

Fact Sheet

March 2012

UK Agreement & Liechtenstein Disclosure Facility (LDF)

GENERAL INFORMATION

On 11 August 2009, the **Government of Liechtenstein** and the **Government of the United Kingdom of Great Britain and Northern Ireland** signed a Tax Information Exchange Agreement ("**TIEA**"). The TIEA provides for the exchange of information between the tax authorities of the two countries, upon request, in appropriate cases according to criteria established by the Organisation for Economic Co-operation and Development ("**OECD**"). However, the TIEA provides unique protection from the exchange of information until 31 March 2015 for Liechtenstein's clients. This provision has been agreed in order to protect UK taxpayers who are in the process of considering their tax affairs but only applies to assets and interests in Liechtenstein.

On the same date (11 August 2009), the Government of Liechtenstein and the UK Tax Authority, Her Majesty's Revenue & Customs ("**HMRC**") signed a Joint Declaration and a Memorandum of Understanding ("**MoU**").

The MoU sets out the terms of a taxpayer assistance and compliance programme ("**TACP**") in Liechtenstein and a special voluntary disclosure facility in the UK known as the Liechtenstein Disclosure Facility ("**LDF**"), an unparalleled opportunity for eligible persons to put their UK tax affairs in order.

The Joint Declaration sets out the context for the TACP, the LDF and related development opportunities, such as a Double Taxation Agreement which the HMRC and the Government of Liechtenstein initialed on 8 February 2012, the first ever comprehensive convention on taxation of income and capital between Liechtenstein and the UK, based on the 2010 OECD Model.

INFORMATION ABOUT THE LDF

The LDF is a bespoke service to support the reviews to be carried out as part of the TACP by Financial Intermediaries in Liechtenstein to identify those who may have liability to UK tax. The LDF offers those with unpaid UK tax liabilities the possibility to regularise their UK tax affairs both quickly and upon particularly favourable terms providing that they acquire, or already have, appropriate assets in Liechtenstein such as a bank account or other structure. Accordingly, existing clients of Liechtenstein Financial Intermediaries can make use of the special disclosure arrangements as can new clients who establish a "meaningful relationship" with Liechtenstein.

The LDF runs from 1 September 2009 to 5 April 2016.

Who is affected by the agreement between the UK and Liechtenstein?

The agreement affects all persons (individuals or entities) with assets or interests in assets in Liechtenstein who the Financial Intermediary knows or believes are or have been resident in the United Kingdom and therefore may have a liability to UK tax.

Assets in scope are:

Bank or securities (portfolio) accounts, companies, partnerships, foundations, establishments, trusts, trust enterprises or other fiduciary entities, estate and insurance policies issued, formed, founded, settled, incorporated, administered or managed in Liechtenstein, entities that possess assets in Liechtenstein or that were founded, are registered, administered or managed in Liechtenstein, regardless of their domicile.

What does the law require Financial Intermediaries in Liechtenstein to do?

Under the terms of the MoU and related laws in Liechtenstein, Financial Intermediaries are under a legal duty to identify and then formally notify relevant persons with possible UK tax liabilities.

What action does a person have to take when they receive formal notification?

Within 18 months of the date of the notification, the person has to take one of the following actions (see further paragraphs 1.16 to 1.19 of the Frequently Asked Questions ("FAQs") published by HMRC on its website at <http://www.hmrc.gov.uk/disclosure/liechtenstein-disclosure.htm>):

- (1) where a person is **not liable to tax in the UK**, they can return the enclosed "Certification of Tax Compliance" to the Liechtenstein Financial Intermediary, duly completed and signed in original, or another equivalent proof such as written confirmation from an appropriately qualified UK legal, tax or accounting adviser (see paragraph 2(i) below); alternatively, they can register under the LDF and disclose to HMRC directly that they do not have any relevant UK tax liabilities.

Please note that the ownership or occupation of property outside the UK or the establishment or declaration of tax residence and / or domicile in a country other than the UK is not sufficient to determine that a person is not liable to tax in the UK.

