



The Liechtenstein Disclosure Facility - A Favourable Way to Become UK Tax Compliant

I. General

1. On 11 August 2009, the UK and Liechtenstein authorities signed three new tax agreements, a Tax Information Exchange Agreement (TIEA), a Memorandum of Understanding (MOU), and a Joint Declaration relating to the MOU. The aim of these agreements is to ensure tax cooperation between the two countries upon request and, at the same time, to provide an attractive opportunity to clear up the tax arrears of UK residents with investments in Liechtenstein. You will find the agreements on www.marxerpartner.com/ldf.

2. Under the TIEA the UK and Liechtenstein will exchange information (e.g. on bank account holders and on beneficiaries of trusts, foundations and other legal entities) in line with international tax standards. Tax information will be exchanged solely upon request; the TIEA does not provide for an automatic exchange of information. The TIEA prohibits "fishing expeditions", i.e. general information requests which do not focus on a specific person. The TIEA will come into effect as soon as each government has completed the necessary procedures to give it effect under domestic law. Until 31 March 2015, the exchange of information based on the TIEA will, however, be limited in order not to compromise the privacy rights of existing clients (see VII below). Clients are thus given ample time to carefully consider their situation and to obtain proper advice regarding their options.

3. Starting no later than 11 August 2010, Liechtenstein financial intermediaries (e.g. banks, trust companies and asset managers) will have the duty under the MOU to identify clients who may have UK tax liabilities. Once

identified, these clients have to be notified of their identification within 3 months. Within a further 18 months from the date of the written notice, the client has to provide the financial intermediary with evidence

- that he or she is not liable to UK taxation or is compliant with his/her UK obligations with regard to the Liechtenstein assets or interests. This has to be done by providing a certification issued by a UK legal, tax or accounting adviser or by providing the financial intermediary with a copy of the tax filing including the Liechtenstein property at issue; or
- that he or she has registered for the Liechtenstein Disclosure Facility (outlined below). In this case, a registration certificate issued by HMRC has to be handed over to the financial intermediary.

Upon receipt of the aforementioned evidence, the Liechtenstein financial intermediary is in a position to continue rendering services to the UK resident. Should the financial intermediary not obtain the pertinent certification, the financial intermediary will have to cease providing services to the client. In return, HMRC has offered a five-year special disclosure facility with favourable terms known as the Liechtenstein Disclosure Facility or LDF. The vast majority of commentators agree that the unique terms of the LDF are an attractive regime under which to become tax compliant in the UK.

II. What are the key features of the LDF?

1. The Liechtenstein Disclosure Facility starts on 1 September 2009 for investments held in

Liechtenstein by 1 September 2009 and on 1 December 2009 for investments moved from abroad to Liechtenstein after 1 September 2009. The LDF ends on 31 March 2015.

2. The LDF applies to all UK taxes including UK Inheritance Tax, Income Tax, Corporation Tax, Capital Gains Tax, Stamp Duty, Value Added Tax and National Insurance contributions.

3. The assessment period is limited to accounting periods/tax years commencing on or after 1 April 1999 for legal entities and 6 April 1999 for natural persons. Recovery will not go back any further and is therefore considerably shorter than the statutory limit of 20 years.

4. The LDF allows taxpayers to choose whether to calculate the actual tax liability on an annual basis or to make use of a composite rate. To a certain extent, estimates can be applied but must be reasonable in order to pass HMRC examination.

- UK tax liability may be calculated on an annual basis going back until April 1999 using the standard HMRC tax rates which are published on www.hmrc.gov.uk/rates. Any applicable tax reliefs and deductions may be asserted. Interest and penalties are due in addition to the tax arrears. The calculation of the arrears with regard to all tax types and tax years involved can be burdensome.
- Another option for the taxpayer is to make use of a single composite rate of 40% applied to all income, profits, gains and other sums chargeable. This rate covers all UK taxes and National Insurance contributions. No reliefs or deductions can be claimed. However, any tax withheld under the EU Savings Directive or under the corresponding EU-Liechtenstein Savings Agreement can be offset. If the composite rate is elected, it applies to all tax years affected by the LDF. Whether the composite rate is beneficial or not depends on the circumstances. If trusts, foundations or other legal entities are involved or in case of inheritance tax issues, the composite rate should be considered closely. Interest and penalties are due in addition to the composite rate.

