

Law
of 30 June 2010
on Administrative Assistance in Tax Matters with the United Kingdom of
Great Britain and Northern Ireland
(UK TIEA Act)

I hereby grant My consent to the following Resolution adopted by Parliament:

I. General Provisions

Article 1

Purpose

This Act serves to implement:

- a) the Agreement of 11 August 2009 between the Government of the Principality of Liechtenstein and the Government of the United Kingdom of Great Britain and Northern Ireland on Tax Information Exchange (hereinafter "Agreement"); and
- b) the Memorandum of Understanding of 11 August 2009 between the Government of the Principality of Liechtenstein and Her Majesty's Revenue and Customs of the United Kingdom of Great Britain and Northern Ireland Relating to Cooperation in Tax Matters.

Article 2

Scope

This Act governs:

- a) the exchange of information in tax matters between the Principality of Liechtenstein and the United Kingdom;
- b) a time-limited taxpayer assistance and compliance programme.

Article 3

Definitions and terminology

1) For purposes of this Act:

- a) "formally commenced a criminal investigation" means
 - aa) the person in question has been formally notified that a criminal investigation has commenced; or
 - bb) the person in question has been arrested for, or charged with, a criminal tax offence or given a police caution;
- b) "Liechtenstein assets" means bank and financial accounts, companies, partnerships, collective investment funds or schemes, trusts, foundations, establishments, or other legal persons, fiduciary relationships or insurance policies issued, formed, incorporated, administered or managed in Liechtenstein;
- c) "financial intermediary" means a person subject to supervision by Liechtenstein's Financial Market Authority and which provides relevant services to relevant persons;
- d) "person" means a natural or legal person, a company, and any other body of persons;
- e) "relevant person" means:
 - aa) In the case of a natural person: a person who has a beneficial interest in relevant property and
 - 1. who, on 1 August 2009 or at any time thereafter, the financial intermediary knows has had a residential address in the United Kingdom which the financial intermediary is or was accustomed to treat as his principal address; or
 - 2. who, on 1 August 2009 or at any time thereafter, the financial intermediary knows has been resident for tax purposes in the United Kingdom; or

3. for whom, on 1 August 2009 or at any time thereafter, a UK address has been given in a form identifying that person as the "beneficial owner" provided to the financial intermediary under the Due Diligence Act.
- bb) in the case of a legal person: a person which has a beneficial interest in relevant property and
1. has its place of incorporation in the United Kingdom; or
 2. which, on 1 August 2009 or at any time thereafter, the financial intermediary knows has been a resident of the United Kingdom for UK tax purposes;
- f) "beneficial interest" means a right or interest over assets or income in the meaning of the definition in the Annex to this Act;
- g) "relevant property" means:
- aa) bank or financial (portfolio) accounts in Liechtenstein; or
 - bb) companies (including companies limited by shares and institutions structured as a company limited by shares as well as companies without a legal personality), partnerships, foundations, establishments, trusts, trust enterprises, or other fiduciary entities, estates, or insurance policies that are issued, formed, founded, settled, incorporated, administered, or managed in Liechtenstein;
- h) "relevant services" means any one or more of the following services provided by a financial intermediary in Liechtenstein with respect to relevant property:
- aa) serving as a member of a board of directors, board of trustees or foundation council or as an officer;
 - bb) providing a registered office;
 - cc) holding power of appointment of beneficiaries, trustees or property whether personal or fiduciary;

dd) providing custodianship of all forms of property whether on the terms of a trust or contract; or

ee) providing banking services as defined under the applicable laws of Liechtenstein;

- i) "registration certificate" means a confirmation by the competent UK authority that the relevant person has notified his intent to disclose;
- k) "disclosure certificate" means a confirmation by the competent UK authority that the relevant person has complied with his obligations under the disclosure procedure in accordance with the laws of the United Kingdom.

2) The designations used in this Act to denote persons, functions and professions include persons of male and female gender alike.

