

**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**

**PREAMBLE**

- A. On the terms of this memorandum of understanding (“**MOU**”), the parties provide for the introduction by the Government of Liechtenstein of a five-year taxpayer assistance and compliance programme and by HMRC of a five-year special disclosure facility.
- B. Under the taxpayer assistance and compliance programme, financial intermediaries in the Principality of Liechtenstein (“**Liechtenstein**”) will be 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**”).
- C. Where such a person is identified, the financial intermediary will be under a duty to notify the person. Unless the person so notified provides to the financial intermediary evidence and certain certification that such person is not liable to UK taxation or is compliant with their UK tax obligations in relation to their Liechtenstein connected affairs within the five-year period, the financial intermediary will then be required to: –
- a) cease providing relevant services to that person; or
  - b) if the financial intermediary for legal reasons is unable to comply with his obligations referred to in subparagraph (a) above, the financial intermediary shall follow any other directions according to procedures approved and agreed by HMRC and the Government of Liechtenstein.
- D. HMRC will make available a special disclosure facility to each person who notifies HMRC pursuant to the taxpayer assistance and compliance programme. Where it is determined that the person is liable to taxation in the United Kingdom, the basis for assessment will be on the terms of the special disclosure facility limiting the penalty and the applicable period of assessment and offering a composite rate in certain defined circumstances.

- E. The special disclosure facility will be available to all persons with new or existing fiduciary, company or other holding structures or financial accounts in Liechtenstein during the five-year period subject to the following: –
- a) any person already under investigation by HMRC as of the date of signing of this MOU cannot participate in the disclosure facility;
  - b) any person who was previously under investigation by HMRC and who knowingly did not disclose his interest in any relevant property will be able to participate in the disclosure facility but will not be able to benefit from the limited penalty provided for in the disclosure facility;
  - c) any person previously contacted by HMRC under the terms of the Offshore Disclosure Facility or the New Disclosure Opportunity will be able to participate in the disclosure facility but will not be able to benefit from the limited penalty provided for in the disclosure facility. The relevant penalty will not, however, be higher than the penalty provided for under the New Disclosure Opportunity; and
  - d) a person who participates in the disclosure facility and has a bank account, including a financial (portfolio) account, outside the UK or Liechtenstein which is in his 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 provided under the disclosure facility and as referred to in paragraphs 5 and 6 of Schedule 7.
- F. The parties agree to separately provide (through a joint declaration, exchange of letters, issuance of frequently asked questions and answers, or otherwise) written guidance on Liechtenstein structures and their treatment as a general matter by HMRC, with a view to assisting financial intermediaries in Liechtenstein to address their obligations as contemplated in this MOU as well as to provide clarification to relevant persons making use of Liechtenstein legal entities or fiduciary relationships.
- G. It is the parties' intention that by the conclusion of the five-year taxpayer assistance and compliance programme under this MOU, there will, as a result of the procedures contemplated by this MOU, be no relevant persons with a beneficial interest in relevant property who are liable to taxation in one party but are using the laws of the other party to disguise such liability without paying appropriate tax in the manner contemplated by this MOU. The measures which

the parties intend to take and which are described in this MOU are intended to achieve that objective.

- H. The parties may agree, as appropriate, to subsequent memoranda whereby the Government of Liechtenstein would establish a similar special disclosure facility and the Government of the United Kingdom would establish a similar taxpayer assistance and compliance programme.
- I. The Government of the United Kingdom and the Government of Liechtenstein have entered into an agreement on tax information exchange (“**TIEA**”), which will be an adjunct to the understandings contained in this MOU and in any related joint declarations, exchange of letters, frequently asked questions and answers or otherwise. On the terms of the TIEA and this MOU, the United Kingdom and Liechtenstein will each be able to make specific tax information requests of one another.
- J. On the basis that the parties meet their respective obligations under the TIEA and this MOU, it is their intention to use the TIEA and this MOU as the means to make requests for information in relation to tax matters falling within the scope of this MOU.
- K. Upon signing this MOU, the parties will commence talks about a comprehensive tax convention on income and capital based on the OECD Model of 18 July 2008 and, in the light of those talks and an assessment by the parties of the effectiveness of the taxpayer assistance and compliance programme and the parties’ commitment to its success, will enter into substantive negotiations on such a convention one year after the signing of this MOU.
- L. The parties confirm that they fully subscribe to the concept of non-discriminatory treatment for each other’s nationals and residents. However, each party may tax its residents on a different basis than it taxes non-residents.
- M. Both parties agree that, given this MOU and the TIEA, no discriminatory treatment or any restrictions to market access can be justified on the grounds of the lack of fiscal supervision, fiscal cohesion, collection of taxes, or abuse of law or on the grounds of difficulties in obtaining relevant information between the parties.

