

Liechtenstein: The LDF (Liechtenstein Disclosure Facility) in Practice

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The LDF (Liechtenstein Disclosure Facility) is based on the MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN ("Government of Liechtenstein") AND HER MAJESTY'S REVENUE AND CUSTOMS ("HMRC") of the United Kingdom of Great Britain and Northern Ireland RELATING TO COOPERATION IN TAX MATTERS (in the following "MOU").

Under the taxpayer assistance and compliance programme, working since 1 September 2009, financial intermediaries in the Principality of Liechtenstein ("**Liechtenstein**") are under a duty to identify certain persons who or which the respective intermediary knows or has reason to know may be liable to taxation in the United Kingdom of Great Britain and Northern Ireland ("**the United Kingdom**" or "**UK**").

Where such a person is identified, the financial intermediary will be under a duty to notify the person. The Liechtenstein financial intermediaries have started working with this MOU and endeavour to motivate clients and business partners to consider the advantages of this MOU.

This article simply picks out some practical issues as the practical side, as often, of the MOU is complicated and leaves open a lot of questions not yet solved. Also would it be much easier if day-to-day-questions were answered by a guidance for the attention of the Liechtenstein financial intermediary, pro-actively supplied by HMRC, to make sure that UK receives the taxes so urgently needed and thus reducing the consultancy costs. It is interesting that one problem arrives again and again, and that is accounting standards. Most banks and our own accounting system supply a capital gain calculation on the average purchase costs, but we have to use the LIFO-principle for UK-matters. For many investments in hedge funds some years ago, the purchase costs and the nature of income/gain in the funds can only be understood and shown after having spent much time resulting in huge costs. So the Liechtenstein financial intermediaries realize that many clients not having EUR 2 million and more on the bank account or in a structure get extremely frustrated when comparing the consultancy fees charged for going through the process and realizing that this heavy burden is simply not deductible. Here a more practicable approach on the basis of an internal guidance to the Liechtenstein financial intermediary would probably show some more results.

Another important question is also: What do I have to do if a Liechtenstein financial intermediary tells me (the relevant UK person) I may be liable to UK tax?

The financial intermediary must be provided with one of the following:

- written confirmation from a legal, tax or accounting adviser that you (the relevant person) have complied with UK tax obligations for your Liechtenstein investments or have applied to disclose under another HMRC tax disclosure facility by a legal, tax or accounting adviser (these advisors must be duly qualified in the UK and admitted to the Law Society, the Institute of Chartered Accountants in England and Wales, or other similar professional body in the UK.);
- evidence to prove you have already met UK tax obligations for your Liechtenstein investments;
- a certified or notarised copy of your Self Assessment tax return showing that your Liechtenstein investments have been declared to HMRC;
- evidence that you are not a UK taxpayer;
- registration and disclosure certificates which HMRC will send to you if you register and make a full disclosure to HMRC under LDF.

Alternatively, the financial intermediary can be provided with a permission to provide HMRC with all details that they hold.

HMRC will not expect to receive and will not request information on any assets or interests of a UK taxpayer that are not relevant to the UK tax liabilities under the LDF. This note put in the internet by HMRC is a very important one, but finally does not solve one of the major problems the Liechtenstein financial intermediaries are faced with.

The MOU takes the approach to make Liechtenstein clients with a UK nexus "compliant". But what if these clients are already compliant? Let us take a UK-resident person (non-domiciled; not being the settlor and aged 20 years) being a 30 % beneficiary in a discretionary trust and who has never received any distribution. He/she is a relevant person with a relevant property according to the MOU and benefits from relevant services from within Liechtenstein. This person is fully compliant with respect to UK tax matters and there is no need neither from the side of the beneficiary nor from the side of the financial intermediary to doubt about tax problems at this stage. Nevertheless, it seems that the whole machinery of actions must be launched what will finally drive this structure out of Liechtenstein.

And how often should the confirmation be supplied to the Liechtenstein financial intermediary, and for which period if the clients are with the financial intermediary for years?

The confirmation will only be done for one period, so for the first time as of 1 August 2009 or later on. After that, HMRC will have knowledge on the assets and a new annual confirmation is not necessary. For earlier periods (relevant are any periods since 6 April 1999) HMRC will get active if the client will not do it anyway, because the assessment of non-paid taxes on income/gain of the relevant property will go back to 6 April 1999.

