



# Ukraine CFC-Taxation and International Solutions

on 14 September 2020

by Dr. Alexander Lindemann



# LINDEMANN RECHTSANWÄLTE

LAW, TAX & AUDIT in ASSET MANAGEMENT



**Dr. Maria Ulmann:**

- ✓ AML & Tax Compliance
- ✓ 6 years of experience in Russia and Switzerland



**Tatiana Zakharova, JD:**

- ✓ Fund Regulation & Contracts
- ✓ 10 years of experience in Russia, USA and Switzerland



**Dr. Maximilian Werkmüller:**

- ✓ Private Wealth & Succession Planning
- ✓ 36 years of experience



**Dr. Oliver Klein:**

- ✓ Real estate & taxation
- ✓ 21 years of experience



**Dr. Alexander Lindemann:**

- ✓ Managing Partner
- ✓ 19 years of experience



**Dr. Ariel Sergio Goekmen-Davidoff:**

- ✓ Wealth Structuring & Risk Management
- ✓ 34 years of experience



**Dr. Sothy Kolmen:**

- ✓ Blockchain & Digital Assets
- ✓ 17 years of experience



**Martin Schweikhart:**

- ✓ Investments & Structured Products
- ✓ 19 years of experience



**Jörg Wenger:**

- ✓ Strategy & Funds distribution
- ✓ 17 years of experience



**Thomas E. Meier:**

- ✓ Private Wealth & Trust Structuring
- ✓ 40 years of experience



**Peter Vrkljan:**

- ✓ Alternative investments & Investor protection
- ✓ 32 years of experience

The firm is specialized on post-Soviet union countries; members of the firm speak English, German, **Russian and Ukrainian**.

Фирма спеціалізується на роботі з постсовєтськими країнами і готова надати Вам консультацію на англійському, німецькому, **російському і українському мові.**



# Friendship Switzerland – Ukraine



29 years of partnership  
Ukraine - Switzerland

- **Switzerland mainly exports** pharmaceuticals, machinery, watchmaking products, precious stones/metals, jewelry, and agricultural products to Ukraine.
- **Imports from Ukraine** consist mainly of precious stones/metals, textiles/clothing, machinery, agricultural products and non-precious metals.



Pictured: President Volodymyr Zelenskyy welcomes Swiss President Sommaruga on state visit to Ukraine on 21 July 2020

- **2015-2018** Swiss Humanitarian Aid budget **around CHF 100 million**
- 2010: **4'843 Ukrainian live permanently** in Switzerland

(Source: Federal Department of Foreign Affairs FDFA)

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# History of bilateral relations



- In **16<sup>th</sup> century** Ukrainians started to study at **Swiss universities in Basel and Geneva** as well as holiday travels. Gf. Gregor Razoumowsky moved 1782 to Lausanne where he was 1783 one of the founders of Société des Sciences Physiques
- In tsarist 19<sup>th</sup> century, the area known as Ukraine today was a popular destination for Swiss travelers. Winegrowers from the French-speaking region of Switzerland founded **Novyi Lancy ('New Lancy')** in the surroundings of **Odessa**, which still exists to this day. In the late 19th century, confectioners from Grisons were rated among the best-known patisseries and cafes in Kyiv, Odessa and Kharkhiv



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# Friendship Switzerland – Ukraine



