SECOND JOINT DECLARATION
BY
THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN AND HER MAJESTY'S REVENUE AND CUSTOMS
CONCERNING
THE MEMORANDUM OF UNDERSTANDING RELATING TO TAXES

On 11 August 2009, the Government of Liechtenstein and Her Majesty's Revenue and Customs (HMRC) signed a Memorandum of Understanding Relating to Cooperation in Tax Matters (MOU). The MOU concerns the introduction by Liechtenstein of a five-year taxpayer assistance and compliance program (TACP) as well as the introduction by HMRC of a five-year special disclosure facility (LDF) for persons wishing to regularise their UK tax affairs. On the same date the parties to the MOU also signed a joint declaration (First Joint Declaration) concerning the MOU on various agreed matters.

This Second Joint Declaration further clarifies the MOU and supplements the First Joint Declaration on related matters that have been agreed by the parties. Any terms used in this Second Joint Declaration will have the meaning given to them in the MOU.

1. Intended Legislation: Clarifications on Audit Procedure and Review Procedure

    a. In relation to the TACP, the Liechtenstein Parliament enacted on 30 June 2010 the intended legislation, which entered into force on 1 September 2010. The intended legislation provides the legal framework for the TACP (i.e. the notification procedure, the certification procedure, the review procedure and the audit procedure).

    b. The Government of Liechtenstein confirms its intention to set out in the near future the details of the TACP, particularly regarding the operation of the audit procedure and the review procedure (including a retention procedure) as a part of implementing the MOU. As detailed in Schedule 6 of the MOU, the parties will agree concerning the identity of the financial intermediaries to be included in the A List in relation to the audit procedure. In the spirit of cooperation under the MOU, the Government of Liechtenstein will provide to HMRC the opportunity to review the rules, processes and systems of the audit procedure. The parties will receive from the Panel annual consolidated summaries of the audit reports conducted under the audit procedure.

2. Clarification on Review Procedure: Approval of Retention Procedure

    a. The parties expect that relevant persons will comply with the TACP, including the certification procedure in respect of any beneficial interest in relevant property. If a relevant person does not comply with the certification procedure, the parties expect that, in accordance with the MOU, the respective financial intermediary will cease to provide relevant

services to the relevant person with respect to such beneficial interest. As detailed in Schedule 5 of the MOU, in *exceptional* circumstances where:

i. the relevant person does not comply with the certification procedure, and

ii. it is not possible for the financial intermediary to terminate the relevant service (due to potential breach of fiduciary duty or substantial breach or frustration of contract by the financial intermediary under the laws of Liechtenstein or due to potential action for breach of duty in any other jurisdiction),

then the financial intermediary will explain the circumstances to the Panel. The Panel will give written directions to the financial intermediary on the steps the financial intermediary must take in order to terminate promptly the relevant services to the relevant person.

b. In the *exceptional* circumstances described in Schedule 5 of the MOU where the Panel confirms in its review that the termination of the relevant services is not possible, the Panel will direct the financial intermediary to follow the retention procedure which was agreed to in the First Joint Declaration and is set out in **Appendix B** to this Second Joint Declaration.

c. The retention procedure may be reviewed and varied as appropriate by the parties to ensure that it fulfils the intention of contributing towards the success of the MOU and overall arrangements between Liechtenstein and HMRC. Furthermore, the parties may consider, as a part of overall arrangements for continued tax cooperation, that certain periodic retention may be appropriate for UK tax years after the final compliance date.

3. <u>Protection of Financial Intermediaries Complying with the MOU</u>

a. The parties wish to confirm again that financial intermediaries (as well as their executives and employees) are expected to have a cooperative and valuable role in ensuring that the TACP as well as the LDF are successful. In view of such role, HMRC views it as highly unlikely to be in the public interest of the United Kingdom for HMRC to undertake a criminal investigation against such financial intermediaries (or against their executives or employees) for past actions or inactions relating to possible breaches of tax laws.

b. Accordingly, as long as trustees and other fiduciaries in Liechtenstein:

i. comply fully with their obligations under the TACP, and

ii. actively assist UK taxpayers with their obligations under the LDF (for example , to the extent allowed under applicable law by providing full access to all necessary documentation and other information as well as to assist the relevant person to make a full disclosure to HMRC and not to obstruct the disclosure process),

HMRC would not normally collect any unpaid UK tax liabilities arising under UK tax law in relation to settled property from the personal assets of

the fiduciaries unless circumstances are highly exceptional. HMRC will seek to collect such unpaid UK tax liabilities either from the relevant persons or from assets still held by fiduciaries on behalf of the relevant person.