What happens if a settlor/founder who set up an irrevocable discretionary foundation in August 2009 and where he/she is not a beneficiary, moved his residence from Sweden to UK in Mai 2010? Is he/she a relevant person with a relevant property?

There is no doubt that this person will be identified in the data base of the financial intermediary with an UK nexus. According to Schedule 2 of the MOU "**Definition of beneficial interest**" a relevant person has a beneficial interest in relevant property for the purposes of this MOU where amongst other circumstances a person or one of the persons established or funded the foundation.

For logical reasons, the financial intermediary will not act and make a note and rely on the statements of HMRC in the publication of "frequently asked questions": "HMRC will not expect to receive and will not request information on any assets or interests of a UK taxpayer that are not relevant to the UK tax liabilities under the LDF."

Can a new relationship just transfer GBP 1'000 on a Liechtenstein bank account? Is this person eligible for the LDF then?

Generally, any person is eligible if he/she (1) has offshore assets as of 1.9.2009 and (2) the assets are in any way connected to unpaid UK taxes and/or duties. If a relevant person did not have any assets outside the UK as of 1.9.2009, and only undeclared UK assets, this person will not be eligible for the benefits of MOU.

So far and until 1.9.2010, it is up to the Liechtenstein bankers and trustees if they accept clients not having commercially meaningful aMoUnts being transferred into Liechtenstein. The LDF could even be started by the relevant UK person without prior knowledge and acceptance by the Liechtenstein financial intermediary. With the implementation of the UK tax assistance act, new Liechtenstein based relationships need, as from 1.9.2010 on, a "declaration of meaningfulness". This means that a relevant person may only be eligible to participate at the LDF, if he/she not only will notify HMRC but can join the notification a declaration by the Liechtenstein financial intermediary that

the business relationship in Liechtenstein is substantial. There will be no fixed amounts and it will be up to the relevant associations to make it clear. However, it will mean that a business relationship cannot be "meaningless". For a trust or foundation it will mean that it will be registered in Liechtenstein and/or the effective place of management/administration will be from within Liechtenstein. With respect to private bank accounts, it means that the purchase of shares of a Liechtenstein based company or simply transferring GBP 20'000.00 to Liechtenstein for covering costs is definitely no longer possible. This supports the logic of the MOU as both Liechtenstein and UK have always considered the MOU to be a success for the Liechtenstein financial intermediaries.

What if a client benefits from consultancy about his non-compliant UK tax position from a UK professional and then the client will simply not go through the LDF?

Any client must understand that UK tax issues relate very fast to money laundering issues in UK. The client must also know who is his/her counterparty (lawyer, accountant, regulated?) and what are the professional's duties to make a report to the UK Serious Organised Crime Agency if the client benefits from the services and then there is no doubt about the fact that the client continues being non-compliant. The duties to report are different from counterparty to counterparty given the circumstances, facts and regulation. There is, according to my opinion, no difference if the professional supplies the services in or outside of UK.

There is some anti-money laundering guidance for the difference sectors, so also for the accountancy sector which summarizes that the regulated accountancy professional does not have to report to the NCIS if there are privileged circumstances set out in s330(10)(a) and (b) or s330(10)(c) of the Proceeds of Crime Act. The exemption does only apply if legal/tax advice is given under exceptional circumstances as outlined or used in connection with actual, pending or contemplated litigation. And no intention should be suspected that the client furthers a criminal purpose through the consultancy (s330(11))! So the situation is quite complicated and difficult for clients who are not quite sure what to do, and here both the UK professional and the Liechtenstein financial intermediary can pro-actively support the UK person on his/her further way.

Final Notes:

The LDF has effectively started now and Liechtenstein financial intermediaries get in touch with the parties in order to benefit from this unique agreement. Financial intermediaries have the legal requirement to identify the UK persons by 1 October 2011. Then they will be notified in writing within 3 months and can solve their situation during another 18 months. If there is no solution, the Liechtenstein financial intermediary must

stop services during the next 6 months. The MOU foresees further measures for special circumstances.

This article comments on some practical issues and is by no means exhaustive. It shows the complexity of this agreement in the daily life.

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