## Swiss firm in Ukraine

*Lindt* 

MAÎTRE CHOCOLATIER SUISSE  
DEPUIS 1845

  
**syngenta**



**Nestlé**

**ALEGROW**

**CREDIT SUISSE** 

*Davidoff*  
CIGARS



 **SWISS**

## Ukraine firm in Switzerland

UKRAINE  
INTERNATIONAL  
AIRLINES



**MAY**



**Nemiroff**

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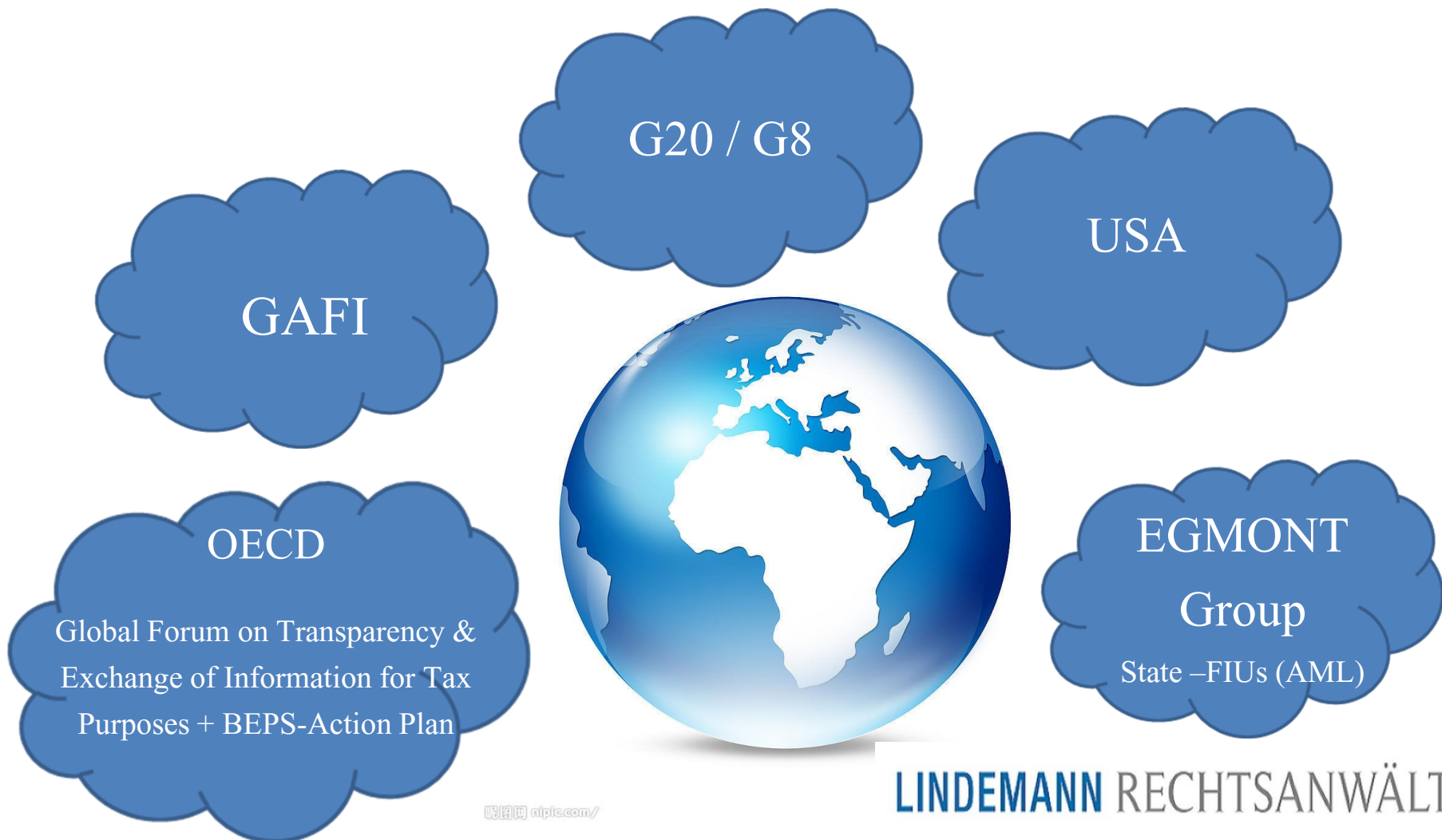
# Agenda



1. International Anti-Money Laundry & Tax Developments
2. Ukraine CFC DRAFT LAW
3. Case Studies
4. What can be done?
5. Your Take Aways



# International Anti-Money Laundry & Tax: Drivers?



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# International Anti-Money -Laundry & Tax: History