5. Interest is calculated from the date tax should have been paid until the date tax is actually paid to HMRC. The applicable interest rates are those regularly levied by HMRC on late payment and depend on the relevant tax-

type and tax year. Lists are available on www.hmrc.gov.uk/rates/interest-late.htm.

6. A fixed penalty of 10% of the tax payable (excluding interest) is levied in addition to the unpaid tax and interest.

7. In case of an “innocent error”, liability will be reduced to the previous six UK tax years as of the time of the disclosure application. Besides, no penalty will be due. This could be of interest in particular where funds were inherited or where a successor beneficiary had not been aware of an existing trust or foundation.

8. The MOU expressly states that there will be no criminal investigation for a tax-related offence provided a full, accurate and unprompted disclosure is made and the funds do not originate from criminal activity. Criminal activity, in this respect, does not include tax evasion.

9. The name of the UK taxpayer making use of the LDF will not be published on the list of deliberate tax defaulters as set out by HMRC in April 2009.

10. HMRC operates a specialised “Liechtenstein Desk” as a Single Point of Contact for disclosure under the LDF.

11. The MOU allows negotiations with HMRC on a no-names basis.

III. Who is eligible to participate in the LDF?

Any person who is a UK resident for tax purposes and who, on 1 September 2009 or thereafter, has a beneficial interest in relevant property in Liechtenstein is eligible to participate in the LDF. The LDF ends on 31 March 2015.

The terms “beneficial interest” and “relevant property” are precisely defined in the MOU. As an overview, the following persons may participate:

- the holder or beneficial owner of a bank or financial (portfolio) account in Liechtenstein; or
- the founder, settlor, beneficiary or stakeholder of a company, partnership, foundation (“Stiftung”), establishment (“Anstalt”), trust, trust enterprise or other fiduciary entity, estate or insurance policy that is issued, formed, founded, settled, incorporated, administered or managed in Liechtenstein. Therefore, the beneficiary of a

Panamanian foundation or a Jersey trust and the owner of a BVI company are also eligible to participate in the LDF provided the foundation, trust or company is managed in Liechtenstein.

IV. Can I use the LDF if I currently do not have assets in Liechtenstein or managed out of Liechtenstein?

Yes, this is possible. Both existing and new clients with assets or interests in Liechtenstein and undeclared UK tax liabilities can use the LDF. In view of the advantages of the LDF it can be attractive for UK residents to transfer undeclared assets held offshore to Liechtenstein in order to become eligible to disclose under the LDF. This can be done, for instance, by opening a Liechtenstein bank account, by establishing a Liechtenstein trust, foundation or other legal entity or by transferring the management of a foreign structure to Liechtenstein.

V. Who cannot, or cannot fully, participate in the LDF?

1. No participation

- Any person already under investigation by HMRC as of 11 August 2009 cannot participate in the LDF. "Under investigation" is defined in the MOU as a situation where there is a suspicion of serious tax fraud and the person has been formally notified by HMRC that an investigation has been commenced, or where the person has been arrested for a criminal tax offence.

2. No full participation

- Any person who was previously under investigation by HMRC and who knowingly did not disclose his or her interest in any relevant property will be able to participate in the LDF but a significantly higher penalty will be applied.
- Any person previously contacted by HMRC under the terms of the Offshore Disclosure Facility (ODF) or the New Disclosure Opportunity (NDO) will be able to participate in the LDF but will not be able to benefit from the limited penalties under the LDF. However, penalties will not be higher than those specified under the NDO.
- A person who participates in the LDF and has a bank account, including a financial (portfolio) account, outside the UK or

Liechtenstein which is in his or her name and was opened through a UK branch or agency of that bank will not, in relation to that account, be eligible for the shorter limitation period, the fixed penalty and the composite rate option.