**TERMS –**

**Part 1**

**Introductory**

1. There are seven schedules to this memorandum, namely –

Schedule 1	:	Defined terms and phrases
Schedule 2	:	Beneficial interest
Schedule 3	:	Notification procedure
Schedule 4	:	Certification procedure
Schedule 5	:	Review procedure
Schedule 6	:	Audit procedure
Schedule 7	:	Disclosure facility

2. Where a word or phrase defined in Schedule 1 appears in the other Parts of this MOU, the type face is in bold italics the first time it appears and it has the meaning given to it in Schedule 1.
3. The preamble to this MOU does not form a part of the terms of this MOU but the preamble's contents may be used to guide the terms' construction which should be purposive.

**Part 2**

**Arrangements to be made by Liechtenstein**

4. This Part provides for the introduction of legislation by the Government of Liechtenstein to carry into effect procedures in Liechtenstein for the identification of persons who have a *beneficial interest* and who are *relevant persons*.

The essential elements which HMRC wishes the Liechtenstein legislation in material part to contain are those in this Part and in Schedules 1 to 6 (hereinafter referred to as “**essential elements**”).

5. The *intended legislation* will provide for the *taxpayer assistance and compliance programme* to commence on the date the intended legislation comes into force and to end on a date not later than the *final compliance date*.
6. The intended legislation will contain provisions to the intent that –

- a) each *financial intermediary* will have a duty –
- i) to identify each relevant person in respect of whom or which it is providing *relevant services*;
  - ii) to give notice to such relevant person or to the party who or which has a contractual relationship with the financial intermediary in relation to the respective relevant property in accordance with the *notification procedure*;
  - iii) to cease providing relevant services (within the period of time as provided for in the notification procedure) in respect of each relevant person who or which does not follow the *certification procedure* or has not been subject to the *review procedure* by the *final compliance date*; or
  - iv) to follow any other directions according to procedures agreed by HMRC and the Government of Liechtenstein.
- b) the duty of a financial intermediary to identify each relevant person with a beneficial interest in respect of whom or which it is providing *relevant services* in accordance with Schedule 2 will be a continuing duty which will –
- i) take effect upon the intended legislation coming into force; and
  - ii) be reinforced by –
    - (1) a requirement on a financial intermediary to conduct an internal review if it knows or has reason to believe that any relevant person has not been previously identified; and
    - (2) the *audit procedure*.
- c) financial intermediaries who do not discharge each of the duties on them provided for in paragraphs 6(a) and 6(b) may be subject to sanctions in respect of each breach of duty unless such intermediaries take corrective action within a reasonable period of time.

7. The formulation of the content of the legislation to be introduced is a matter solely for Liechtenstein. To ensure agreement that the essential elements are present within the intended legislation, Liechtenstein may provide HMRC with

the opportunity to review the draft intended legislation within a reasonable period of time prior to its introduction for enactment.

8. Liechtenstein will enact the intended legislation no later than twelve months after the date of signing of this MOU and will promptly notify HMRC when the intended legislation has been enacted and of the date when it will come into force.

### **Part 3**

#### **Arrangements to be made by HMRC**

9. This Part provides for the introduction of measures by HMRC to complement the intended legislation.
10. HMRC will arrange that from the date when this MOU is signed –
  - a) HMRC will make the terms of the disclosure facility available from 1 September 2009 until and including the final compliance date to persons who are eligible to participate in the disclosure facility according to Schedule 7 of this MOU; and
  - b) HMRC will issue certificates in accordance with the provisions of the certification procedure.
11. HMRC agrees that, provided that the TIEA operates effectively, no discriminatory treatment or any restrictions to market access can be justified on the grounds of the lack of fiscal supervision, fiscal cohesion, collection of taxes, or abuse of law or on the grounds of difficulties in obtaining relevant information between the parties.

### **Part 4**

#### **Termination**

12. Each party may terminate this MOU on giving the other party six months notice in writing in advance.
13. In the event that any party terminates this MOU, each party may publish that fact and the reasons for the termination.

## **Part 5**

### **Notices**

**14.** Notices under this MOU and its Schedules will be given in writing –

- a) by the Prime Minister of the Government of Liechtenstein to the Commissioners of HMRC;
- b) by the Commissioners of HMRC to the Prime Minister of the Government of Liechtenstein.

## **Part 6**

### **Miscellaneous**

**15.** Amendments to the terms of this MOU may be made only by agreement in writing between the parties.

**16.** This MOU will take effect as of the date of its signing by the parties.

In witness whereof the undersigned, being duly authorized thereto by the respective party, have signed this Agreement.

Signed in Vaduz, Liechtenstein, on the 11<sup>th</sup> day of August 2009.

