

The Liechtenstein Disclosure Facility

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CATEGORY:

ARTICLE

The global trend towards international tax transparency gathered further momentum on 11 August 2009 following the surprising announcement that the Government of Liechtenstein and the UK tax authority ('HMRC') signed a Memorandum of Understanding relating to cooperation in tax matters. In the Memorandum of Understanding, Liechtenstein and HMRC agreed to the introduction of a 5-year 'taxpayer assistance and compliance program'. As part of the program, 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.

The UK and Liechtenstein have also entered into a tax information exchange agreement.

Scope of the LDF

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

HMRC is expected to issue further guidance before the start of the LDF.

Penalties

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. A person who was contacted in relation to the Offshore Disclosure Facility in 2007 or the New Disclosure Opportunity starting in September this year ('NDO'), will be able to use the LDF, but will have the penalties of the NDO applied. (For details on the NDO, please see our Stop Press dated 28 July 2009, which is available on our website).

HMRC has agreed that a person who makes a full disclosure will not be subject to criminal investigation by HMRC, unless the source of the funds constitutes criminal property (other than from illegal tax evasion).

Timing

The LDF will start from 1 September 2009 and end in March 2015.

Comparison with the NDO

In contrast to the NDO, the LDF offers assurance against criminal prosecution and confirmation as to how HMRC will tax certain entities (e.g. foundations), for the purposes of the LDF only. These factors, in addition to the shorter limitation period of 10 years, make the LDF a more attractive regime under which to disclose and pay UK tax liabilities.

In the light of this fact, 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. HMRC's ability to identify taxpayers with offshore accounts has been strengthened after it succeeded last week in obtaining 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 about clients who have offshore accounts. HMRC is now expected to obtain details of over 500,000 account holders. Furthermore, in its 2009 Budget, the UK Government announced plans to publish (on the internet) a list of taxpayers who have deliberately understated their tax liability and have not taken advantage of an opportunity to make a voluntary disclosure.

Legal professional privilege


We would be happy to coordinate an approach to HMRC under the LDF and/or NDO and the responses to any queries posed by them in conjunction with clients' UK accountants or other professional advisers thereby ensuring that the collation of the information and evidence needed to deal with HMRC is carried out in a manner which preserves legal professional privilege to the fullest extent possible.

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