II. Exchange of Information in Tax Matters

Article 4

Applicable law

Unless otherwise provided by this Act, the exchange of information in tax matters shall be governed by the Law on International Administrative Assistance in Tax Matters.

Article 5

Special grounds for declining a request

- 1) A request made before 1 April 2015 may be declined if:
 - a) it does not relate to a criminal matter in respect of which the requesting State has formally commenced a criminal investigation; and
 - b) the person concerned has not applied to disclose under a tax disclosure facility of the requesting State where he is eligible to do so.

- 2) A request relating to Liechtenstein assets located in Liechtenstein on 11 August 2009 and transferred out of Liechtenstein before 1 April 2015 may be declined if:

- a) it does not relate to a criminal matter in respect of which the requesting State has formally commenced a criminal investigation; and
 - b) the person concerned would be or would have been eligible to apply to disclose under a tax disclosure facility of the requesting State.
- 3) Paragraphs 1 and 2 are without prejudice to the grounds for declining a request under the Law on International Administrative Assistance in Tax Matters.

Article 6

Information protected by confidentiality

- 1) The information protected pursuant to article 12, paragraph 2 of the Law on International Administrative Assistance in Tax Matters includes particulars concerning such information or items made for the purpose of review by a person of the possibility of his taking advantage of a tax disclosure facility.
- 2) A holder of information is not required to disclose information on manufacturing costs or other cost information.
- 3) Article 12 of the Law on International Administrative Assistance in Tax Matters applies *mutatis mutandis*.

III. Taxpayer Assistance and Compliance Programme

A. General provisions

Article 7

Object and purpose

- 1) The purpose of the taxpayer assistance and compliance programme is to introduce procedures for identifying persons who may be liable to taxation in the United Kingdom.

2) It encompasses:

- a) the notification procedure;
- b) the certification procedure;
- c) the review procedure; and
- d) the audit procedure.

B. Detailed provisions governing the procedures

1. Notification procedure

Article 8

Identification and notification requirement

- 1) A financial intermediary is required to identify the relevant persons to whom the financial intermediary provides relevant services. By ordinance, the Government shall set out provisions governing the details, including the deadlines to be met by the financial intermediaries with respect to identification.
 - 2) The financial intermediary shall notify the person identified under paragraph 1 that:
 - a) the financial intermediary knows or has reason to believe that the person is a relevant person; the reasons for the financial intermediary's knowledge or belief shall be stated;
 - b) the relevant person has within 18 months from the date of that written notice:
 - aa) to satisfy the financial intermediary that the person notified is not a relevant person;
- or

- bb) to provide the financial intermediary within 30 days of receipt a registration certification and a disclosure certification issued by the competent UK authority; or
- cc) to provide a document to the financial intermediary pursuant to article 9, paragraph 2; and
- c) the financial intermediary will cease to provide services within six months from the expiry of the time period under subparagraph (b), unless the financial intermediary has submitted an application for a review procedure, but subject to any longer time periods granted by the competent UK authority as part of the UK certification procedure.
- 3) If the identified person is not the contracting party of the financial intermediary, the financial intermediary shall inform the contracting party responsible for the relevant property.
- 4) The notification under paragraph 2 must be made within three months of identification; if notification within this time period turns out not to be practicable, it shall be carried out as soon as possible. The notification may be omitted if the financial intermediary knows that the person concerned has already been informed to the same effect.
- 5) The financial intermediary shall issue a confirmation of relevance required for participation in the disclosure procedure to the relevant person. The Government shall set out details by ordinance. In doing so, it may determine the requirements for the relevance of a business relationship after consulting the affected business associations.

2. Certification procedure

Article 9

Presentation of the registration or disclosure certificate or other evidence

- 1) The registration certificate and the disclosure certificate are issued by the competent UK authority to the relevant person for providing to the financial intermediary. The financial intermediary may also accept certified or notarised copies of the certificates.
- 2) As an alternative to the registration or disclosure certificate, evidence may be provided to the financial intermediary that the person concerned is not liable to UK taxation or is compliant with his UK tax obligations by means of appropriate written confirmations, forms, or declarations. By ordinance, the Government shall set out more detailed requirements for these documents.