For Her Majesty's  
Revenue and Customs of  
the United Kingdom of  
Great Britain and Northern  
Ireland:

For the Government of the  
Principality of  
Liechtenstein:

## SCHEDULE 1

### Defined terms and phrases

1. The following words and phrases have the following meanings –
  - a) “**audit procedure**” means the procedure in Schedule 6;
  - b) “**beneficial interest**” means a right or interest over assets or income in the meaning of the definition in Schedule 2;
  - c) “**certification procedure**” means the procedure in Schedule 4;
  - d) “**disclosure facility**” means the disclosure facility in Schedule 7;
  - e) “**eligible person**” means a person who:
    - i) is a relevant person (as defined below) or is a person otherwise considered to have any liability to UK tax in respect of relevant property; and
    - ii) is prepared to fulfil in full his, her or its obligations under the disclosure facility set out in Schedule 7.
  - f) “**final compliance date**” means 31 March 2015;
  - g) “**financial intermediary**” means a person subject to supervision by Liechtenstein’s Financial Market Authority and which provides a relevant service to a relevant person;
  - h) “**HMRC**” means Her Majesty’s Revenue and Customs or its predecessor organisations, including the Inland Revenue and Her Majesty’s Customs & Excise, as well as any successor organisations.
  - i) “**intended legislation**” means legislation to be introduced by Liechtenstein containing in material part the essential elements identified in this MOU;
  - j) “**New Disclosure Opportunity**” or “**NDO**” means the tax disclosure programme announced by the United Kingdom Chancellor in his budget on



22 April 2009 for taxpayers in the United Kingdom who hold bank accounts outside the United Kingdom, as detailed subsequently by HMRC;

- k) “**notification procedure**” means the procedure in Schedule 3;
- l) “**Offshore Disclosure Facility**” or “**ODF**” means the tax disclosure programme announced by the United Kingdom Chancellor in his budget dated 21 March 2007;
- m) “**Panel**” means a panel or other review board that may be established and operated by the Government of Liechtenstein according to the terms set out in Schedule 5;
- n) “**person**” means a natural or legal person, a company, and any other body of persons;
- o) “**relevant person**” means –
  - i) In the case of a natural person, a person who has a beneficial interest in relevant property and
    - (1) who, on 1 August 2009 or at any time thereafter, the financial intermediary knows has had a residential address in the UK which the financial intermediary is or was accustomed to treat as his or her principal address; or
    - (2) who, on 1 August 2009 or at any time thereafter, the financial intermediary knows has been resident for tax purposes in the UK; or
    - (3) for whom, on 1 August 2009 or at any time thereafter, a UK address has been given in a form identifying that person as the “beneficial owner” provided to the financial intermediary under Liechtenstein anti-money laundering legislation.
  - ii) In the case of a legal person, a person which has a beneficial interest in relevant property and
    - (1) has its place of incorporation in the UK, or

(2) which, on 1 August 2009 or at any time thereafter, the financial intermediary knows has been a resident of the UK for UK tax purposes.

- p) “**relevant property**” means –
- i) a bank or financial (portfolio) account in Liechtenstein, or
  - ii) a company (including a corporation and an institution structured as a corporation as well as a company without a legal personality), 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;
- q) “**relevant service**” means any one or more of the following services provided by a financial intermediary in Liechtenstein with respect to relevant property –
- i) serving as a board member or officer;
  - ii) providing a registered office;
  - iii) holding powers of appointment of beneficiaries, trustees or property whether personal or fiduciary;
  - iv) providing custodianship of all forms of property whether on the terms of a trust or contract; or
  - v) providing banking services as defined under the applicable laws of Liechtenstein;
- r) “**review procedure**” means the procedure in Schedule 5;
- s) “**tax disclosure programme**” means a voluntary disclosure or similar programme for persons subject to and/or obligated to pay any taxes as determined by the tax laws of the UK and will include all such programmes whether available on a national, unilateral, bilateral, or multilateral basis or otherwise;
- t) “**taxpayer assistance and compliance programme**” means the notification procedure, certification procedure, review procedure and audit procedure;

- u) “**UK**” means the United Kingdom of Great Britain and Northern Ireland;
  - v) “**UK tax year**” means 6 April in any year until 5 April of the following year;  
and
  - w) “**under investigation**” means where there is a suspicion of serious tax fraud and the person has been formally notified by HMRC that an investigation has commenced, or where the person has been arrested for a criminal tax offence.
2. Any terms not defined in this Schedule 1 will have, to the extent that the context so allows, the meaning given to them in the agreement on tax information exchange (“TIEA”) signed by the Government of the UK and the Government of Liechtenstein on the day of signing of this MOU.
  3. References to “he” include references to “she” in the case of natural persons and to “it” in the case of legal persons.



## **SCHEDULE 2**

### **Definition of “beneficial interest”**

A relevant person has a beneficial interest in relevant property for the purposes of this MOU where any of the circumstances outlined below apply: –