- (2) where a person is **compliant with their UK tax obligations**, they can provide the Financial Intermediary with one of the following documents:
 - (i) a written confirmation (or a certified or notarised copy thereof) by a legal, tax or accounting adviser duly qualified in the United Kingdom and admitted to the Law Society, the Institute of Chartered Accountants in England and Wales, or other similar professional body in the United Kingdom that they are compliant with their tax obligations in the UK in respect of the relevant property; or
 - (ii) a certified or notarised copy of the person's tax filing(s), in part or in whole, as filed with HMRC by the taxpayer, provided that such filed copy shows that the relevant property in issue has been declared to HMRC; or
 - (iii) the enclosed "Certification of Tax Compliance", duly completed and signed in original; or
 - (iv) a form identifying the person and evidencing compliance with their tax obligations in the UK in respect of the relevant property, in a format approved by HMRC.

- (3) to **make use of the LDF** and provide the Financial Intermediary with one of the following documents:
- (i) a written confirmation (or a certified or notarised copy thereof) by a legal, tax or accounting adviser duly qualified in the United Kingdom and admitted to the Law Society, the Institute of Chartered Accountants in England and Wales, or other similar professional body in the United Kingdom that the person has submitted an application to disclose the relevant property under the LDF; or
 - (ii) an LDF registration certificate and, after having made a disclosure to HMRC and paid any tax due, an LDF disclosure certificate (each within 30 days of receipt of such certificates issued by HMRC).
- (4) where a person considers that they are not a "relevant person" as defined in the MoU, they should contact the Financial Intermediary immediately for further guidance. There are various reasons why a person may not in fact be a relevant person. However, due to the complexity of UK tax law and depending on the individual situation, it may be necessary in such a case to seek professional advice from a suitably qualified legal, tax or accounting adviser in the UK.

In order to assist you in this process, the Liechtenstein Financial Intermediaries will provide you with a Checklist and standard forms.

Please note that even though there is a period of 18 months from the date of notification within which one of the above steps must be taken, it is important that a person who receives a formal notice responds as soon as possible in order to allow any issues or queries to be resolved in good time.

What if a person fails to provide the Financial Intermediary with the required documents prior to expiry of the 18 month deadline?

Under the terms of the MoU and related laws in Liechtenstein, the Financial Intermediary may be forced to cease providing services in relation to the relevant property within a period of six months from the expiry of that deadline.

Who is eligible to participate in the LDF and can benefit from it?

Both existing clients and new clients who have (a) assets or interests in Liechtenstein which are considered to be "meaningful" for the purposes of the MoU and (b) undeclared UK tax liabilities can use the LDF, providing that they already had an undeclared asset or account overseas as at 1 August 2009.

For persons who are not existing clients in Liechtenstein, assets can be moved from another bank or Financial Intermediary, either in the UK or overseas to be managed by a Liechtenstein Financial Intermediary (e.g. a bank or trustee)

What conditions have to be met in order to qualify for the LDF?

A "meaningful relationship" with a Liechtenstein Financial Intermediary is required at the time that the application to register for the LDF is made. In order to prove that a client has established a meaningful relationship, the Financial Intermediary will issue a "Confirmation of Relevance" to their client so that they can apply for disclosure under the LDF. HMRC will not be able to process registrations without such a Confirmation of Relevance.

What are the benefits of the LDF?

The LDF has been introduced to help UK taxpayers with undeclared tax liabilities relating to assets in Liechtenstein or anywhere else in the world to regularise their tax affairs. By coming forward under the LDF, they will be able to take advantage of a number of special terms:

- the regularisation of undisclosed assets worldwide and all undeclared UK tax liabilities whether relating to those assets or not
- the period of assessment for UK taxes will be restricted to tax years from 6 April 1999 (rather than the normal 20 year period or for an unlimited period in relation to inheritance tax); therefore, income and gains prior to April 1999 will not be subject to UK taxes
- accordingly, no inheritance tax is payable prior to April 1999, which is a significant concession in relation to inherited wealth
- In cases of "innocent error" by individuals, liability to UK tax will be limited to a period of 6 tax years prior to the date of registration.
- a reduced fixed penalty of 10% on any unpaid tax will be payable in respect of the tax years from 6 April 1999 to 5 April 2009 (as opposed to a possible maximum of 200%) with no penalty in the case of "innocent error"
- a favourable penalty regime will apply for subsequent tax years (e.g. 2009/2010 and 2010/2011) which will generally be 20% (or 30% in cases of deliberate and concealed behaviour)
- taxpayers will be given the option:
 - to settle all UK tax liabilities (including inheritance tax, VAT, income tax and capital gains tax) by payment of a 40% composite rate for each tax year until April 2009;

or, if more beneficial:

- to calculate and pay tax according to the actual rates, allowances and deductions applicable in each relevant tax year
- tax already withheld in accordance with the European Union Savings Tax Directive will be credited
- assurance against criminal investigations in cases of full, accurate and unprompted disclosure, provided that the source of the fund is not from "criminal activity" (excluding tax evasion)
- assistance from HMRC with a bespoke service via the "Liechtenstein Desk" providing advice to taxpayers or their advisers relating to the LDF (on an anonymous basis, if required, prior to making a disclosure)
- HMRC will generally accept reasonable offers for the payment of the tax based on estimated liability where actual calculations cannot be performed
- exemption from the "naming and shaming" procedure announced by HMRC in April 2009 for publishing the names of deliberate tax defaulters
- speedy and straightforward processing of applications
- UK tax certainty for future years
- no requirement to repatriate the funds or assets to the UK after the LDF has been completed (or to use them to pay any tax due)

Who can take limited advantage of the LDF?

- UK taxpayers using the LDF will be subject to a higher penalty (but not higher than 20%) where they have been contacted by HMRC following the Offshore Disclosure Facility ("ODF") in 2007 or the New Disclosure Opportunity ("NDO") in 2009
- UK taxpayers can use the LDF but will be subject to significantly higher penalty where they were previously notified of an investigation by HMRC for serious tax fraud or were arrested for a criminal tax offence and knowingly failed to disclose interests in Liechtenstein assets.
- UK taxpayers with a bank account, including a financial (portfolio) account, outside the UK or Liechtenstein which is in their name and was opened through a UK branch or agency of that bank can participate but will not benefit from the key benefits of the LDF (fixed penalty, 10 year limitation period, composite rate)

Who cannot take advantage of the LDF?

- UK taxpayers with no assets or interests in Liechtenstein
- UK taxpayers under investigation by HMRC as at the date of signing the MoU or at a later date when Liechtenstein financial intermediary contacts the taxpayer in order to prove UK tax compliance/exemption
- If a UK taxpayer takes part in this disclosure facility but later decides not to go through with it or refuses to answer further questions from HMRC, they are likely to be subjected to an HMRC investigation. The UK taxpayer will not be able to satisfy or benefit from the conditions of the LDF.

Can clients wait until 2016 to take action?

Although the LDF is available until 5 April 2016, it is important to take action now. There is a misconception that those with undisclosed liabilities will be able to wait until 2016 and submit a disclosure for the ten years prior to that date. It is not a rolling ten-year window; undeclared tax liabilities are payable and are subject to penalties and interest for all tax years from 6 April 1999. As a result, the longer a UK taxpayer waits, the higher the penalties and the greater the interest are payable. In addition, the risk of an investigation by HMRC increases.

If you already have assets or interests in Liechtenstein and you have received a formal notification from a Financial Intermediary, you must observe the timelines mentioned in the notification.

What are the consequences of a participation in the LDF?

UK taxpayer will need to:

1. declare all previously undeclared assets worldwide to HMRC, and
2. pay all relevant tax obligations and the appropriate interest and penalty.

An eligible person who complies fully with his obligations under the LDF will only be liable to UK tax with respect to all previously undisclosed tax liabilities in respect of each successive UK tax year commencing on and after 6 April 1999.

The full terms of the MoU and further FAQs published by HMRC can be viewed online via HMRC's website at:

<http://www.hmrc.gov.uk/disclosure/liechtenstein-disclosure.htm>.

Please note that certain aspects of the TACP and the LDF are revised or updated from time to time. We would therefore recommend that you or your adviser obtain up-to-date information from HMRC's website before making a final decision as to how to proceed.

Disclaimer:

The information published and opinions expressed in this document are for information purposes only and are intended merely to provide a general overview of the agreement between Liechtenstein and the United Kingdom, in particular the Liechtenstein Disclosure Facility (LDF). The information published in this document has been prepared with care; however, we accept no liability for the information provided being up to date, accurate and complete. Nothing published in this document constitutes investment, legal, tax or other advice. For such advice, please consult your own professional advisor. We disclaim, without limitation, all liability for any loss or damage of any kind, including any direct, indirect or consequential damages, which might be incurred through the use of or access to the information published in this document.