- **2013** OECD Action Plan on Base Erosion and Profit Shifting (BEPS): CFC-Laws; Thin-Cap Rules; Transfer Pricing Rules; Automatic Exchange
- **2013** G20 Endorsed CRS for Automatic Exchange of Information
- **2012-16** States implement Tax Fraud as Predicate Offence of Anti Money Laundry («AML»)
- **2012** GAFI – Focus: Tax Fraud & Evasion
- **2001 / 2003** GAFI - Focus: Terrorism Financing
- **1990 / 1996** GAFI - Focus: Drug Traffic





# Ukraine CFC law: process



## Overview

**28 April 2016:** “De-offshorization” Working Group was established by Petro Poroshenk

**6 May 2016:** First Meeting of Working Group and subsequent presentation of Ukraine CFC-Draft-Law\*

**15 November 2016:** Expected day of submission of anti-offshore draft laws to Parliament – not yet

**22 November 2016:** Minister of Finance announced to joining OECD BEPS Action Plan by 1.1.2017

**16 January 2020:** Ukrainian Parliament adopted draft of Anti-BEPS-law

**21 Max 2016:** President signed Anti-BEPS-law

**1 January 2021:** CFC Tax Rules come into force

\*Проект закону України про внесення змін до Податкового кодексу України у зв'язку з прийняттям Закону України «Про податковий суверенітет України та офшорні компанії» внесенний Тимошенко Ю.В.



