

The Liechtenstein Disclosure Facility

On 11 August 2009 the Governments of Liechtenstein and the UK signed an Agreement on Tax Information Exchange ("TIEA"). On the same day the Liechtenstein Government and HMRC signed a Memorandum of Understanding Relating to Cooperation in Tax Matters ("MOU") and a Joint Declaration concerning the MOU. In the MOU, Liechtenstein and HMRC agreed to the introduction of a 5-year 'taxpayer assistance and compliance program'. As part of the programme, Liechtenstein financial intermediaries will be under a duty to identify clients who may have a liability to UK tax and, if a client cannot provide evidence of his or her compliance with UK tax, the financial intermediary will have to cease acting for the client. In return, HMRC has offered a special disclosure facility with reduced penalties ('LDF').

HMRC and Liechtenstein have agreed to continue to consider procedures over the 5-year period, such as fines or retention taxes on property in Liechtenstein to provide incentives and sanctions to encourage disclosure to HMRC, and have entered into a tax information exchange agreement.

The LDF is available to anyone with UK tax liabilities in respect of financial interests in Liechtenstein structures, including bank accounts, companies, trusts and foundations, which are formed, administered, or managed in Liechtenstein.

In most cases a penalty of 10% will be applied (in addition to the unpaid tax and interest) for a period of up to 10 years. The LDF will start from 1 September 2009 and end in March 2015.

The LDF is a more attractive regime than the UK New Disclosure Opportunity ("NDO"):

1. The limitation period is shorter, only 10 years instead of 20
2. There is a longer time in which to notify
3. There is an assurance against criminal prosecution (with some limitation) and confirmation as to how HMRC will tax certain entities

Those who hold assets and/or investments in Liechtenstein as at 1 August 2009 can participate in the LDF from 1 September 2009. The LDF will be available to those who move their investments into Liechtenstein after 1 August 2009 from 1 December 2009. Where a person has an interest in a Liechtenstein entity and other undeclared assets, there may be an advantage to utilising the LDF and the NDO, rather than only the NDO.

HMRC has stated that taxpayers who do not make use of the NDO or LDF will face a penalty of 30% (rising to 100%), and/or possibly criminal prosecution. In light of the TIEA and the fact that HMRC have obtained approval from the courts to issue a 'blanket' information notice, requiring more than 300 UK and foreign banks and financial institutions to disclose information to HMRC their ability to identify taxpayers with offshore accounts has certainly been strengthened.

If you would like any more information or would like to discuss any of the issues raised, please contact:

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