of Position (after the Vote): A/C.2/77/L.11/Rev: Promotion of Inclusive and Effective International Tax Cooperation at the United Nations', 2022 <https://estatements.unmeetings.org/estatements/11.0020/20221123/XQ3sy5xSD6sb/CEtd07bwLWsk_en.pdf>.

Since November, they have additionally made a submission to the Secretary General. In their submission, Liechtenstein further reiterated their concerns over the process and made comments at the Economic and Social Council's Special meeting on international cooperation in tax matters to the same effect. In both instances, they reiterated that there are already mechanisms and organisations to address these issues (namely the OECD) and that "it is crucial to avoid any additional uncertainties by creating additional mechanisms. These uncertainties will undermine states' capacities in a wide range of areas which will particularly affect developing countries."[41]

Their concerns over duplicate processes, and their suggestion that there are already mechanisms in place, are both misplaced. The OECD represents a small minority of countries; and its stewardship has been ineffective in curbing illicit financial flows or in securing greater transparency.

The OECD, its members, and its policies are failing - at great cost to the world. In 2021, the Tax Justice Network used OECD country by country reporting data to estimate that $483 billion USD is lost to tax havens every year - with OECD countries being responsible for 78 per cent of that. Liechtenstein alone is responsible for inflicting $31.6 million USD worth of tax losses on other countries through corporate tax abuse and $15.7 million USD through offshore tax abuse by wealthy individuals. Lower income countries lose a disproportionately large portion of their current tax revenues to tax abuse.[42] Estimates also suggest that 1 in every 4 tax dollars lost to corporate tax abuse could have been prevented just by making country by country reporting data publicly available.[43]

Liechtenstein's professed concern for the capacity of "developing countries" seems disingenuous at best. Lower income countries from the global south are the very ones noting that existing mechanisms are exclusionary, lack accountability, and have proven ineffective, if not harmful. The global south does not need Liechtenstein to speak for them and especially not over them.

Existing measures are not doing enough, especially for developing countries who have already dedicated a significant amount of capacity for very little return. The resulting inequities in the global tax system create scope for human rights failures. A UN mechanism that is created and governed on more representative grounds should replace the current ineffective mechanisms. We urge Liechtenstein, especially as a higher income country that has benefitted from financial secrecy policies for decades, to support the creation of an inclusive forum for tax at the United Nations without reservations, and to allow global south countries to speak for themselves in future discussions.

Information on initiatives tackling illicit financial flows, offshore and undeclared wealth or assets in established sectors like banking,

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[41] Liechtenstein, 'Input from Liechtenstein to the Secretary General's Report Requested in Resolution 77/244 of 30 December 2022 Regarding the "Promotion of Inclusive and Effective International Tax Cooperation at the United Nations"', 2023.
[42] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021*.
[43] Tax Justice Network, 'State of Tax Justice 2022'.

investment, financial, asset and wealth management sectors and emerging sectors in the country

Liechtenstein's financial secrecy and lack of transparency create an environment in which illicit financial flows can flourish. In the Fifth Round Mutual Evaluation Report of Liechtenstein, the Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL) determined that Liechtenstein had not fully examined all present threats, which affects their understanding of money laundering risks. These threats include the extent to which Liechtenstein's financial sector is used to launder the proceeds of tax abuse committed abroad, and information on the types and location of non-bankable assets administered by trust and company service providers. The committee further noted that "as an [international financial centre], services and products offered in Liechtenstein could potentially be used to finance terrorism abroad."[44]

Illicit financial flows include all the cross-border movements of monies related to tax avoidance, tax evasion, regulatory abuses, bribery and the theft of state assets, the laundering of the proceeds of crime and the financing of terrorism. They pose one of the greatest modern threats to democracy and public participation.[45] Illicit financial flows are facilitated by laws and policies which allow corporations, wealthy elites, and criminals to circumvent regulatory measures and law enforcement. As such, they present a systemic risk. The existing international financial system facilitates movement of assets and wealth across borders with anonymity and impunity. The overall effect of this opacity reduces the domestic revenue available to states and further risks weakening progressive governance in which human rights can flourish. This curtails available expenditure for the public good by reducing resources for social protections, public services, welfare benefits and the realisation of human rights.[46]

The systems that enable illicit financial flows not only reduce the resources available for governments, but also ensure that powerful elites and corporate entities are unwilling to combat the system that inflates their own offshore bank accounts. The very people with the power to combat illicit financial flows are those who most benefit from ignoring the problem.