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# Ukraine CFC law: basics

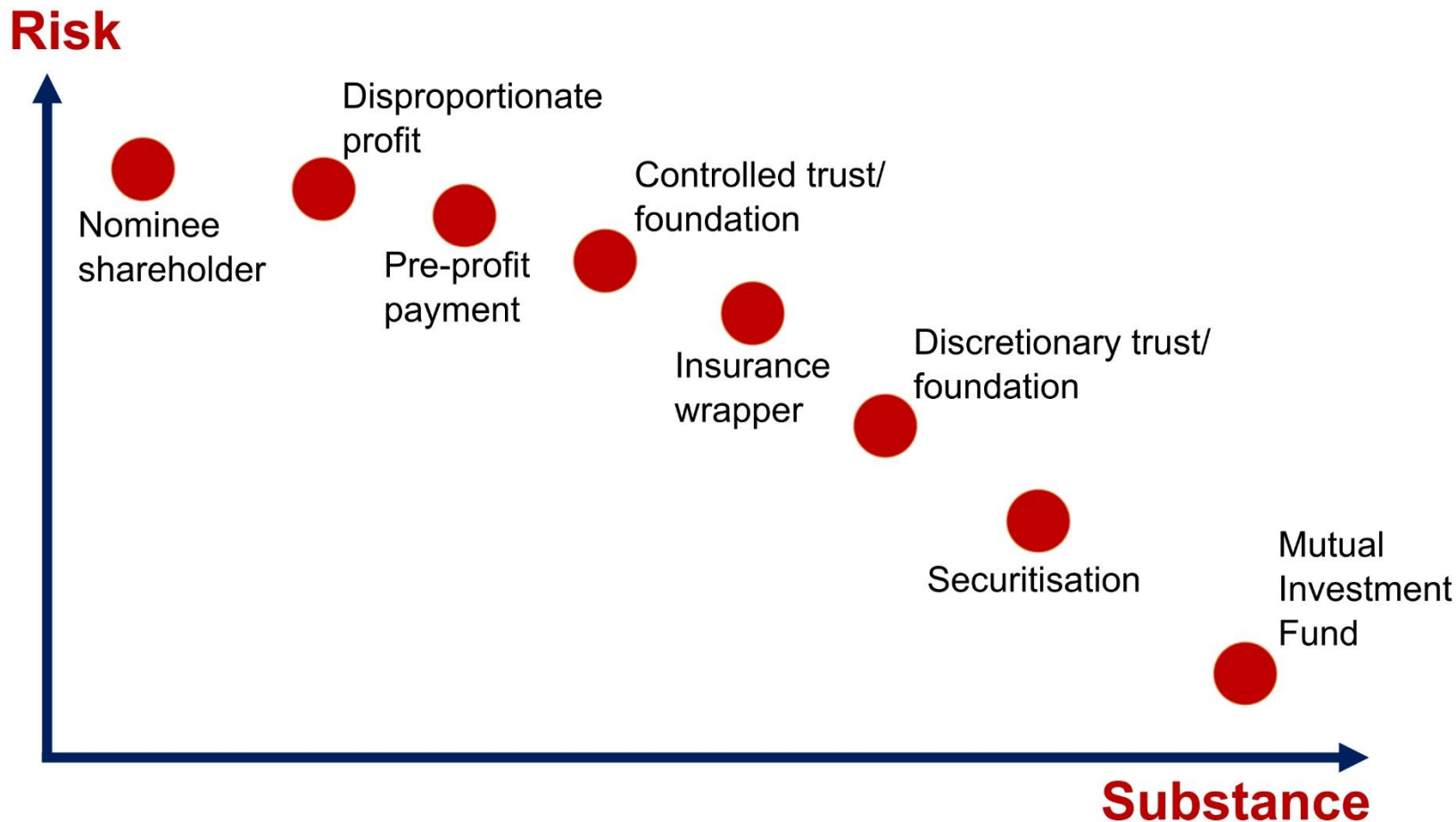


based on draft submitted 16.01.2020

- ✓ **CFC** is a foreign company, including without a legal entity status, trust or partnership, which is under control of a Ukrainian resident (individual or a company).
- ✓ **Controlling person** is a resident of the Ukraine who
  - a) independently holds more than 50% of shares in CFC; or
  - b) Holds more than 25% (10% after 2023) of shares in CFC, provided that together with other Ukrainian residents he/she owns at least 50% of such shares (irrespective of whether these residents are related or not); or
  - c) solely or jointly with other related Ukrainian residents effectively controls a CFC
- ✓ **Disclosure** of CFCs annually, by 1 March (otherwise fine of 100 times the subsistence level + criminal liability), financial statements to be attached
- ✓ **Tax base** calculated as non-distributed profits, with foreign tax paid by CFC being deductible in Ukraine