4. Guidance on Liechtenstein Entities

To assist taxpayers and financial intermediaries in meeting their obligations for the purposes of the MOU, the parties have considered and agreed the guidance on characterisation, recognition and treatment of certain Liechtenstein legal entities and fiduciary relationships. This agreed guidance is included in **Appendix A** to this Second Joint Declaration and is based on Liechtenstein and UK laws as of 1 January 2010. The parties may review and revise this guidance to reflect relevant changes in those laws in the future.

5. Clarification on Relevant Property under the LDF

a. The parties wish to clarify that for the purposes of the LDF an asset or an interest in an asset in Liechtenstein refers to relevant property or an interest in relevant property.

b. The parties expect that any new relevant property (in Liechtenstein) established specifically to facilitate participation in the LDF will be meaningful and of sufficient value and permanence to reflect the spirit of the MOU. A further public statement regarding such new investments in the future in or via relevant property in Liechtenstein will be made by the parties in due course.

c. The parties wish to clarify that only a relevant person (i) who is not already "under investigation" (as defined within the MOU Schedule 1(w)) and (ii) who holds relevant property as of the date of registration and disclosure can qualify to participate in the LDF.

d. The LDF terms available to the relevant person will depend upon the nature of the account, asset or property held at 1 September 2009:

i. If the relevant person did not have a non-UK account, asset or property at 1 September 2009, such person will not be eligible for the shorter limitation period, the fixed penalty or the single composite rate option under the LDF.

ii. Subject to subparagraph 5(d)(iii) below, if the relevant person held a non-UK account, asset or property at 1 September 2009, the person will be eligible for the full terms of the LDF.

iii. If the relevant person had as of 11 August 2009 a bank account, including a financial (portfolio) account, outside the UK or Liechtenstein that is in his or her name and was opened through a UK branch or agency of that bank, the person will not, in relation to that account, be eligible for the shorter limitation period, the fixed penalty and the composite rate option under the LDF.

iv. For avoidance of doubt, a non-UK account, asset or property for the purposes of this Second Joint Declaration includes:

(1) a non-UK bank or financial (portfolio) account;

(2) an interest in a non-UK company or partnership formed, incorporated or managed outside the UK (that is not held in or through a UK bank or financial (portfolio) account);

(3) an interest in a non-UK trust, foundation, establishment, trust enterprise, or other non-UK fiduciary entity formed, founded, settled or managed outside the UK;

(4) an interest in non-UK immovable property as a legal owner or beneficiary;

(5) an interest in a non-UK estate; or

(6) an interest in a non-UK insurance policy issued or administered outside of the UK.

6. Clarification on the Composite Rate Option under the LDF

a. The parties wish to clarify that a person eligible to participate in the LDF must calculate their UK tax liability in accordance with UK law and make an appropriate disclosure to HMRC. Alternatively, a single composite rate option (CRO) may be used to calculate the amount due. Where the person makes an election to apply the CRO, the calculation will be accepted by HMRC in lieu of all UK taxes due on the actual basis for the years of disclosure, provided that such calculation is full and accurate as required for all disclosures to HMRC. If an election is made to apply the CRO, it must be applied for all tax years that are included in the disclosure from 1 April 1999 to 5 April 2009. The CRO calculation ends on 5 April 2009 and for taxable years from that date normal taxation rates and rules under UK tax legislation will apply.

b. HMRC will consider after the end of each tax year (i.e. 2009/2010 to 2014/2015) whether a single charge rate will be available as an alternative under the LDF to the actual calculation of UK taxes for the respective UK tax year that has ended. If and when such alternative rate is made available, HMRC will publish the terms, procedures and rate of charge at the appropriate time.