3. Review procedure

Article 10

Appointment of the review panel

- 1) The Government shall appoint a review panel composed of three to five members appointed by the Government. The Government shall also determine the chairperson. The first term of office shall be four years; the second and last term of office shall end on 1 April 2017.
- 2) Specialised competence in the fields of trust services, banking, law and taxation shall be represented on the review panel. The Liechtenstein Bankers Association and the Liechtenstein Association of Professional Trustees shall be entitled to nominate one member each for consideration by the Government. Members may only be appointed who have an impeccable reputation, a high degree of expertise and sufficient practical experience.

- 3) The members of the review panel shall exercise their duties independently and shall not be bound by any directions.
- 4) The members of the review panel shall be compensated adequately for their services from the general national finances. The amount of the compensation shall be determined by the Government.
- 5) By ordinance, the Government shall determine the organisation and procedures of the review panel. The review panel may issue its rules of operation.

Article 11

Responsibilities of the review panel

The review panel shall be responsible for:

- a) deciding on applications for a review procedure (article 12);
- b) issuing directions to financial intermediaries (article 13);
- c) mandating the auditor in audit procedure A (article 19);
- d) gathering, evaluating and submitting the audit reports (article 20).

Article 12

Application for a review procedure

- 1) A financial intermediary may apply for a review procedure if the termination of services under article 14 would:
 - a) give rise to a breach of fiduciary duty or substantial breach or frustration of contract by the financial intermediary under the laws of Liechtenstein, or
 - b) give rise to an action for breach of duty in any other jurisdiction.

- 2) The application must be submitted within four months from the expiry of the time period under article 8, paragraph 2(b), but subject to any longer time periods granted by the competent UK authority as part of the UK certification procedure.

Article 13

Directions by the review panel

- 1) If the preconditions for the review procedure (article 12, paragraph 1) are met, the review panel shall by means of a decree give directions to the financial intermediary on what further steps must be taken by the financial intermediary.
- 2) For this purpose, the review panel shall carefully weigh interests and give due consideration to:
 - a) the interests of the country in protecting client confidentiality and contractual rights as well as the ability, viability and integrity of the financial intermediaries to perform their respective duties to the relevant persons, and
 - b) the interests of the United Kingdom in protecting its tax revenue.
- 3) Measures to be taken by the financial intermediary under paragraph 1 may include:
 - a) termination of the relevant services within a reasonable period of time;
 - b) a fine to be imposed on the relevant property;
 - c) deduction or retention of taxes with respect to the relevant property;
 - d) other measures designed to provide economic incentives to the relevant person to comply with his tax liability.
- 4) By ordinance, the Government shall provide details on the measures under paragraph 3(b) to (d) on the basis of an understanding with the competent UK authority.

4. Termination of services

Article 14

Grounds for termination

- 1) If none of the conditions mentioned in article 8, paragraph 2(b) is met, the financial intermediary must terminate the relevant services to the relevant person with respect to the relevant property, unless the financial intermediary has applied for a review procedure under article 12, paragraph 1.
- 2) The termination must occur at the latest six months from the expiry of the time period under article 8, paragraph 2(b), but subject to any longer time periods granted by the competent UK authority as part of the UK certification procedure.
- 3) Moreover, the services shall be terminated in accordance with a decree under article 13, paragraph 3(a) or in the case where an application for a review procedure is declined. This provision is without prejudice to article 116 of the National Administration Act.