- 1) In the case of foundations, trusts or other fiduciary entities : –
  - a) he is the person or one of the persons who established or funded it; or
  - b) he is the person or one of the persons who the financial intermediary regards as its principal beneficiary or principal beneficiaries; or
  - c) he is a person entitled to 25% or more of its income or capital; or
  - d) he is a person who has received a distribution or distributions, in a given UK tax year, in total amounting to £5,000 or more from such an entity since 1 August 2009; or
  - e) he is a person who the financial intermediary knows has been provided with the benefit, in a given UK tax year, of an asset or any number of assets of a value equivalent to £25,000 or more from such an entity since 1 August 2009.
- 2) Where relevant services within Schedule 1 (1)(q)(v) are provided in respect of bank and financial (portfolio) accounts that are relevant property: –
  - a) those persons in whose name the account is held if they are natural persons and are the beneficial owners of the account or are UK companies satisfying the tests in (1) or (2) of paragraph 1(o)(ii) of Schedule 1; or
  - b) the account is held in the name of a natural person who is not the beneficial owner or in the name of a legal person other than a company referred to in paragraph 2(a) of this Schedule 2, any person identified as the “beneficial owner” in forms provided to the financial intermediary by that legal person pursuant to Liechtenstein anti-money laundering legislation.
- 3) Where relevant services within Schedule 1 (1)(q)(i)-(iv) are provided to corporations (other than those that are listed or which are collective investment vehicles) including institutions structured as corporations, as well as companies

without legal personality, that are relevant property, those natural persons who, at any time since 1 August 2009: –

- a) have held or controlled a share or voting rights amounting to 5% or more in such entity; or
  - b) have received 5% or more of the profits of such entity.
- 4) The parties wish to record the fact that any person with any interest whatsoever in relevant property is required to account to HMRC for any UK tax properly payable in respect of such interest and, for the avoidance of doubt, the terms of this Schedule 2 are entirely without prejudice to this requirement.



## SCHEDULE 3

### Notification Procedure

The notification procedure will be as follows:

- 1) The financial intermediary will contact and notify a relevant person identified according to Schedule 2 or, where such person is not a party with whom the financial intermediary has a contractual relationship, through such person with whom the financial intermediary has a contractual relationship in relation to the relevant property, in writing within **3 months** (or if not practically possible as soon as possible thereafter) of making the identification (unless the financial intermediary knows that such person has already been otherwise so notified) and inform that person –
  - a) that the financial intermediary knows or has reason to believe that the person is a relevant person;
  - b) of the reasons for the financial intermediary's knowledge or reasons;
  - c) that the relevant person has within **18 months** from the date of the written notice under this paragraph 1 –
    - i) to satisfy the financial intermediary that the person notified is not a relevant person; or
    - ii) to provide a registration certificate to the financial intermediary pursuant to paragraph 3 of Schedule 4, and thereafter **within the additional time period** specified in paragraphs 4 and 5 of Schedule 4 to provide a disclosure certificate to the financial intermediary; or
    - iii) to provide certification to the financial intermediary pursuant to paragraph 6 of Schedule 4; and
  - d) that if on or before the expiry of the time period in paragraph 1(c) of this Schedule 3 (but subject to any longer time periods provided for in paragraphs 4 and 5 of Schedule 4 for receiving and providing a disclosure certificate), the person has not fulfilled at least one of the conditions set out in paragraph 1(c), the financial intermediary will be under the obligation in paragraph 2 of this Schedule 3.

- 2) Subject to paragraph 3 of this Schedule 3, the financial intermediary will cease to provide the relevant service with respect to the relevant person with respect to the relevant property on or before the expiry of **6 months** from the expiry of the time period under paragraph 1(c) of this Schedule 3 (but subject to any longer time periods provided for in paragraphs 4 and 5 of Schedule 4 for receiving and providing a disclosure certificate).
- 3) If compliance with paragraph 2 of this Schedule 3 would –
  - a) give rise to a breach of fiduciary duty or substantial breach or frustration of contract by the financial intermediary under the laws of Liechtenstein, or
  - b) give rise to an action for breach of duty in any other jurisdiction,the financial intermediary may follow the review procedure for directions.
- 4) If the financial intermediary does not follow the review procedure pursuant to paragraph 3 of this Schedule 3 on or before the expiry of 4 months from the expiry of the time period under paragraph 1(c), paragraph 2 of this Schedule 3 will apply.
- 5) The failure by a financial intermediary to comply with this Schedule 3 will be subject to a fine, which will be higher for repeated offences, under the intended legislation. The fines may be used by the Government of Liechtenstein to cover the costs of the taxpayer assistance and compliance programme.



## SCHEDULE 4

### Certification Procedure

The certification procedure will be as follows: –

1) A person who knows or has reason to believe that he is a relevant person with respect to relevant property will, unless one of the alternative approaches provided in paragraph 6 of this Schedule 4 is adopted, notify HMRC of:

i) their intention to apply for disclosure under the disclosure facility in writing at the following address: –

HM Revenue & Customs  
Liechtenstein Desk  
7<sup>th</sup> Floor, The Triad  
Stanley Road  
Bootle  
Merseyside  
L75 2EE

or

ii) their intention to apply for disclosure otherwise, in such manner as may be prescribed by HMRC.

2) Within **60 days** of receipt by HMRC of notification under paragraph 1 of this Schedule 4, HMRC will –

a) assign a disclosure reference number to the notification;

b) issue a registration certificate addressed to the person making the notification under paragraph 1 of this Schedule 4; such certificate will contain the following information –

i) an acknowledgement that the notification has been made;

ii) the name of the person that made the notification; and

iii) the assigned disclosure reference number.