Transparency initiatives

Information on financial transparency (automatic exchange of information, beneficial ownership, country-by-country reporting), anti-money

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[44] MONEYVAL, *Fifth Round Mutual Evaluation Report of Liechtenstein*, May 2022 <https://rm.coe.int/moneyval-2022-6-mer-liechtenstein/1680a71000> [accessed 17 April 2023].
[45] Cobham, Alex, 'Target 2030: Illicit Financial Flows', *Elcano Royal Institute*, 2018 <https://www.realinstitutoelcano.org/en/analyses/target-2030-illicit-financial-flows/> [accessed 3 February 2023].
[46] Cobham, Alex, and Petr Janský. Estimating Illicit Financial Flows: A Critical Guide to the Data, Methodologies and Findings, n.d.

laundering/ corruption and anti-tax avoidance laws, accountancy and public participation (freedom of information requests, access to remedy, labour laws etc.)

Automatic exchange of information

Automatic exchange of tax information is critical to overcome the scourge of bank secrecy and prevent cross-border tax evasion. Liechtenstein was an early adoptee, joining over 100 jurisdictions that signed up to the automatic exchange program under the OECD common reporting standard in 2018. While this was a crucial step forward at the time, the original agreement comprised mainly high income countries. As of November 2021, Liechtenstein was automatically exchanging information with 102 jurisdictions[47] out of the 107[48] who had signed multilateral competent authority agreements, which provides the legal framework for the automatic exchange of information according to Common Reporting Standards.[49]

While Liechtenstein in general performs according to OECD criteria, Liechtenstein does not apply either the wider or wider-wider approach.[50] The wider and wider-wider approaches are ways for jurisdictions to go beyond the basic due diligence procedures in the common reporting standard which are designed to collect information on eligible accounts from residents in jurisdictions participating in multilateral competent authority agreements.

The wider approach means that jurisdictions collect information on all non-residents, whether from a participating jurisdiction or not. The wider-wider approach consists of collecting information on all non-residents and also sending information to local authorities, which would allow them to at least publish statistics on total deposits by country of residence.[51] These statistics would enable excluded low-income countries to find out at least how much money in total their residents hold in Liechtenstein financial institutions. Statistics can also be used to measure capital flight and inequality, allow tax authorities to cross-check statistical data against reported tax returns, and enable anti-corruption agencies to check the same with government officials' asset declarations.[52]

Liechtenstein is a small, wealthy nation with the capacity to undertake a wider or wider-wider approach to common reporting standards, and we urge the country to do so.

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[47] Tax Justice Network, 'Financial Secrecy Index 2022'.
[48] Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*, Key Financial Secrecy Indicators (2022) <https://fsi.taxjustice.net/fsi2022/KFSI-18.pdf>.
[49] 'What Is the Multilateral Competent Authority Agreement - OECD' <https://www.oecd.org/tax/transparency/documents/whatisthemultilateralcompetentauthorityagreement.htm> [accessed 17 April 2023].
[50] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=18&id=567>
[51] Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*, 18.
[52] Andres Knobel, 'Statistics on Automatic Exchange of Banking Information and the Right to Hold Authorities (and Banks) to Account', *Tax Justice Network*, 2019 <https://www.taxjustice.net/2019/06/21/statistics-on-automatic-exchange-of-banking-information-and-the-right-to-hold-authorities-and-banks-to-account/> [accessed 7 May 2022].