5. Audit procedure

a) General provisions

Article 15

Principle

- 1) Compliance by each financial intermediary with the requirements of the taxpayer assistance and compliance programme shall be audited by independent auditors.
- 2) The following procedures shall apply:
 - a) audit procedure A;
 - b) audit procedure B;

b) Audit procedure A

Article 16

Audit list

- 1) Banks and trust companies as well as their legal successors or assignees included in the audit list shall be subject to audit procedure A.
- 2) The audit list shall be maintained by the Government. The audit list shall be compiled upon conclusion of a corresponding understanding between the Government and the competent UK authority.
- 3) Additions to and subtractions from the audit list shall be undertaken on the basis of an understanding between the Government and the competent UK authority. On request, certification of the listing shall be issued.
- 4) The audit list shall be adjusted periodically. Even without an understanding under paragraph 3, the Government may undertake the subtraction of a bank or trust company if it is liquidated or has filed for bankruptcy.

Article 17

Auditor

- 1) The auditor must be a duly qualified professional. By ordinance, the Government shall specify the professional and other requirements to be met by an auditor.
- 2) The auditor to be appointed in a specific audit procedure shall be determined by the review panel. The bank or trust company may deposit two proposals for an auditor with the review panel. As a rule, the review panel shall mandate the proposed preferred auditor.
- 3) The auditor must keep silent about the findings of his audit activities. Within the scope of his activities pursuant to this Act, the auditor shall be subject to official secrecy. This provision is without prejudice to reporting under article 19.

Article 18

Audits

- 1) The banks and trust companies on the audit list shall not be audited more often than once a year. The first audit shall be made 30 months after entry into force of this Act, the last between 1 January and 31 December 2016.
- 2) The auditor shall be given unlimited access to all information which the auditor considers is necessary to perform the audit. The auditor shall determine the audit method.
- 3) If the auditor notes that a financial intermediary has failed to comply with the identification or notification obligation, the auditor shall impose a deadline to remedy the failure.
- 4) Financial intermediaries employing the deduction procedure (article 13, paragraph 3(c)) shall bear the costs of the audits in the amount determined by the Government by ordinance.

Article 19

Audit report

- 1) The auditor shall submit an audit report to the review panel containing the following information:
 - a) the name of the financial intermediary that has been audited;
 - b) the number of auditors and the level of compliance in a way which is statistically significant and anonymous.
- 2) The audit panel shall gather the audit reports from the auditors and compile statistics and an annual consolidated summary. This consolidated summary shall be submitted for the attention of the Government and the competent UK authority.
- 3) The review panel shall notify grave or repeated violations of this Act to the supervisory or disciplinary authority responsible for the financial intermediary in question.

c) Audit procedure B

Article 20

Due Diligence Act auditor

- 1) Financial intermediaries that are not on the audit list shall be audited by auditors or auditing companies by way of a separate audit procedure as part of the ordinary inspections pursuant to the Due Diligence Act.
- 2) The provisions set out in article 18, paragraphs 2 to 4 and in article 19 shall apply *mutatis mutandis* to audit procedure B.

C. Procedure and legal remedies

Article 21

Procedure

Unless otherwise provided by this Act, the procedure shall be governed by the National Administration Act.

Article 22

Appeals

Decrees by the review panel may be appealed by way of a complaint to the Administrative Court within 14 days from service.

D. Penal provisions

Article 23

Infractions

- 1) The Government shall punish with a fine of up to 10,000 francs for committing an infraction anyone who:

- a) in violation of article 8, paragraph 1 does not identify the relevant person;
 - b) fails to make the notification under article 8, paragraph 2;
 - c) in violation of article 14, fails to terminate services;
 - d) fails to comply with a decree by the review panel issued for purposes of enforcing this Act;
 - e) violates regulations implementing this Act the infraction of which is declared to be punishable.
- 2) The fine shall be increased appropriately for repeated offences; the amount of the fine may not exceed 50,000 francs, however.
 - 3) These provisions are without prejudice to supervisory and disciplinary measures.

Article 24

Responsibility

If the violations are committed in the business operations of a legal person or a trusteeship, article 23 shall apply to the persons that acted or should have acted on their behalf, but with joint and several liability of the legal person or the trust property for fines and costs.