- c) thereafter deal with such person (i) according to the terms of the disclosure facility if HMRC is notified prior to the final compliance date or (ii) according to the terms of other disclosure procedures available to the notifying person at that time.
- 3) The person who or which has received from HMRC a registration certificate under paragraph 2 of this Schedule 4 will provide such certificate (or a certified or notarised copy thereof) to the respective financial intermediary within **30 days** of receiving the certificate.
- 4) If a person has (i) obtained a registration certificate under paragraph 2 of this Schedule 4 and (ii) complied with their obligations under Schedule 7 (or with the terms of other disclosure procedures available at that time) within **7 months** for persons opting for disclosure using a single composite rate of UK tax under paragraph 6 of Schedule 7, or within **10 months** for all other persons, from the date of issuance of such registration certificate, HMRC will issue a disclosure certificate (or a letter of extension of the time period in order for such person to comply with their obligations under Schedule 7) within **30 days of the expiration of the 7 month or 10 month period referred to above (whichever is appropriate)** addressed to such person. The disclosure certificate will contain the following information –
- a) confirmation that the person making the notification has complied with their obligations under Schedule 7 or the terms of other disclosure procedures available at that time;
- b) the name of the person that made the notification; and
- c) the assigned reference number.
- 5) The relevant person who or which has received a disclosure certificate (or letter of extension) under paragraph 4 of this Schedule 4 will provide such a certificate (or a certified or notarised copy thereof) to the respective financial intermediary within **30 days** of receiving the certificate.
- 6) As an alternative to providing the registration certificate under paragraph 2 and/or the disclosure certificate (or letter of extension) under paragraph 4 of this Schedule 4, a relevant person notified by a financial intermediary will be required to show evidence that such person is not liable to UK taxation or is compliant with their UK tax obligations by providing to such financial intermediary one of the following certifications:

- a) a written confirmation (or a certified or notarised copy thereof) by a legal, tax or accounting adviser 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;
  - i) that such relevant person is compliant with their tax obligations (as opposed to such obligations that may be time barred) in the UK in respect of the relevant property; or
  - ii) that such relevant person has submitted an application to disclose the relevant property under an HMRC tax disclosure facility;
- b) a form identifying such relevant person and evidencing compliance in respect of their tax obligations (as opposed to such obligations that may be time barred) in the UK in respect of the relevant property, in a format approved by HMRC;
- c) a certified or notarised copy of the tax filing, in part or in whole, filed by such person with HMRC, provided that such filed copy shows that the relevant property at issue has been declared to HMRC; or
- d) a written waiver and identification form by such person, authorising the respective financial intermediary to forward such waiver to HMRC and subsequently provide to HMRC a copy of tax information foreseeably relevant to the person's tax obligations with respect to the relevant property.



## SCHEDULE 5

### Review Procedure

- 1) The Government of Liechtenstein will establish a review procedure. The review procedure may include a Panel comprised of independent persons (or such other institution(s) or person(s) as the Government of Liechtenstein decides) to hear each application made by a financial intermediary under the review procedure (as well as possibly to process audit reports under the audit procedure if the Government of Liechtenstein so decides).
- 2) Proceedings under this review procedure will be confidential and will take place in Liechtenstein.
- 3) The Government of Liechtenstein will consider applications under this review procedure to confirm that if the financial intermediary ceases to provide relevant services to the relevant person, such termination of services would:
  - a) give rise to a breach of fiduciary duty or substantial breach or frustration of contract by the financial intermediary under the laws of Liechtenstein, or
  - b) give rise to an action for breach of duty in any other jurisdiction,
- 4) After confirming that one or more of the criteria under paragraph 3 of this Schedule 5 are met and giving due consideration of the balance between: –
  - (i) the interest of Liechtenstein in protecting client confidentiality and contractual rights as well as the ability, viability and integrity of Liechtenstein's financial intermediaries to perform their respective duties to the relevant person; and
  - (ii) the interests of the UK in protecting its revenue,the Panel (or such other institution(s) or person(s) as the Government of Liechtenstein decides) will give directions to the applicant(s) on what steps the applicant(s) will take to –
  - a) cease to provide relevant services to the relevant person with respect to the relevant property within a reasonable period of time; or
  - b) follow any other directions according to procedures approved and agreed by HMRC and the Government of Liechtenstein. Procedures to be approved and

agreed by HMRC and the Government of Liechtenstein may include fines to be imposed on the relevant property, deduction or retention taxes and/or other approaches designed to provide economic incentives to the relevant person to take one of the steps contemplated by this MOU.

- 5) The failure by a financial intermediary to comply with directions under paragraph 4 of this Schedule 5 will be subject to a fine, which will be higher for repeated offences, under the intended legislation. The fines may be used by the Government of Liechtenstein to cover the costs of the taxpayer assistance and compliance programme.
- 6) HMRC reserves the right to request that the Government of Liechtenstein audit the directions given under paragraph 4 of this Schedule 5 by giving notice in writing to the Government of Liechtenstein to inquire into the details of how a particular decision was arrived at.