VI. What is the timeframe of LDF procedures?

1. A UK taxpayer eligible and willing to participate in the LDF will be notified by the Liechtenstein financial intermediary of his/her identification as a possible UK taxpayer and can then register for the LDF within 18 months (see 1.3 above). He or she can, however, also register for the LDF before having been contacted by the financial intermediary. In most cases it will be advisable to take action sooner rather than later.

2. Either way, LDF proceedings are initiated by the UK taxpayer's notification of HMRC's Liechtenstein Desk of his or her intention to apply for disclosure under the LDF. HMRC will then issue a registration certificate within 60 days. This registration certificate should be sent to the financial intermediary within 30 days.

3. The UK taxpayer has to send his full disclosure to HMRC within 7 months (if using the composite rate) or 10 months (if calculating the liability on an actual basis) of issuance of the registration certificate. Under certain circumstances, HMRC can grant an extension. HMRC will provide a disclosure form with guidance notes. The disclosure has to provide full details of all previously undisclosed tax liabilities for each tax year since April 1999 and ending with the tax year covered by the disclosure. If the actual amount is not ascertainable, an offer for tax based on estimated figures including suitable evidence to support the estimate will suffice.

4. Within 30 days of receiving full disclosure, HMRC will provide the taxpayer with a disclosure certificate confirming that he or she has complied with their obligations under the LDF. The disclosure certificate should be forwarded to the financial intermediary within 30 days.

5. Within six months of receiving the disclosure, HMRC strives to either accept the offer or to ask for further information. LDF proceedings will end once the disclosure offer is accepted and all arrears are fully paid. Under certain conditions payment by instalments is possible.

6. Further guidance on the LDF proceedings including a Q&A section can be found on www.hmrc.gov.uk/disclosure/liechtenstein-disclosure.htm.

VII. How is the LDF linked to the TIEA?

The UK-Liechtenstein Tax Information Exchange Agreement provides for exchanging tax information upon request along the lines of the generally accepted OECD standard (see I 2 above). The TIEA provides for a number of protections designed to assure that exchange of information does not compromise the considerable privacy rights of persons making use of the Liechtenstein Financial Centre. Concerning the LDF, the following safeguards are of particular importance:

- Protection of existing and new clients during the voluntary disclosure period: Liechtenstein has the right to decline a TIEA request made prior to 1 April 2015 relating to any UK client of a Liechtenstein financial intermediary (bank, trust company, asset manager etc.). This protection is conceived to permit existing and, in particular, new clients who wish to benefit from the LDF to take the time necessary to obtain proper advice.

However, no protection will apply in cases relating to criminal tax matters in respect of which the requesting party has formally commenced a criminal investigation. If, therefore, the taxpayer has been formally notified of a criminal tax investigation or if he or she has been arrested for or charged with a criminal tax offence or given a police caution, information can be provided to HMRC before 1 April 2015. Furthermore, protection is not available after the person has applied to make a voluntary disclosure under a tax disclosure facility.

- Enhanced protection of existing clients: Clients who already had bank and financial accounts or company/fiduciary structures in Liechtenstein on 11 August 2009 (the date when the TIEA was signed) and who decide to close their accounts or transfer out, liquidate or terminate their companies or fiduciary structures before 1 April 2015 will be protected from tax information exchange even after 1 April 2015.

However, this protection will not apply in cases relating to criminal tax matters. In general, UK taxpayers have to be aware that more and more jurisdictions sign tax agreements with the UK. It is therefore

likely that there are, or will be, such agreements between the UK and the country where the Liechtenstein assets or interests are moved to. Those agreements may very well not include a favourable disclosure facility. A transfer of Liechtenstein assets abroad may therefore prove disadvantageous for the client, especially in the long run.

