

# BENEFIT OR BURDEN

The agreements between Liechtenstein  
and the UK

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# THE AGREEMENTS

- Tax information exchange agreement
- Memorandum of understanding
- Joint declaration

# THE TIEA

- Treaty between states
- formally signed on 11 August, 2009
- A national law still has to be implemented in Liechtenstein
- Shall cover all taxes imposed by the parties
- Shall not cover information which is neither held by authorities nor in the possession or control of persons who are within the territorial jurisdiction of the contracting states

# GOALS OF THE TIEA

- regulate the exchange of information with respect to taxes between the Contracting Parties and facilitate tax cooperation and taxpayer assistance, and
- assist the maintenance and development of the Principality of Liechtenstein's financial services industry
- no beneficial owners who are liable to taxation within the jurisdiction of one Contracting Party and are using the laws of the other to disguise such liability without paying appropriate tax should exist by expiry of a five years period!

# EXCHANGE OF INFORMATION

- Information exchanged upon request
- includes information held by banks, other financial institutions, and any person, also nominees and trustees, acting in an agency or fiduciary capacity, but not advocates
- Information will not be exchanged if the information could be obtained by other means available in the own territory

# DETAILS OF THE REQUEST

- identity of the person
- period of time
- nature and form of the information requested
- matter under the party's tax law
- reasons why the info is foreseeably relevant
- grounds for believing information is there
- name; address of any person believed to have the information
- conformity with law & administrative practice
- statement of ability
- statement all means have been taken

# WHAT MAY BE ASKED FOR?

- Upon explicit request information may be asked also in form of
  - authenticated copies of documents
  - deposition of witnesses
- Presence of the requesting party may be granted; questions may be asked and documents may be viewed, if persons involved give consent previously

# DECLINING A REQUEST

- request is not conform with agreement
- discrimination of nationals of requ. Party
- not all possibilities of the requesting Party have been pursued in its territory
- request is contrary to the public policy
- request before 31 March 2015 in civil matters
- reason for request has been eliminated before 31 March 2015

# INFORMATION STAYING SECRET

- information which would disclose trade process or a trade or industrial or professional secret
- information held by intelligence gathering authorities
- information on manufacturing costs unless a DTA exists
- Information which the other party would be unable to obtain in similar circumstances
- items subject to legal privilege
- rights and safeguards secured to persons shall remain but not unduly prevent or delay effective exchange

# CONFIDENTIALITY

- Any information which has been given or received has to be treated as confidential
- Information shall be used only for the purposes mentioned in the request
- Information may be disclosed in public court proceedings or in judicial decisions
- In no event shall the information be disclosed to another country without express written consent of the requested party

# COOPERATION

- Mutual technical assistance
- Mutual agreement procedure
- Costs
  - Ordinary costs: requested party
  - Extraordinary costs: requesting party
- Necessary legislation has to be implemented within one year!

# INFORMATION EXCHANGE

- Information exchange as of 1 January 2010 if criminal matters are involved
- Other information exchange by 31 March 2015
  - Unless disclosure procedure has been opened

# THE MEMORANDUM OF UNDERSTANDING (MOU)

- 5 years taxpayer assistance and compliance program
- 5 year special disclosure facility
- a new law in Liechtenstein has to be implemented
- Use of disclosure facility is already possible
- Goal: no person will be able to disguise his UK tax liability in Liechtenstein by 31 March 2015

# DISCLOSURE PROCEDURE (MOU)

- Possible from 1 September 2009
  - For people with a footprint in Liechtenstein then
- Possible from 1 December 2009
  - For people with a footprint acquired after 1 September 2009 and before 31 March 2015

# WHO MAY REGISTER? „RELEVANT PERSON“

## A natural person

- with residential address in the UK on 1 August 2009 or any time thereafter or
- who has been resident for tax purposes in the UK or
- with UK address in the „beneficial-owner-form“

## A legal person

- which has its place of incorporation in the UK
- which on 1 August 2009 or any time thereafter has been resident in the UK for tax purposes