## SCHEDULE 6

### Audit Procedure

- 1) Compliance by each financial intermediary with the requirements of the taxpayer assistance and compliance programme will be audited by an independent auditor.
- 2) There will be two bases for audit.

#### First Basis for Audit

- 3) The following persons, or their successors or assigns, will be subject to audit on the first basis –
  - a) banks as listed in an appendix to this MOU to be agreed by the parties no later than **24 months** from the date of entry into force of the intended legislation, and
  - b) trust companies as listed in an appendix to this MOU to be agreed by the parties no later than **24 months** from the date of entry into force of the intended legislation,  
  
(hereinafter referred to as “the A List”).
- 4) Additions to and subtractions from the A List –
  - a) both parties may agree from time-to-time to add persons to the A List; and
  - b) a person may be subtracted from the A List (i) if it is liquidated or falls into bankruptcy or (ii) only by consent in writing given by both parties.
- 5) The auditor of a person on the A List will 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, or duly qualified in Liechtenstein and a licensed member of an equivalent professional body in Liechtenstein.
- 6) An auditor will be under a duty to submit an audit report to the Panel (or such other institution(s) or person(s) as the Government of Liechtenstein decides) containing the following information –

- a) the name of each financial intermediary that has been audited;
  - b) the number of auditors and the level of compliance in a way which is statistically significant and anonymous.
- 7) The Panel (or such other institution(s) or person(s) as the Government of Liechtenstein may decide) will gather the audit reports from the auditors, combine the statistics, and submit the consolidated summary not more often than once a year to HMRC.
- 8) Each person on the A List will be audited not more often than once a year.
- a) The first audit will be made upon the expiry of **30 months** from the date of entry into force of the intended legislation;
  - b) The last audit will be in the calendar year following the final compliance date.
- 9) The duty of an auditor to report to Liechtenstein and the frequency and content of such reports will be a matter for Liechtenstein, however –
- a) each financial intermediary must be required to provide the auditor with unlimited access to all information which the auditor considers is necessary to perform the audit; and
  - b) each auditor must be at liberty to decide which method to employ in order to perform the audit.
- 10) The cost of all audits made on the first basis will be paid by the Government of Liechtenstein which may (i) request HMRC to contribute to all or part of the cost and/or (ii) require financial intermediaries on the A List that follow the deduction procedure to contribute to all or part of the cost.

#### Second Basis for Audit

- 11) All financial intermediaries who are not on the A List will be audited by firms identified and appointed in the same way as auditors are appointed and operate under the anti-money laundering laws of Liechtenstein.



## SCHEDULE 7

### The Disclosure Facility

#### Summary of the terms of the disclosure facility

- 1) The disclosure facility includes the following, the terms of which are more fully set out in this Schedule 7:
  - a) This disclosure facility will be available from **1 September 2009** for those relevant persons with an existing asset or interest in an asset in Liechtenstein as of **1 September 2009**; relevant persons with an asset or an interest in an asset in Liechtenstein acquired between **2 September 2009** and the final compliance date may participate in the disclosure facility from **1 December 2009**;
  - b) Liability to all UK taxes, where previously not assessed to UK tax, but limited to include only the UK tax years commencing on and after **6 April 1999** for natural persons and accounting periods commencing on or after **1 April 1999** for legal persons;
  - c) Liability being further limited for natural persons to the previous six UK tax years as of the time of the disclosure application in cases of “innocent error” (as defined below);
  - d) A person eligible to participate in this disclosure facility having the option either to pay a single composite rate of tax (which will cover all UK taxes and apply each year where such person elects to use the composite rate with no reliefs or other deductions to be allowed in that year) at 40% for a UK tax year or to calculate actual liability for a UK tax year;
  - e) Interest properly payable under UK law payable in respect of liability to UK tax under the disclosure facility;
  - f) Limited penalties (or no penalty in cases of “innocent error”) in respect of any liability to UK tax subject to the application of a penalty set at the same rate as the NDO for those persons to which the NDO is deemed to apply;
  - g) Assurance regarding criminal investigations; and
  - h) Provision by HMRC of a bespoke service.

#### Eligibility to participate in the disclosure facility

- 2) Subject to paragraphs 3 and 4 of this Schedule 7, a person is eligible to and may participate in this disclosure facility with respect to all and any assets and income

in respect of which UK tax may apply from the date when this MOU is signed until and including the final compliance date, if such person is an eligible person.