Liechtenstein is also not engaging in the Global Forum's Pilot Project to partner with a low-income country to assist them in implementing the Common Reporting Standard.[53] The Pilot Program partners a high income country with a low income country to assist them in implementing the common reporting standard and thereby provides a path for low income countries to participate.[54] We urge Liechtenstein to follow the examples of Argentina, Australia and Germany and publish statistics on the total account balance held in their financial institutions (by country of residence) and to consider participating in the pilot project especially given its purported concern regarding the capacities of "developing countries" in complying with international tax compliance mechanisms.[55]

Beneficial ownership

Beneficial ownership is one of the key components in combatting illicit financial flows related to tax evasion, money laundering, corruption, and the financing of terrorism. It involves the identification of "beneficial owners", being the individuals (natural persons) who ultimately control legal vehicles, even when the legal ownership is registered to another person or entity, such as a lawyer or shell company. While transparency of legal ownership information alone is not enough, it is a crucial precursor for transparency of beneficial ownership information, since it determines the first tier of ownership.[56]

Major data leaks - from Lux leaks[57] to the Paradise Papers[58], and most recently the Pandora Papers[59] - reveal how politicians, public officials, and high net worth individuals abuse complex financial structures to pay less tax and highlight the desperate need for better transparency measures.

Liechtenstein has significant risk areas in terms of the ability to identify both legal ownership and beneficial ownership:"

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[53] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=18&id=376>
[54] Global Forum on Transparency and Exchange of Information for Tax Purposes, *Automatic Exchange of Information: A Roadmap for Developing Country Participation*, Final Report to the G20 Development Working Group, 5 August 2014 <http://www.oecd.org/ctp/exchange-of-tax-information/global-forum-AEOI-roadmap-for-developing-countries.pdf> [accessed 3 May 2022].
[55] Liechtenstein, 'Input from Liechtenstein to the Secretary General's Report Requested in Resolution 77/244 of 30 December 2022 Regarding the "Promotion of Inclusive and Effective International Tax Cooperation at the United Nations"'.
[56] Andres Knobel and Florencia Lorenzo, *Beneficial Ownership Registration around the World 2022* (December 2022) <https://taxjustice.net/wp-content/uploads/2022/12/State-of-Play-of-Beneficial-Ownership-2022-Tax-Justice-Network.pdf> [accessed 16 December 2022].
[57] ICIJ. "Luxembourg Leaks: Global Companies' Secrets Exposed." ICIJ (blog), 2014. <https://www.icij.org/investigations/luxembourg-leaks/>
[58] ICIJ. "Paradise Papers: Secrets of the Global Elite," 2017. <https://www.icij.org/investigations/paradise-papers/>
[59] ICIJ. "Pandora Papers: An Offshore Data Tsunami - ICIJ," October 3, 2021. https://www.icij.org/investigations/pandora-papers/about-pandora-papers-leak-dataset/.

- Foundations in Liechtenstein provide comprehensive legal protection of the assets under both domestic and international law.[60, 61] Liechtenstein foundations are therefore often used in global wealth ownership chains by both high net worth individuals and multinational companies to protect assets and capital.[62, 63]
- Despite operating as a civil law jurisdiction, Liechtenstein has also opted to adopt the common law trust structure - an extremely private entity form that can be used to give wide discretion to trustees.[64, 65]
- The *Anstalt* is a unique legal entity similar to a foundation but designed as a one-man entity. This structure is often used for tax evasion purposes and gives legal person status to a natural person, allowing the ownership chain to be obscured and hidden.[66, 67]
- All legal vehicles are not required to register even the bare minimum legal ownership information, with exceptions being made for joint-stock companies and limited partnerships with a share capital.[68]
- Legal ownership information is not required to be updated after a company's incorporation.[69]
- Liechtenstein allows bearer shares (paper documents that giver ownership of a company to whoever has the physical slip of paper in their possession) making it impossible to know who controls the company at any particular moment. While private custodians must keep the bearer shares, there is no

