V. Comparison with Lichtenstein Disclosure Facility (LDF)

Background and development of LDF

In August 2009 an historic agreement between HM Revenue & Customs ("HMRC") and the Government of the Principality of Liechtenstein was annouced to provide for the introduction of a five year UK taxpayer assistance and compliance programme via a special disclosure facility, the Liechtenstein Disclosure Facility ("LDF"). The agreement is widely regarded as one of HMRC's most purposeful initiatives to increase the tax compliance of certain UK residents. This initiative was a result of what some are calling a "perfect storm" of events including:

- The theft of personal data in relation UK citizens holding assets that in some cases were untaxed in the UK
- The increasingly difficult economic climate brought on by the 2008 banking and financial crisis
- The increased cooperation between tax authorities of different jurisdictions resulting in a number of Tax Information Exchange Agreements ("TIEA") which enable countries to share and exchange information on their taxpayers

On August 11th 2009 the UK and Leichtenstein signed a TIEA and Memorandum of Understanding ("MOU") supported by a subsequent Joint Declaration. The purpose of the MOU and Joint Declaration was to set out the agreed actions of both countries and included the details of the LDF.

Overview of the Liechtenstein Disclosure Facility

- The LDF allows individuals with unpaid UK taxes relating to previously undisclosed income or capital gains linked to offshore accounts and assets held in the Principality of Liechtenstein to settle related tax liabilities and late payment interest charges and penalties
- The terms of the LDF also provide for its use by those UK taxpayers who do not have an existing asset in Liechtenstein provided they do have such an asset at the time of registering with HMRC for participation in the LDF and they held an offhsore asset (worldwide) on 1st September 2009
- The LDF provisions apply to all UK Resident and/or certain non-UK Domiciled individuals who have any interest in a "Relevant Asset" operated and/or managed in the Principality of Liechtenstein (i.e. Accounts, Trusts, Regulated Trusts, Stiftungs, Foundations, Anstalts or Corporate entities) and would otherwise be subject to UK tax
- Wth effect from 1st September 2012, those wishing to particpate in the LDF are required to confirm a "Meaningful Relationship" with Liichtenstein to the relevant Liechtenstein Financial Intermediary (FI) so that in turn the FI issues the required Certificate of Relevance to enable participation in the LDF. In July 2012 the Leichtenstein Government issued an amendment to the terms of the original LDF agreement via the UK TIEA ordinance. The intended purpose of the amendment is to enable new long term relationships to be established with the Liechtenstein Financial Centre
- The amendment defined a "Meaningful Relationship" by establishing the following thresholds of the materiality of a business relationship:
  - Banks: At least 20% of the worldwide undisclosed bankable assets (or CHF3 million) that are to be registered for participation in the LDF must be held in Liechtenstein
  - Trust Company: At least 10% of the undisclosed worldwide bankable assets (or CHF1 million) that are to be registered for participation in the LDF must be held in Leichtenstein
  - Legal Entity domiciled abroad but managed in Liechtenstein: At least 15% of the undisclosed worldwide bankable assets (or CHF1 million) that are to be registered for participation in the LDF must be held in Liechtenstein
  - Insurance Company in Liechtenstein: a policy with a minimum premium of CHF150,000
- The provisions of the LDF were implemented on 1st September 2009 and the facility will continue until 2016 (extended from 2015) unless the individual is notified directly by a Liechtenstein Financial Institution, in which case other time limits will apply. The time limit for particpation in the LDF is more generous than that of previous HMRC disclosure initiatives but, nevertheless,

any delay may increase the penalty charges if the disclosure is made outside of the LDF or HMRC initiate an enquiry/investigation into the individual's affairs

- Generally, HMRC's powers allow them conduct enquires for periods going back as far as 20 years in circumstances where the individual's UK tax non-compliance is suspected to have been deliberate. Under the terms of the LDF, HMRC limits the assessment period to tax years beginning 6th April 1999 onwards (or accounting periods from 1st April 1999).
- Where resulting additional tax arises from innocent error or carelessness the disclosure period is limited to four or six years respectively
- Under the provisions of the LDF, an individual may be able to claim immunity from criminal prosecution if the disclosure includes a full declaration of their previously undeclared worldwide assets and income held offshore. This amnesty will apply if any income tax, capital gains tax, inheritance tax etc. outstanding is paid in full together with additional interest and penalty charges. Outside of the LDF, ordinarily HMRC can, in extreme cases, apply a penalty of 200% of the tax outstanding and recommend criminal prosecution leading to a conviction and a possible sentence of up to seven years imprisonment

Tax, interest and beneficial penalty rates of the LDF

- Particpation in the LDF provides for settlement of all UK taxes including (but not limited to) Income Tax, Corporation Tax, PAYE, Capital Gains Tax, VAT and Inheritance Tax
- The LDF provides for settlement of all related taxes, late payment interest charges and a favourable 10% penalty rate (20% for tax years post 2008/2009). The penalty for the full disclsoure period is increased to 30% where the assets being disclosed were not declared to HMRC during a previous tax investigation
- The terms of the LDF are complicated. In some cases, the LDF may lead to tracking changes in UK tax, trust and residency laws for the tax years from 1999/2000 to the year of disclosure. There are further regulations (under the LDF) that allow a composite rate of tax of 40% to be applied to the taxable amounts (covering all taxes due), but which would, in turn, involve intensive and time consuming scrutiny of the movement of an individual's funds to ascertain the taxable amounts
- Where it can be demonstrated that reasonable care was taken or that any error or omission of disclosed income and/or gains was entirely innocent, HMRC will not seek to impose penalties

VI . Final opportunity

HMRC has announced that it "will not offer these preferential terms to offshore account holders again"...and "this will be the final opportunity of its kind" (HMRC website).

Taxpayers who do not make use of this final opportunities may face penalties of at least 30% (up to 200%) if HMRC raises its own enquires as a result of future investigations that will ultimately lead to the banks having to reveal the account information.