7. Clarification on the penalties under the LDF

a. The parties wish to clarify that where none of the exceptions under the LDF apply, a penalty of 10% on the unpaid UK tax will be chargeable for tax years up to 5 April 2009, provided the relevant person makes a full and complete disclosure under the terms of the LDF. The exceptions to the penalty of 10% on unpaid UK tax up to 5 April 2009 are where the relevant person:

i. did not have a non-UK account, asset or property (as defined in paragraph 5(iv) above) at 1 September 2009;

ii. is "under investigation" (as defined within the MOU Schedule 1(w);

iii. was previously investigated for suspected serious tax fraud and knowingly did not disclosure his or her interests in any relevant property (in Liechtenstein);

iv. has been contacted by HMRC under the terms of the Offshore Disclosure Facility or the New Disclosure Opportunity;

v. innocent error applies or reasonable care is demonstrated, in which case no penalty will be applicable.

b. For subsequent tax years the penalty will be based on the appropriate level due under UK legislation for the respective behaviours (such as reasonable care, careless, deliberate, or deliberate and concealed). Provided the relevant person cooperates fully and makes a full and complete disclosure under the terms of the LDF, the minimum level of penalty will be applied. HMRC will continue to publish information and examples on such penalties in answers to frequently asked questions (available on the HMRC website).

8. Further Steps Regarding the UK-Liechtenstein Tax Convention

The parties have started discussions about a comprehensive convention on taxation of income and capital (DTA) as a part of the continued cooperation in relation to tax matters. The DTA discussions will consider the incidence of double taxation, transfer pricing issues, and tax obstacles or areas of mutual cooperation. The parties wish to conclude successfully the substantive negotiations on the DTA and will use their best efforts and resources to do so.

9. Rights and Duties After 31 March 2015

The parties confirm their intention that by the conclusion of the TACP, there will be no relevant persons with a beneficial interest in relevant property who are liable to UK taxation but are using the laws of Liechtenstein to disguise such liability without paying appropriate tax in the manner contemplated by the MOU and this Second Joint Declaration. The measures that the parties intend to take and that are described in the MOU and this Second Joint Declaration are intended to achieve that objective.

The parties further confirm that they will discuss their respective rights and duties after 31 March 2015 and will agree on mechanisms on identification and documentation of relevant persons not already in force at the time. Such mechanisms will be designed to ensure the continuing effective operation of the TIEA and the future DTA as well as related arrangements agreed and implemented on tax cooperation and information exchange.

10. Further Public Statements and Clarifications

The MOU sets out the joint understanding of the parties as to how the LDF and the TACP operate. The terms of the MOU can be varied by agreement between the parties or terminated by either party. If and when appropriate, the parties may issue

clarifications regarding issues relating to the MOU in order to ensure the orderly running of the LDF and the TACP.

The parties to the MOU will monitor the effectiveness of the tax arrangements and intend to issue periodic public statements on the LDF progress, the TACP implementation, and the DTA negotiations as appropriate including published answers to frequently asked questions, joint press releases and/or further declarations.

This Second Joint Declaration is signed in duplicate, one original for each party,

in Vaduz, Liechtenstein, this __ day of September 2010 by

H.S.H. Prince Nikolaus of Liechtenstein

_____

For and on behalf of the Government of the Principality of Liechtenstein

in _____, this __ day of _____ 2010 by

Dave Hartnett, CB, Permanent Secretary for Taxation

_____

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

APPENDIX A

TO

SECOND JOINT DECLARATION
BY
THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN AND HER MAJESTY'S REVENUE AND CUSTOMS
CONCERNING
THE MEMORANDUM OF UNDERSTANDING RELATING TO TAXES

Guidance on Characterisation, Recognition and Treatment of Liechtenstein Legal Entities and Fiduciary Relationships

The Government of the Principality of Liechtenstein and Her Majesty's Revenue and Customs have considered and agreed the following guidance on characterisation, recognition and treatment of certain legal entities and fiduciary relationships to assist taxpayers and financial intermediaries in meeting their obligations for the purposes of the MOU. This guidance is based on Liechtenstein and UK laws as of 1 January 2010. The parties may review and revise this guidance to reflect relevant changes in those laws in the future. Where a person has an interest in a type of entity that is not specified below, they must provide complete information about the entity to HMRC to enable a view to be given.