- 3) Notwithstanding the provisions of paragraph 2 of this Schedule 7, if a person
  - a) receives a notice from a financial intermediary pursuant to paragraph 1 of Schedule 3 and
  - b) knows or has reason to believe that he is already “under investigation” (as defined in Schedule 1(w)) by HMRC with respect to relevant property when such notice is received,  
  
that person will not be an “eligible person” (as defined in Schedule 1(e)).
- 4) Notwithstanding paragraphs 2 and 3 of this Schedule 7,
  - a) any person already “under investigation” (as defined in Schedule 1(w)) by HMRC as of the date of signing of this MOU cannot participate in the disclosure facility;
  - b) any person who was previously “under investigation” (as defined in Schedule 1(w)) by HMRC and who knowingly did not disclose his interest in any relevant property will be able to participate in the disclosure facility but HMRC will apply a significantly higher penalty and not the limited penalty provided for in the disclosure facility;
  - c) any person previously contacted by HMRC under the terms of the Offshore Disclosure Facility or the New Disclosure Opportunity will be able to participate in the disclosure facility but will not be able to benefit from the limited penalty provided for in the disclosure facility (but will not be subject to penalties higher than the penalty provided for under the NDO); and
  - d) a person who participates in the disclosure facility and has a bank account, including a financial (portfolio) account, outside the UK or Liechtenstein which is in his 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 referred to in paragraphs 5 and 6 of this Schedule.

#### **The terms of the disclosure facility**

- 5) Under this disclosure facility, subject to paragraphs 6 and 7 of this Schedule 7, an eligible person who complies fully with his obligations under the disclosure facility (i) will be liable to UK tax with respect to all previously undisclosed tax



liabilities in respect of each successive UK tax year commencing on and after **6 April 1999** for natural persons, and accounting periods commencing on or after **1 April 1999** for legal persons, and ending with the UK tax year covered by the disclosure at issue and (ii) will not be liable to any UK tax whatsoever in respect of any UK tax year ending on or before **5 April 1999**.

- a) The eligible person will be liable to pay such interest on the tax payable under this paragraph 5 as is properly chargeable under UK law.
  - b) The eligible person will also be liable to pay a fixed penalty of 10% of the tax payable (excluding interest) pursuant to this paragraph 5.
- 6) Subject to paragraph 7 of this Schedule 7, as an alternative to calculating actual liability to pay UK taxes under paragraph 5 of this Schedule 7 in respect of the UK tax years referred to in the first sentence thereof, and in lieu of all UK taxes (including, without limitation, National Insurance Contributions, UK Inheritance, Income, Corporation, Capital Gains, Stamp Duties, and Value Added tax) due and payable in respect of each such UK tax year, an eligible person may elect to pay UK tax for each such UK tax year at a single composite rate of UK tax equal to 40%. For avoidance of doubt, the composite rate will also cover taxes due from any predecessor in interest, such as a deceased parent and the executors of their estate in the case of an inheritance.
- a) The amount of UK tax payable under this paragraph 6 will be determined by applying the composite rate to all income, profits, gains and any other sums properly chargeable to tax in the UK (with no reliefs or other deductions to be allowed except as provided for in paragraph 8 of this Schedule 7) for each relevant UK tax year for which the payment is made.
  - b) The eligible person will be liable to pay such interest on the tax payable pursuant to this paragraph 6 as is properly chargeable under UK law.
  - c) The eligible person will also be liable to pay a fixed penalty of 10% of the tax payable (excluding interest) pursuant to this paragraph 6.
- 7) In cases of “innocent error”, (i) the liability to UK taxes, where previously not assessed to UK tax, will be limited to include only the previous six UK tax years as of the time of the disclosure application, and (ii) no penalty on the tax payable will apply. For purposes of this paragraph 7 an error made by a relevant person will constitute an innocent error in the following circumstances
- a) the error led to a failure of the relevant person to report to HMRC an interest in relevant property as a result of which the relevant person would be subject to tax in the UK; and
  - b) the error was made by the relevant person and no one else; and

c) the error was one that a reasonable person would have made.

For the purposes of this paragraph 7, whether or not the error was one that a reasonable person would have made will be determined by HMRC, after due consideration of any representations made by or on behalf of the relevant person.

- 8) For avoidance of doubt, any tax withheld under the European Union Savings Directive (Council Directive 2003/48/EC) or under the Agreement between the European Community and Liechtenstein providing for measures equivalent to those laid down in that Directive will be creditable and credited against any UK taxes due under this disclosure facility, including for persons who choose to disclose using the single composite rate under paragraph 6 of this Schedule 7.

#### Assurance against criminal tax investigation

- 9) A relevant person who makes a full, accurate and unprompted disclosure to HMRC under the disclosure facility, will not be subject to criminal investigation by HMRC for a tax-related offence, unless the source of the funds from which the relevant person has benefited or may benefit constitutes “criminal property” within the meaning specified in section 340 of the Proceeds of Crime Act 2002 (provided that the definition of criminal property for this purpose will not include property that has arisen solely as a result of illegal tax evasion).