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[60] Treuhand Liechtenstein, 'Asset Protection in Liechtenstein', *LCG Treuhand AG* <https://www.treuhand-liechtenstein.li/en/private-clients/asset-protection/> [accessed 27 April 2023].
[61] Grant Thornton, *Overview of the Liechtenstein Foundation / "Stiftung"* <https://www.grantthornton.ch/globalassets/1.-member-firms/switzerland/insights/pdf/2020/_neuer-kontakt-fuer-ph/uebersicht_ueber_die_liechtensteinische_stiftung_factsheet_en.pdf> [accessed 27 April 2023].
[62] George E. Glos, 'The Analysis of a Tax Haven: The Liechtenstein Anstalt', *The International Lawyer*, 18/4 (1984), 929–55 <https://core.ac.uk/download/pdf/216913236.pdf> [accessed 27 April 2023].
[63] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=2&id=234>
[64] Sebastian Auer and Dominique Marxer, 'The Breach of Trust Doctrine under Liechtenstein Trust Law and Its Impact on the Preservation and Enforcement of Beneficiaries' Rights', *Trusts & Trustees*, 00/0, 1–8 <https://assets.ctfassets.net/wwqh0hdhnyw9/4fJ02lNaxoYtJHELmIGi5p/3eb2a681bcb0438ad1771963268e78b9/ttaa116__1_.pdf> [accessed 27 April 2023].
[65] Kathleen Lahey and others, *State Responsibility for the Impact of Domestic and Extraterritorial Tax Abuse on Women: Liechtenstein - Background Memorandum Submission to the Committee on the Elimination of Discrimination against Women 70th Session* (UK, 7 February 2018) <https://taxjustice.net/reports/liechtenstein-submission-to-committee-on-the-elimination-of-discrimination-against-women/> [accessed 12 April 2022].
[66] Glos, 'The Analysis of a Tax Haven', 929–55.
[67] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=2&id=234>
[68] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=3&id=470>
[69] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=3&id=472>

requirement to register them with a government authority.[70] This is a major threat to transparency and a crucial hurdle in achieving beneficial ownership transparency.

Liechtenstein does not have a public beneficial ownership registry. While there are beneficial ownership reporting requirements to authorities, the lack of robust and updated legal ownership requirements and the existence of bearer shares renders the information available dubious.[71]

Without transparency of legal ownership information, insight into effective beneficial ownership is impossible. At the very least, Liechtenstein should require all legal vehicles to register legal ownership information - with no exceptions.

The public should not have to rely on data leaks, which risk criminalising journalists and other whistle blowers. Making beneficial ownership data public, by making registers available to the public and to journalists, ensures better political accountability.[72]

The Tax Justice Network has created a Roadmap to Effective Beneficial Ownership Transparency (REBOT), which outlines steps and strategies countries can use to achieve effective transparency.[73] We urge Liechtenstein to adopt effective measures to improve its beneficial ownership transparency, to prevent being an attractive destination for illicit financial flows from tax evasion and corruption. For the minimal and most urgent steps forward, Liechtenstein should take immediate steps to:

i. Require all legal vehicles to register legal ownership information - with no exceptions.
ii. Get rid of bearer shares, or at least immobilise them by requiring them to be handed over to a government authority.
iii. Establish a formal, comprehensive beneficial ownership registry with public access.

Country by country reporting

Country by country reporting is an accounting practice specifically designed to expose, and consequently prevent, profit shifting by multinational corporations. It requires multinational corporations to disclose how much profit or loss they make in each country they operate in. This practice is necessary to reveal the misalignment between where their real economic activity takes place, and where profits are declared for tax purposes. The OECD requires this data to be provided to home country tax authorities. However, because of somewhat spurious

[70] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=15&id=172>
[71] Tax Justice Network, 'Financial Secrecy Index 2022'.
[72] Tax Justice Network. "Pandora Papers Shows Transparency Failure Is an Accountability Failure," October 3, 2021. https://taxjustice.net/2021/10/03/pandora-papers-shows-transparency-failure-is-an-accountability-failure/.
[73] Andrés Knobel, *Roadmap to Effective Beneficial Ownership Transparency (REBOT)* (2 July 2023) <https://taxjustice.net/wp-content/uploads/2023/02/Roadmap-to-Effective-Beneficial-Ownership-Transparency-Version-1-2023.pdf> [accessed 8 February 2023].

reciprocity requirements most lower income countries never get access to the data.

Estimates based on aggregated data from the OECD suggest that Liechtenstein receives US$119 million in profit shifted from other jurisdictions - and inflicts US$31.6 million in tax loss on other countries through its facilitation of global corporate tax abuse annually.[74] As a low tax jurisdiction, robust disclosure of aggregated country by country reporting data would expose any corporations that are making use of Liechtenstein as a low tax jurisdiction by shifting profits away from where their real economic activity is located.