For avoidance of doubt, nothing contained in this appendix is to affect the ability of affected persons to rely on UK law or practice permitting alternative characterisation, recognition and treatment. The parties further recognise that the ultimate UK taxation consequences for UK taxpayers will depend on the particular facts relating to specific entities or fiduciary relationships. Nothing in this appendix affects how those entities or relationships are treated for any purposes outside the MOU.

1) A European Union harmonised company form, such as "Aktiengesellschaft" or "AG"; "Gesellschaft mit beschränkter Haftung" or "GmbH"; "Societas Europaea" or "SE" is to be characterised, recognised and treated as a company for UK tax purposes.

2) A business formed as "Kommanditgesellschaft" or "KG" or "Kollektivgesellschaft" is to be characterised, recognised and treated as a partnership for UK tax purposes.

3) Trusts ("*Treuhandschaften*") or foundations ("*Stiftungen*") are to be characterised, recognised and treated as trusts for UK tax purposes.

   For avoidance of doubt, a business activity is only allowed in the case of charitable foundations or private foundations where a respective law specifically permits it. In the case of family foundations, business activity ("*nach*

kaufmännischer Art geführtes Gewerbe") is not permitted. Accordingly, while a foundation has its own legal personality, its essence and purpose, like those of a trust, is to preserve and maintain assets for the beneficiaries.

4) An establishment ("*Anstalt*") in Liechtenstein to be characterised, recognised, and treated for UK tax purposes as follows:

   a) An establishment that according to its articles is permitted to undertake a business activity ("*nach kaufmännischer Art geführtes Gewerbe*"), and therefore is obliged to have an audit, is to be characterised, recognised and treated for UK tax purposes as a company.

   b) An establishment that according to its articles is *not* permitted to undertake a business activity ("*nach kaufmännischer Art geführtes Gewerbe*"), and therefore is *not* obliged to have an audit, is to be characterised, recognised, and treated for UK tax purposes as follows:

      i) An establishment with founder's rights or shares is to be characterised, recognised and treated as a company.

      ii) An establishment with no founder's rights or shares to be characterised, recognised and treated as a trust.

      For avoidance of doubt, an establishment with founder's rights means an establishment of which the founder (settlor) has full powers to decide upon who the beneficiaries are and to change the beneficiaries, and such powers are transferrable.

5) A trust enterprise ("*Treuunternehmen*") in Liechtenstein is to be characterised, recognised, and treated for UK tax purposes in an analogous way to an establishment ("*Anstalt*").

APPENDIX B

TO

SECOND JOINT DECLARATION
BY
THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN AND HER MAJESTY'S REVENUE AND CUSTOMS
CONCERNING
THE MEMORANDUM OF UNDERSTANDING RELATING TO TAXES

MOU Review Procedure: Approval of Retention Procedure

I. DEFINED TERMS

For purposes of this retention procedure,

a) "MOU" means the Memorandum of Understanding Relating to Cooperation in Tax Matters signed by the Government of the Principality of Liechtenstein and HMRC on 11 August 2009;

b) "Retention rate" is the rate equal to:

i) in the cases where the retention interest existed as of 11 August 2009, 1.5% per annum applicable for each whole or part of a retention year in which the retention interest has been held by the relevant person; or

ii) in the cases where the retention interest did *not* exist as of 11 August 2009,

- 27% if applied prior to 6 April 2013, for any and all retention years up to and including 2012/2013, *plus*

  1.5% per annum applicable for each whole or part of the remaining retention years of 2013/2014 and 2014/2015, if the retention interest is still held by the relevant person and the relevant person has not yet complied with the certification procedure; *or*

- 28.5% if applied between 6 April 2013 and 5 April 2014, for any and all retention years up to and including 2013/2014, *plus*

  1.5% for the whole or part of the last retention year of 2014/2015, if the retention interest is still held by the relevant person and the relevant person has not yet complied with the certification procedure; *or*

- 30% if applied after 5 April 2014, for any and all retention years up to and including the last retention year of 2014/2015.