# RELEVANT PROPERTY

- A Liechtenstein bank or portfolio account
- A company in Liechtenstein
  - Including corporation, partnership, foundation, establishment, trust, trust enterprise or other fiduciary entity, estate or insurance policy that is issued formed, founded, settled, incorporated, administered or managed in Liechtenstein

# BENEFICIAL INTEREST I

- the person or one of the persons who established a trust, foundation and the like
- the person who is regarded as the principal beneficiary by the financial intermediary
- or entitled to 25 % or more of its income and capital
- a person who received a distribution in a UK tax year in total amounting to £ 5,000 or more
- a person who has been provided with the benefit of an asset worth over £ 25,000

# BENEFICIAL INTEREST II

- Person in whose name a bank account is held
- Any person identified as beneficial owner of a bank account in the due diligence files
- Persons who hold 5 % or more of the voting rights or
- Persons who received 5 % or more of the profits of a Liechtenstein company

# NOTIFICATION PROCEDURE

- relevant person will be informed by the financial intermediary; within 18 months
- relevant person has to prove that he is not a relevant person or give evidence that UK tax situation is in good order (e.g. by certification of a UK tax professional or tax files)
- or the relevant person person must apply for disclosure in writing to HMRC

# NOTIFICATION PROCEDURE II

- HMRC will issue a reference number and registration certificate
- within 30 days the certificate must be provided to the financial intermediary
- or the financial intermediary shall cease to provide the relevant services within 6 months
- if this is not possible – panel solution

# TAXATION AND PENALTIES

- All UK Taxes from 6 April 1999 will be paid
- Option to elect to pay either a composite rate of tax at 40 % or calculate on an actual basis for each UK tax year
- Interest will be charged at the relevant rate
- Penalties will be limited to 10 % of liabilities and nil for „innocent error“ (period limited to 6 UK tax years in that case)

# NO LDF POSSIBLE

- In current investigation cases
- Persons who opened accounts through a branch of a UK bank (no limitation period, no fixed penalty, no composite rate)
- Persons who have been previously under investigation or contacted by HMRC cannot have the 10 % penalty but still can apply
- SI cases and criminal cases

# THE BESPOKE SERVICE

- Offer by HMRC
- Anonymous first contact by intermediary and option to have single point of contact
- Due consideration of the eligible person's circumstances (e.g. timing of sale of assets)
- Use of the service means that the eligible person's name may not be published

# INABILITY OF REVERSING

- Once engaged, disclosure has to be brought to a successful end
- In the event that an eligible person...
  - Withdraws Cooperation
  - Fails to provide full disclosure
- ... HMRC may...
  - Make an exchange of information request
  - Publish the name of the person

# JOINT DECLARATION

- The conclusion of a tax treaty will be discussed (one year after signing the MOU)
- Very likely that HMRC will have no interest to undertake investigations against trustees
- Guidance on Liechtenstein structures (3 months)
  - Company (AG, GmbH, some establishments)
  - Partnership (Kommanditgesellschaft, Kollektivgesellschaft)
  - Trust (trusts , foundations, some establishments)

# POSSIBILITIES MENTIONED IN THE JOINT DECLARATION

- Alternative final tax /retention tax?
- Reciprocity/non-discrimination
- Rights and duties after 31 March 2015

# POSITIVE COMMENTS?

- Good option for clients to become tax compliant – even without Liechtenstein connection before
- No naming and shaming for LDF applicants
- Money can stay in Europe
- Knowledge of Liechtenstein and English tax advisors can be used to the benefits of clients
- Structuring the future with reliable rules

# MRC CONTACT DATA

HM Revenue & Customs

Liechtenstein Team

7 th floor

The Triad

Stanley Road

Bootle

Merseyside

L75 2 EE

- [www.hmrc.gov.uk/disclosure/liechtenstein-disclosure.htm](http://www.hmrc.gov.uk/disclosure/liechtenstein-disclosure.htm)

- HMRC help desk:  
Tel: +44 151 300 2750

# CONTACT INFORMATION

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