While Liechtenstein in principle has country by country reporting to authorities, the information is not public.[75] As long as this information is not fully *public* it will not ensure accountability for either companies or the jurisdictions that facilitate their profit shifting. This is important, because public country by country reporting is more than twice as effective as non-public country by country reporting at deterring cross-border corporate tax abuse.[76] Liechtenstein's legislation on local country by country reporting in theory appears to go beyond the OECD's requirements by triggering local filing even if the parent entity is resident in a non-partnered jurisdiction. Liechtenstein has however indicated that it will limit the practical application of this legislation to be in line with the more restrictive OECD standards and no further.[77] OECD standards have proven ineffective in combatting financial secrecy and corporate tax evasion, and this bare minimum compliance on the part of Liechtenstein is therefore of little consequence.

Cross-border tax abuse not only results in a direct loss of revenue, but also undermines governments' ability to redistribute as they participate in the "race to the bottom," where investors, corporations, and wealthy elites clamour for lower tax rates and more advantageous tax incentives, further damaging the state's capacity to deliver, and eroding public morale and tax compliance. To effectively deliver on human rights obligations and protections, both locally and abroad, Liechtenstein needs to commit to delivering on comprehensive, public, and disaggregated country by country reporting, as a way of deterring cross-border tax abuse.

Issues related to illicit financial flows, national tax structure (including any tax incentives/ exemptions provided to corporates, sectors), accountability and transparency mechanisms in this domain (access to information on financial and fiscal issues with relevant disaggregation and, when possible, periodicity).

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[74] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021.*
[75] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=8&id=318>
[76] Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021.*
[77] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=9&id=419>

Risks presented by Liechtenstein's Corporate Tax Policy and Legal Framework

Liechtenstein offers a corporate income tax rate of 12.5 per cent.[78] This low tax rate, equal to that of Ireland[79] which is itself a notorious secrecy jurisdiction, is aimed purely at attracting foreign investment. In addition, several tax incentives reduce the tax base on which these already low tax rates are applied and there are no anti avoidance provisions. Liechtenstein's regressive provisions include:

- Exempting income from holdings in foreign real estate and capital gains on the sale of shares (Corporate Tax Haven Index, Haven Indicator 5, IDs 524 & 525)[80]
- Offering partial exemptions on foreign and domestic dividends (Corporate Tax Haven Index, Haven Indicator 5, ID 525)[81]
- Fictional or notional interest deductions are allowed, allowing companies with high equity to deduct a fictitious amount of financial costs from its tax base, generally calculated as hypothetical interest expenses that the company would have if it were financed through loans (Corporate Tax Haven Index, Haven Indicator 8, ID 516);[82]
- There are not sufficient robust, publicly available transparency measures for company accounts, tax rulings, extractives contracts, tax avoidance schemes, or tax court rulings (Corporate Tax Haven Index, Haven Indicators 9-14)[83];
- There are no anti-avoidance measures. Generally, jurisdictions that do not limit these practices are hoping to attract profit-shifting activity. (Corporate Tax Haven Index, Haven Indicators 15-19)[84]

Risks presented by Liechtenstein's Financial Secrecy Framework

Aside from the risks highlighted above, other risks which present an extraterritorial risk to the economic and social rights of people in other countries include:

- Penalties for breaching banking secrecy. Liechtenstein imposes criminal sanctions on any individual for disclosing a client's banking data to any

[78] Tax Justice Network, 'Country Profiles: Liechtenstein', Corporate Tax Haven Index 2021, 2021 <https://cthi.taxjustice.net/en/cthi/profiles?country=LI&period=21> [accessed 20 April 2023].
[79] Tax Justice Network, 'Country Profiles: Ireland', *Corporate Tax Haven Index 2021*, 2021 <https://cthi.taxjustice.net/en/cthi/profiles?country=IE&period=21> [accessed 20 April 2023].
[80] Tax Justice Network, 'Corporate Tax Haven Index', 2021 <https://cthi.taxjustice.net/en/> [accessed 8 May 2022].
[81] Tax Justice Network, 'Corporate Tax Haven Index'.
[82] Tax Justice Network, *Haven Indicator 8: Fictional Interest Deduction*, Corporate Tax Haven Indicators (2021) <https://cthi.taxjustice.net/cthi2021/HI-8.pdf> [accessed 18 April 2023].
[83] Tax Justice Network, 'Corporate Tax Haven Index'.
[84] Tax Justice Network, 'Corporate Tax Haven Index'.