IV. Transitional and final clauses

Article 25

Temporal scope of application

- 1) The provisions in Chapter II (Exchange of Information in Tax Matters) shall have effect for requests received after entry into force of this Act and:
 - a) in the case of criminal tax matters in respect of which the competent UK authority has formally commenced a criminal investigation, with respect to taxable periods that begin on or after 1 January 2010 or, where there is no taxable period, for charges to taxes arising on or after that date; and

- b) in all other cases, with respect to taxable periods that begin on or after 1 April 2010 or, where there is no taxable period, for charges to taxes arising on or after that date.
- 2) With respect to persons who have made an application to participate under the tax disclosure facility, information shall be provided in respect of all relevant taxable periods covered by the tax disclosure facility, notwithstanding the provisions set out in paragraph 1.
 - 3) Documents or information created or derived from a date preceding the taxable periods mentioned in paragraphs 1 and 2 and in article 5, paragraphs 1 and 2, shall be provided:
 - a) only to the extent that they are foreseeably relevant and of critical importance to an ongoing tax investigation relating to the covered periods, and
 - b) only if accompanying documents or information not of such foreseeable relevance and critical importance may be redacted prior to being exchanged.

Article 26

Entry into force and expiry

- 1) This Act shall enter into force on 1 September 2010, unless a referendum is called, in which case it shall enter into force on the day of its promulgation.
- 2) Article 6, paragraph 2 shall expire if a tax agreement with the United Kingdom provides a mechanism for remedying transfer price disputes. The Government shall announce the date of expiry in the Liechtenstein Law Gazette.
- 3) Subject to paragraphs 4 and 5, the provisions in Chapter III (Taxpayer Assistance and Compliance Programme) shall expire on 1 April 2015.
- 4) Articles 10 to 14, 19, 20 para. 2 and articles 23 and 24 shall expire on 1 April 2017; article 8 para. 5, article 9 and articles 15 to 18 shall expire on 1 January 2017.

- 5) Appeals against decrees issued pursuant to the provisions in Chapter III which are still pending on 31 March 2015 or are filed after that date shall continue to be handled pursuant to the provisions in Chapter III.

Definition of beneficial interest

A relevant person has a beneficial interest in relevant property for the purposes of this Act where any of the circumstances outlined below apply:

1. In the case of foundations, trusts or other fiduciary entities:
 - a. he is the person or one of the persons who established or funded it; or
 - b. he is the person or one of the persons who the financial intermediary regards as its principal beneficiary or principal beneficiaries; or
 - c. he is a person entitled to 25% or more of its income or capital; or
 - d. he is a person who has received a distribution or distributions, in a given UK tax year, in total amounting to GBP 5,000 or more from such an entity since 1 August 2009; or
 - e. he is a person who the financial intermediary knows has been provided with the benefit, in a given UK tax year, of an asset or any number of assets of a value equivalent to GBP 25,000 or more from such an entity since 1 August 2009.
2. Where relevant services are provided as part of banking services as referred to in article 3, paragraph 1(h)(ee) of the Act in respect of bank and financial (portfolio) accounts that are relevant property:
 - a. those persons in whose name the account is held if they are natural persons and are the beneficial owners of the account or are UK companies satisfying the tests in article 3, paragraph 1(e)(bb)(1) or (2) of the Act; or
 - b. the account is held in the name of a natural person who is not the beneficial owner or in the name of a legal person other than a company referred to in paragraph 2(a) of this Annex, any person identified as beneficial owner in forms provided to the financial intermediary by that legal person pursuant to Liechtenstein due diligence legislation.
3. Where relevant services within article 3, paragraph 1(h)(aa) to (dd) are provided to companies limited by shares (other than those that are listed or which are collective

investment vehicles) including institutions operating as companies limited by shares, as well as companies without legal personality, that are relevant property, those natural persons who, at any time since 1 August 2009:

- a. have held or controlled a share or voting rights amounting to 5% or more in such entity; or
- b. have received 5% or more of the profits of such entity.