# How to restructure to be CFC tax compliant?

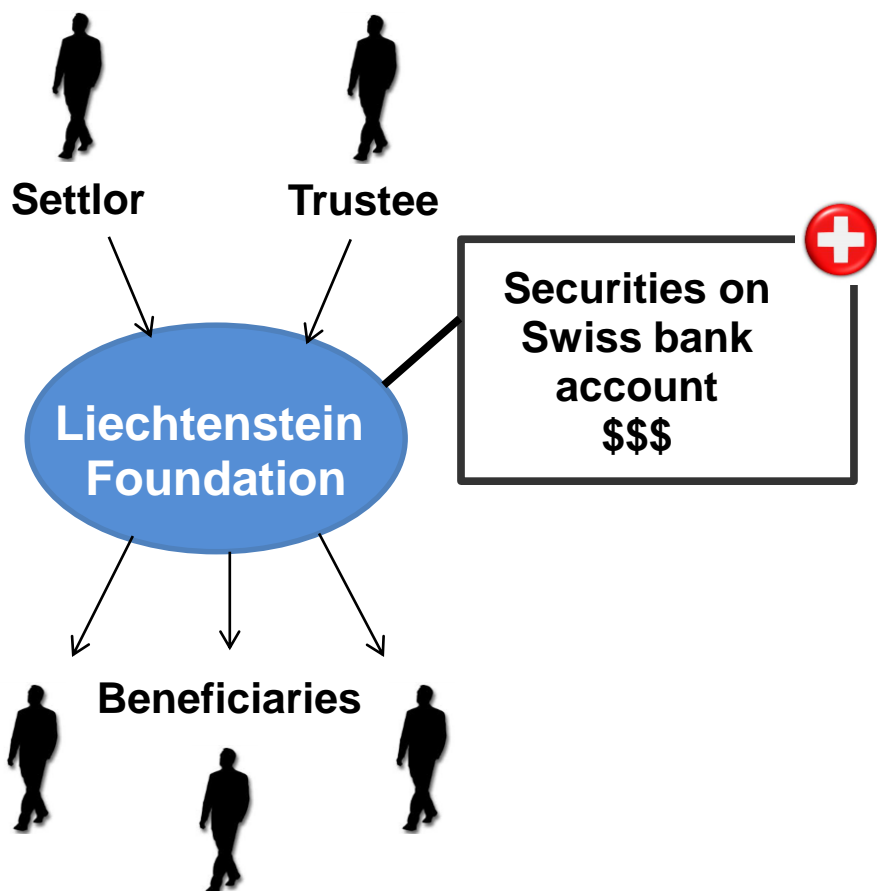




# Case Study 1



## Foundation for 230mio- Oligarch



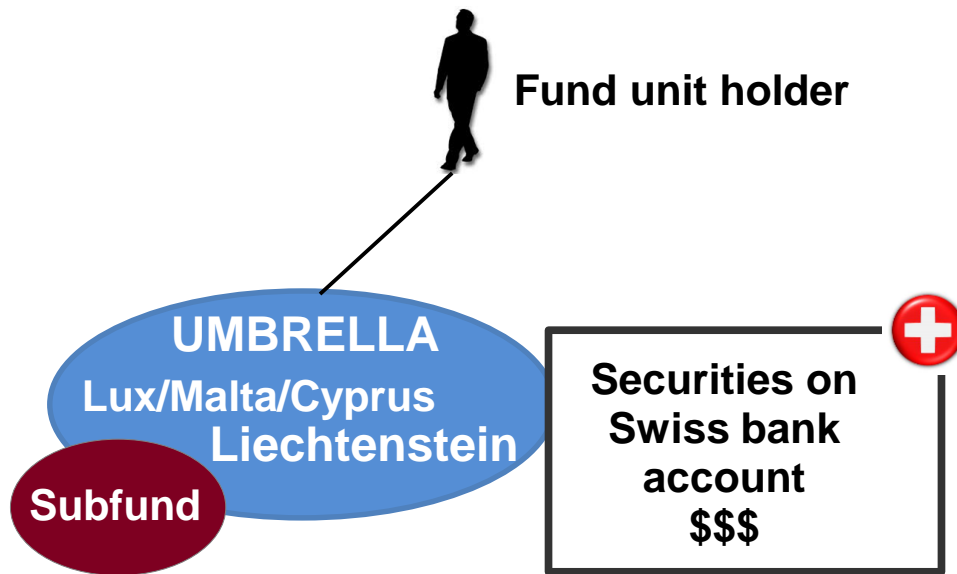
- ✓ Out of scope of Draft-CFC-rules because irrevocable trust & founder has no right to income?
  - ✓ Place of Management in Ukraine?
  - ✓ Control by settlor or beneficiary? Protector?
  - ✓ 20% or 10%/50% - participation?
  - ✓ Reporting of Distributions?
- => Irrevocable and discretionary Foundations may be out of scope for CFC tax



# Case Study 2



## Fund Structure for 2 Entrepreneurs with 65mio



- ✓ Solid corporate governance may prevent “control” by unit holder?
  - ✓ Participation? Above 10%?
  - ✓ Additional safeguard via listing?
  - ✓ Duty to report under CFC-Act?
- ⇒ Fund solutions can be structured to comply with CFC-tax



# Case Study 3:



## Irrevocable & discretionary trust: Injunction against Federal Tax Administration



Alexandre Dumas Head of Tax  
Information Exchange of the Swiss  
Federal Tax Authority  
in Bern (“ESTV”)

1. Ukrainian Client is informed by bank of tax administrative assistance request by country of residence
2. Swiss Tax Authorities issues decree to client that enables filing of tax information
3. Settlor files injunction against Tax-Decree; Settlor is not beneficial owner; In BVGer 18 March 2011 the ESTV decision was Annihilated  
⇒ **According to Swiss court ruling no tax information was allowed to be given on Settlor**

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# What can be done?



- ✓ Closely monitoring this reform's developments
- ✓ Reviewing their current structure
- ✓ Identify alternative solutions
- ✓ Running a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis and building an action plan to address challenges



# Your Take Aways



1. Switzerland & Ukraine since centuries enjoy tradition of exchange & friendship.
2. You are not alone: more then 40 States worldwide apply CFC-taxation
3. There are Solid Solutions to international CFC-law challenges, do your homework in time



# *Many Thanks!*

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