third party. Sanctions include prison terms and fines.[85] (This is important to read in the context of high profile cases in other jurisdictions where those who breached banking secrecy laws have borne harsh consequences.)[86] These laws are designed to, and arguably will, deter whistle-blowers from alerting the public to illicit financial flows. (Financial Secrecy Index; Secrecy Indicator 1; ID 360)

- Real estate: there is no central real estate registry in Liechtenstein. Transparency and public access is thwarted by "a sophisticated online interface". Furthermore, administrative requirements for accessing documents are cumbersome and made difficult without language translation.[87] (Financial Secrecy Index; Secrecy Indicator 4; ID 416)
- Public statistics: Several indicators assessed by the Financial Secrecy Index illustrate how the state gives insufficient priority to the timely and freely accessible publication of statistics including data on bilateral trade and data on trade in financial services. This undermines the principle of transparency and of public accountability.[88] (Financial Secrecy Index; Secrecy Indicator 16)
- Companies filing of annual accounts: The submission of annual accounts to a public authority in Liechtenstein are not always required. This undermines transparency and thwarts efforts to assess the incidence of abusive accounting practices.[89] (Financial Secrecy Index; Secrecy Indicator 7; IDs 188, 189, 201)
- Freeports: Bonded warehouses in freeports or free trade zones are known to constitute a risk because they are largely opaque and tend to operate outside of the controls that would normally be exercised by customs and excise agencies. There are indications of warehouses in freeports being abused in Liechtenstein for the storage of high-value assets, rendering them largely invisible.[90] (Financial Secrecy Index; Secrecy Indicator 4; ID 418)

A number of other Tax Justice Network research indicators expose the prevalence of opaque financial practice within Liechtenstein's legal and policy framework. These result in high secrecy scores on issues where the state is failing to provide public transparency. Detailed notes explaining the nature of financial secrecy across all assessed indicators are described in [Liechtenstein's country profile].

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[85] Tax Justice Network, 'Financial Secrecy Index', 2022 <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=1&id=360>
86 Ed Vulliamy, 'Swiss Whistleblower Rudolf Elmer Plans to Hand over Offshore Banking Secrets of the Rich and Famous to WikiLeaks', The Observer, 16 January 2011, section Media <https://www.theguardian.com/media/2011/jan/16/swiss-whistleblower-rudolf-elmer-banks> [accessed 20 April 2023].
87 Tax Justice Network, 'Liechtenstein Country Detail – Financial Secrecy Index'. < https://fsi.taxjustice.net/country-detail/#country=LI&period=22>
[88] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=16>
[89] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=7>
[90] Tax Justice Network, 'Financial Secrecy Index 2022'. <https://fsi.taxjustice.net/country-detail/#country=LI&period=22&indicator=4&id=418>

Please provide any other information, documents or background materials that may be relevant for the mandate.

Tax Justice Network, Liechtenstein country profile

Corporate Tax Haven Index 2021, Liechtenstein profile

Financial Secrecy Index 2022, Liechtenstein profile

Conclusion

Liechtenstein is presented with an important opportunity in 2023. The state can continue to renege on its United Nations human rights obligations or it can progressively embrace principles of transparency and accountability by acting rapidly to dismantle a malignant financial secrecy architecture. Liechtenstein should undertake a thorough evaluation of the impacts that its financial and tax policies have on fundamental human rights both at home and abroad, especially in regards to the most vulnerable populations and take measures to redress retrogressive policies.

Leadership of the Finance Ministers of Africa in 2022 brought forward a UN Resolution for a progressive framework for global taxing rights to be established under the auspices of the United Nations, and countries across the globe are increasingly calling for tax policy paradigms that are transparent, equitable and effective.

The common good that is provisioned by public services – in the access to free health, education, and through the establishment of a social protection floor – has been reaffirmed by the devasting impact of covid, the continuing global economic downturn and by exorbitant debt for the poorest economies. Liechtenstein should support without reservations the initiative for a United Nations global tax convention that would set a comprehensive standard for global tax measures that benefit all nations equally.

These initiatives are a demand for rights and equality, and they leave Liechtenstein and other tax havenry strongholds swimming against a tide of public interest.