Fact Sheet

Update, July 2015

UK Agreement & Liechtenstein global 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**").

On the same date, 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 offers those with unpaid UK tax liabilities the possibility to regularise their UK tax affairs in relation to any previously undeclared or miscalculated income or gains arising in relation to their property or affairs anywhere in the world. The LDF allows individuals, companies or other entities such as trusts to regularise their tax affairs both quickly and upon particularly favourable terms providing that they acquire, or already have, qualifying 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 has been available since 1 September 2009, but ends on 31 December 2015.

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Background

The Liechtenstein Disclosure Facility ("**LDF**") provides the facility for UK taxpayers to voluntarily declare any unpaid liabilities where these are "substantially connected" with overseas assets to HM Revenue & Customs ("**HMRC**"). The benefits include:

- A gaurantee of non-prosecution for previous tax offences ;
- the ability to avoid a civil investigation of fraud process;
- tax liabilities will only be recovered from 1999, rather than the full 20 years that HMRC could seek where there has been deliberate evasion; in other words, no taxes of any sort are payable in relation to periods before 6 April 1999;
- substantially reduced penalties on the tax due (e.g. a fixed penalty of 10% from 6 April 1999 to 5 April 2009) instead of rates that could otherwise be as high as 200%);
- the ability to choose a fixed ‘Composite Rate Option’ or a ‘Single Charge Rate’ rather than calculating the tax according to the actual rates applicable;
- exemption from the "naming and shaming" provisions that HMRC are entitled to use to publically identify deliberate tax defaulterrs;
- speedy and straightforward processing of applications;
- UK tax certainty for future years;
- no requirement to repatriate funds or assets back to the UK after the LDF has been completed;

Who can make a disclosure?

There are a number of conditions that individuals must meet in order to be eligible to participate in the LDF. These include:

- having undeclared tax liabilities relating to an offshore asset or account that was in existence as at 1 September 2009;
- demonstrating that a "meaningful relationship" with a Liechtenstein Financial Intermediary exists at the time of applying to participate in the LDF by obtaining a “Confirmation of Relevance” (‘COR’) issued by the Financial Intermediary.

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The full criteria that must be met to be eligible to participate in the LDF can be found on HMRC's website.

In order to fulfill the requirement of having a "meaningful relationship", assets can be moved from another bank or another Financial Intermediary located outside Liechtenstein, to be booked or managed by a Liechtenstein Financial Intermediary.

HMRC and the Government of Liechtenstein have agreed that **the deadline by which an application to participate in the LDF must be received by HMRC is midnight on 31 December 2015**. An appplication to register must usually be accompanied by a valid COR. However, with effect from 1 December 2015, HMRC will not require sight of a COR at the same time that an application to register is made. Instead, a COR must be submitted and received by HMRC within 30 days of the date of registration. The COR must confirm that a meaningful relationship with a Liechtenstein Intermediary existed at the point in time at which the LDF application was made. Failure to provide the COR within the 30 day period will result in the application to the LDF being rejected by HMRC.

Why make a disclosure now?

Apart from the obvious benefits of participation in the LDF and the fact that the LDF will come to an end on 31 December 2015 (see above), it is highly likely that HMRC will obtain information about any assets or income that you hold overseas if you don't make a voluntary disclosure. In September 2016, HMRC are due to receive information from Financial Institutions in the British Crown Dependencies (Jersey, Guernsey and the Isle of Man) and British Overseas Territories in relation to the beneficial owners of accounts. For the first time, this will include the underlying individuals behind passive investment companies and trust structures. Just 12 months later, HMRC will receive similar details from other jurisdictions who are "early adopters" and will implement the Common Reporting Standard ("**CRS**") which is the new global standard for automatic exchange of account information between revenue authorities around the world.

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What happens if I miss the LDF deadline?

HMRC have confirmed that there will be one final time-limited disclosure facility to run between 2016 and 2017 in advance of the first information being received under the CRS. Further details are awaited in relation to the eligibility criteria that must be met and the terms. **However, it has already been confirmed that these will be considerably less generous and on much tougher terms than is currently available under the terms of the LDF**. In particular, there will be no immunity from prosecution and it is unlikely that individuals who are already under any form of investigation will be allowed to participate. The 1999 cut-off period under the LDF will not apply so undeclared taxes can be claimed up to 20 years back. Penalities will be at least 30% and it is highly unlikely that there will be an option to use the Composite Rate Option (CRO) or the Single Charge Rate (SCR).

Undeclared liabilities are subject to interest which will continue to accumulate over time. Penalties for failing to declare tax are also likely to increase the longer the period that elapses before any disclosure is made.

The UK government is also consulting on the introduction of two potential new criminal offences in the UK:

- a ‘strict liability‘ offence of holding assets or accounts overseas with undeclared offshore income or gains; and
- a new corporate offence of facilitating tax evasion, targeting the entities behind the creation of complex evasion structures.

The UK Government has also announced an additional £4m funding for HMRC to help process the considerable data that it will receive from Financial Institutions around the world under the CRS.

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Furthermore, the UK Government has announced in the Budget in July 2015 some major changes which include:

- abolishing non-domicile status for long term residents;
- inheritance tax on UK residential property of non domiciles, including non-domiciles who are not UK resident; and
- spending over £800m to help combat non compliance and tax ecasion.

For persons or entities who have provided a "Certification of Tax Compliance" to your Liechtenstein Financial Intermediary but, on reflection, are not completely sure that their worldwide income or gains have been duly taxed, it might be wise to consult an adviser in order to properly review all relevant tax affairs, undertake a tax 'health check' before the LDF comes to an end.

Time is running out to take advantage of the beneficial terms of the LDF which will not be available after 31 December 2015 so please take action now.

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

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