

# HMRC removes some advantages of voluntary disclosure

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## UK

On 14th August 2014 HMRC announced a number of significant changes to the Liechtenstein Disclosure Facility (LDF) which have removed some of the advantages available to those individuals who still have undisclosed tax liabilities to HMRC. The original purpose of the LDF when it was launched back in 2009 was to allow individuals with assets in Liechtenstein and undisclosed tax liabilities to settle those liabilities with HMRC on exceptionally advantageous terms.

Since 2009, individuals with experienced representation have been able to avail themselves of the favourable terms available under the LDF by acquiring an asset in Liechtenstein and making a disclosure to HMRC of their outstanding tax liabilities arising not only from assets held in Liechtenstein but also from undisclosed assets held elsewhere in the world.

However, under these amendments to the LDF, HMRC has significantly narrowed the availability of some of the most advantageous terms of the LDF. Now, in cases where there is no substantial connection between the liabilities being disclosed and the offshore asset held by the taxpayer on 1st September 2009, or where the matter being disclosed was the subject of an enquiry that began more than three months before the LDF application or in circumstances where there has been no disclosure to HMRC of new information, the advantageous settlement terms under the LDF will not be available to the taxpayer. Furthermore it can't be ruled out that there won't be further revisions to the access criteria or terms before the LDF disclosure facility ends on 5th April 2016. The only good news is that, provided the disclosure is handled properly, a full amnesty from criminal investigation is still available.

In a further development, HMRC has also confirmed that taxpayers who have participated in tax planning involving Employee Benefit Trusts (EBTs) can no longer avail themselves of the LDF. The disguised remuneration rules mean that EBTs, which were used as compensation tools and often hold significant assets offshore, cannot be accessed by the taxpayer beneficiary without incurring large PAYE and NICs liabilities. EBTs have been a bone of contention between taxpayer beneficiaries and HMRC since HMRC issued Spotlight 5, which confirmed that, in HMRC's view, EBT tax planning did not work. This is an issue which has been the subject of prolonged and high profile litigation between the Murray Group and HMRC (the Rangers case), which resulted in a major defeat for HMRC when the Upper Tier Tax Tribunal ruled against HMRC, causing the latter collateral damage to their high profile EBT settlement opportunity (EBTSO).

HMRC has come back fighting, however, by recently announcing that it is to appeal the decision of the Upper Tier Tribunal in the Rangers case and also by announcing that the EBTSO which was launched in April 2011 is to close on 31 March 2015, with an expectation that the settlement process will be concluded by 31 July 2015. This may not give taxpayers time to await the final verdict in the Rangers case before deciding whether to pursue the EBTSO.

The changing of the LDF criteria 'goal posts' and the prolonged litigation in the tax tribunals is very confusing to the ordinary taxpayer, who believes that the payment or non-payment of tax should be a simple question of applying the tax legislation. One thing is certain, however; in this climate a mistake in navigating the tax legislation can be very costly to taxpayers, and it is crucial therefore that the taxpayer obtains expert legal advice before further opportunities are lost.

# Authors

Maurice Martin

OF COUNSEL | LONDON

Private client and tax

 +44 20 7597 6113

 [maurice.martin@withersworldwide.com](mailto:maurice.martin@withersworldwide.com)

Tessa Lorimer

CONSULTANT | LONDON

Private client and tax

 +44 20 7597 6129

 [tessa.lorimer@withersworldwide.com](mailto:tessa.lorimer@withersworldwide.com)