#### **Level of disclosure required by HMRC from eligible persons**

- 10) Subject to paragraph 12 of this Schedule 7, HMRC will require the eligible person to supply such information as HMRC reasonably deems necessary to ensure that the eligible person accounts to HMRC for any UK tax (together with interest and penalties) as is properly payable by the eligible person under this disclosure facility. Without prejudice to the generality of the foregoing, HMRC may require the eligible person to provide as much of the following information as is appropriate to the circumstance of the particular case:
- a) Name, address and date of birth of the eligible person;
  - b) A copy of the passport and birth certificate of the eligible person or other certified copy documentation to evidence the identity of the eligible person;
  - c) The national insurance number or any other unique tax reference of the eligible person;
  - d) Full information and a copy of documentation evidencing the circumstances due to which the person is an eligible person;
  - e) Full details of all previously undisclosed tax liabilities in respect of each successive UK tax year or accounting period since **6 April 1999** for natural persons, and **1 April 1999** for legal persons, and ending with the UK tax year

covered by the disclosure in issue, unless the eligible person submits an offer for tax based on estimated liability to tax together with evidence to justify such estimate;

- f) A statement from the eligible person as to whether the eligible person wishes to calculate liability on an actual basis under paragraph 5 of this Schedule 7 or to adopt the composite rate under paragraph 6 of this Schedule 7;
  - g) A computation of the overall tax liability of the eligible person;
  - h) A declaration that the disclosure is correct and complete; and
  - i) Full contact details of any professional adviser to the eligible person with respect to this disclosure facility.
- 11) Subject to paragraph 12 of this Schedule 7, HMRC will also require the following financial commitment from the eligible person when providing HMRC with the information referred to in paragraph 10:
- a) Payment of all tax liabilities due under this disclosure facility, together with interest and penalties; or
  - b) Evidence of any inability to pay the sum due at the time that the disclosure form (or information in writing) is submitted, together with a proposal for payment.
- 12) Notwithstanding paragraphs 10 and 11 of this Schedule 7, the level of disclosure that HMRC may require from an eligible person will not be more onerous than the level of disclosure required under the New Disclosure Opportunity or other tax disclosure programme to a similar factual situation.

### **The Bespoke Service**

- 13) The Bespoke Service will be a personalised service available to any eligible person who participates in the disclosure facility. The Bespoke Service from HMRC will include the following:
- a) Possibility of initial anonymous contact by a professional adviser or the financial intermediary involved to discuss with HMRC the circumstances of the eligible person on a “no names” basis;
  - b) The option for the eligible person and their professional advisor of having a single point of contact within a discrete HMRC team to ensure consistency of treatment;
  - c) Due consideration by HMRC of residence and domicile claims by the eligible person subject to providing of full supporting evidence;

- d) Fulfilling the obligations of HMRC within **6 months** where practical or any other time limits specified in this MOU (whichever is shorter), provided that full and accurate disclosure is made;
- e) Due consideration and acceptance by HMRC of offers for tax based on estimated liability to tax subject to receipt of evidence to justify such estimate;
- f) Due consideration and acceptance by HMRC of offers for making payments by instalments, subject to receipt by HMRC of evidence that means to pay is an issue for the eligible person, but in such circumstances forward interest will be included;
- g) Due consideration and acceptance by HMRC of offers for the timing of the sale of assets belonging to or available to the eligible person to fund the payment of tax payable to the HMRC;
- h) Subject to paragraph 16 of this Schedule 7, exclusion of the eligible person from the application of the measure announced by HMRC in April 2009 that enables HMRC to publish the names and details of individuals and companies who deliberately understate their tax returns leading to a loss of tax of more than £25,000; and
- i) Assistance to any eligible person to deal with future reporting requirements to HMRC, but on the basis that the eligible person remains fully responsible for ensuring that his, her or its reporting requirements to HMRC are fully complied with.

#### **Liability of the eligible person and consequences of non-cooperation**

- 14) For the avoidance of doubt, the obligations of the eligible person to report any interest in relevant property to HMRC and to account for any tax due thereon will be satisfied only if full and unprompted disclosure is made in respect of relevant property and full tax, together with interest and applicable penalties, is paid thereon.
- 15) For the avoidance of doubt, whether or not a notification is provided to an eligible person by a financial intermediary, the eligible person remains responsible for reporting any interest in relevant property to HMRC and accounting for all taxes due thereon under UK law in accordance with the UK self-assessment tax regime.
- 16) In the event that an eligible person takes part in this disclosure facility but withdraws cooperation or fails to provide full disclosure to HMRC with respect to all and any assets and income in respect of which UK tax may apply, then in addition to any other sanctions against the eligible person referred to elsewhere in

this MOU, HMRC may make an exchange of information request to the Government of Liechtenstein according to the TIEA and/or publish the name of such person as a deliberate tax defaulter as set out in Budget notice 63 issued by HMRC on 22 April 2009.

### **Financial Intermediaries**

- 17) HMRC wishes to ensure this disclosure facility is successful and achieves the aim of the parties that by the final compliance date there will be no persons liable to taxation in the UK who are using the laws of Liechtenstein to disguise such liability without accounting for any tax due as provided in this MOU. HMRC anticipates that the financial intermediaries will have an important and valuable role in ensuring this objective is met.
  
- 18) Accordingly, HMRC wishes to record that in relation to the financial intermediaries, in view of the expected cooperative role that such financial intermediaries will undertake in ensuring that the taxpayer assistance and compliance programme as well as this disclosure facility are successful, HMRC anticipates that it is highly unlikely to be in the public interest of the UK to undertake a criminal investigation against such financial intermediaries.