VIII. How does the LDF affect a client who is tax compliant?

UK tax compliant clients of a Liechtenstein financial intermediary (e.g. a bank, trust company or asset manager) do not need to make use of the LDF. They will, however, need to provide their financial intermediary with a certification that they are UK tax compliant regarding their investment in Liechtenstein, e.g. by providing a certification issued by a UK legal, tax or accounting adviser (see I 3 above).

IX. How can Marxer & Partner help?

The Liechtenstein Disclosure Facility (LDF) provides UK taxpayers holding undeclared investments outside the UK with an advantageous opportunity to become UK tax compliant. More and more jurisdictions worldwide sign tax information exchange agreements with the UK but only the Liechtenstein agreement offers favourable disclosure terms. The LDF is open not only for persons already having undeclared assets in Liechtenstein but also for those moving their assets held in another jurisdiction to Liechtenstein until 31 March 2015 in order to take advantage of the LDF.

Marxer & Partner is Liechtenstein's oldest and largest law firm with the highest number of lawyers trained in common law jurisdictions. We have more than 80 years of experience in estate planning and international tax law. Besides, we have long-standing relationships with various leading UK law firms and tax advisers. We are thus able to provide useful services to clients interested in the LDF and to their advisers. Our clients are protected by the strict attorney-client privilege provided for under Liechtenstein law.

We will be pleased to assist you in all matters concerning the LDF. Among others, we are happy to provide the following services for UK taxpayers to take advantage of the LDF:

- establishment of Liechtenstein trusts, foundations and companies;

- management of foreign trusts, foundations, or companies in order to make the beneficiaries and owners of those foreign structures eligible for the LDF;
- establishment of relations to Liechtenstein banks, tax advisers and accounting firms;
- contacts, on a no-names basis, with trusted legal, tax and accountancy advisers in the UK and abroad;
- more legal services for UK clients and their advisers.

We are gladly at your disposal for any additional information. Please directly contact the partners

Dr. Stefan Wenaweser, LL.M.
stefan.wenaweser@marxerpartner.com

Dr. Markus Summer, LL.M.
markus.summer@marxerpartner.com

Dr. Armin Dobler, LL.M.
armin.dobler@marxerpartner.com

or use our general contact address:

Marxer & Partner
Attorneys-at-Law
Heiligkreuz 6
9490 Vaduz
Liechtenstein

Tel. +432 235 81 81
Fax. +423 235 82 82
info@marxerpartner.com
www.marxerpartner.com

This Client Info and the texts of the TIEA, the MOU and the Joint Declaration are available for download on www.marxerpartner.com/ldf.

MARXER & PARTNER

RECHTSANWÄLTE

Marxer & Partner Rechtsanwälte/Attorneys-at-Law, founded in 1925, is the oldest and largest law firm in the Principality of Liechtenstein. The firm consists of 30 lawyers trained in various jurisdictions and offers comprehensive legal services to internationally operating enterprises and private clients alike. We specialise in estate planning matters including national and international tax law issues.

Marxer & Partner cooperates with tax advisers, trust companies, accounting and auditing firms, real estate experts, asset managers and banks worldwide. Over the decades, the firm has acquired a comprehensive international cooperation network of leading attorneys in every important financial centre. In particular, our ties with the United Kingdom date back to the 1930's. Marxer & Partner is the Liechtenstein member of Lex Mundi, a worldwide association of independent law firms. You can reach us at www.marxerpartner.com.

Disclaimer

The above is a summary of the LDF and the information available from HMRC and the Government of Liechtenstein as at the date of this publication and constitutes no legal advice. If you are a person who is liable to UK taxation or who is resident for tax purposes in the UK, or if you think that you may be liable to UK taxation, we strongly recommend that you seek UK tax advice from a specialised UK tax adviser. We will be happy to assist you in the selection of an expert through our network.