

STRATEGIC TAX PLANNING

International & UK Tax Consultants

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HMRC CHANGES TACK ON THE “BEST DEAL IN TOWN” FOR TAX EVADERS

When the Liechtenstein Disclosure Facility (“LDF”) was launched in September 2009 it appeared as an innovative and forward thinking approach to persuade Offshore Tax Evaders to come clean. It came in the wake of the failed second NDO and at last seemed to recognise that unless some discount on the strict interest tax and penalties due were given, very few would come forward.

The key was that the facility was open to anyone with an Offshore Account, Investment Company or Trust interest anywhere in the World. It could also prevent prosecution for someone with no Offshore connections. These broad terms and the 10% Fixed Penalty reduction in interest to 10 years (as opposed to 20 years) and the 40% Composite Rate option seemed attractive.

Unfortunately, the LDF was created by a well crafted but necessarily complex legal document.

Many firms who claimed to specialise in Investigations work and some non-specialist Lawyers saw the LDF as an opportunity to jump on the “bandwagon” and try and lump All comers into the scheme, or at least promise to do so. It was seen as just another fee making opportunity!

HMRC operates a helpline specifically for the LDF and it must have become clear to them that many Advisers simply couldn’t understand the complex rules of the LDF and were merely trying to see if it could be flexed to include anyone they had signed up.

HMRC’s response has been to tighten the terms of the LDF.

Firstly, the key to entering the LDF was that the taxpayer had to have “**Relevant Property**” in Liechtenstein.

Clause 5.b. of the New Memorandum of Understanding (“MOU”) with Liechtenstein makes it clear:

*“any new **Relevant Property** will be meaningful and of sufficient value and permanence to reflect the spirit of the MOU.*

*A further public statement regarding such new investment in the future in or via **Relevant Property** in Liechtenstein will be made by the parties in due course”.*

It is now unclear (and will be until the issue of the further public statement) what level of investment is actually required.

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HMC have also clarified that all the other key benefits of the deal are time limited to 5th April 2009.

After that date, the 10% Fixed Penalty and the Composite Rate do not apply. Normal penalties and actual tax are due after then.

HMRC appear to have thrown the LDF into limbo. Why?

Well, I think that the approach to winning Clients and bizarre claims being made by some Advisers; such as “we can help you negotiate the best deal with HMRC” are at least in part to blame.

The LDF is a facility to pay tax owed at beneficial rates with a fixed penalty and a no prosecution guarantee, not a negotiation!

It may also be that HMRC (who say 876 notifications had been received by 30th September 2010) are going to review the existing disclosures, because it is clear many of the Advisers struggled to understand the terms of the LDF.

I believe HMRC are also secretly disappointed with the response to the LDF and that is why they have effectively put it in limbo, so they can redefine those who they are targeting.

The sad fact is that HMRC lack the resources to effectively tackle tax evasion. Raising Income Tax rates and VAT only encourages Tax Evaders and without a huge increase in skilled manpower at HMRC, then the LDF represents in my view, a viable way forward.

Its target was clearly serious Tax Evaders and HMRC will presumably now make this clear.

The key for Clients who want to use the LDF is to engage Advisers with appropriate tax and legal expertise, to ensure that by entering the LDF they resolve their tax issues and not create new ones!

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