c) "Retention interest" means the beneficial interest of the relevant person in relevant property determined in accordance with Schedule 2 of the MOU and confirmed by the Panel;

d) "Retention year" means any one of the 16 consecutive UK tax years commencing in April 1999 (i.e. UK tax years 1999/2000 to 2014/2015) in which UK tax liability arises in respect of the relevant property and the relevant person has not complied with the certification procedure.

e) "Retention amount" means the amount (in pounds sterling) determined under this retention procedure to be retained from the retention interest by applying the retention rate to the retention interest; and

f) Any terms not defined herein will have the meaning given to them in the MOU.

II. RETENTION PROCEDURE

This retention procedure will be authorised and administered at the direction of the Panel.

1) This retention procedure will apply where:

   a) the relevant person has not complied with the certification procedure, and

   b) the relevant service does not cease, and

   c) under the review procedure provided for under paragraph 4(b) of Schedule 5 of the MOU, there are written directions by the Panel to the financial intermediary for the application of this retention procedure.

2) When the conditions in paragraph 1 above apply, the respective financial intermediary involved will act as follows:

   a) Obtain from the Panel an unique reference number for the retention interest;

   b) Establish the number of retention years in which the retention interest has been held by the relevant person;

   c) Obtain the applicable market value (in pounds sterling) of the retention interest. For the avoidance of doubt:

      i) the applicable market value means the value that the property might reasonably have been expected to fetch on a sale in the open market; the Panel will approve the valuation where market value is not readily available by considering the facts of each case and/or by issuing general guidelines;

      ii) in all cases where the retention interest existed as of 11 August 2009 and where the relevant person is *not* a discretionary beneficiary, the

market value does not have to be obtained for each retention year but rather once as at 11 August 2009;

iii) in all cases where the retention interest did *not* exist as of 11 August 2009 and where the relevant person is *not* a discretionary beneficiary, the applicable market value will be the highest market value (in pounds sterling) determined by comparing:

- the values at the end of each calendar quarter ended prior to calculating the retention amount, and/or
- on 5 April of the applicable retention years ended prior to calculating the retention amount, in cases where the market value is not readily available on a stock exchange or otherwise, and

iv) in all cases where the relevant person is a discretionary beneficiary, the retention interest will be calculated by reference to the total amount of income and capital payments made to the relevant person and/or the value of the benefits received by the relevant person during any retention year until the date on which the retention amount is calculated.

d) Calculate the retention rate;

i) As an example and for the avoidance of doubt, where calculating the retention amount is undertaken in May 2012 and the retention interest has been owned by the relevant person in all 14 retention years (1999/2000 to 2012/2013), the retention rate will be 21% (14 years x 1.5%). For the remaining retention years ending 5 April 2014 and 5 April 2015, additional retention of 1.5% will be done for each such retention year if the retention interest is still held by the relevant person and the relevant person's failure to comply with the certification procedure continues.

ii) As an example and for the avoidance of doubt, where a discretionary beneficiary has had an interest in a discretionary trust since 1999 and received distributions and/or benefits of £100,000 each year in three years prior to May 2012 (when calculating the retention amount is undertaken), the retention rate will be 21% (14 years x 1.5%) on £300,000. For the remaining retention years ending 5 April 2014 and 5 April 2015, additional retention of 1.5% will be done for each such retention year if the interest in the discretionary trust is still held by the beneficiary and the beneficiary's failure to comply with the certification procedure continues. The additional retention will apply on the amount of all distributions and/or benefits received by the beneficiary during the retention years until the date of calculating the retention amount for such additional retention.

iii) For the avoidance of doubt, in all cases where the retention interest did *not* exist as of 11 August 2009, the retention rate will be as follows:

- If calculating the retention amount is undertaken prior to 6 April 2013, the retention rate will be *27%* total for any and all retention years up to and including 2012/2013. For the remaining retention

years ending 5 April 2014 and 5 April 2015, additional retention of *1.5%* will be done for each such retention year if the retention interest is still held by the relevant person and the relevant person's failure to comply with the certification procedure continues.

- If calculating the retention amount is undertaken between 6 April 2013 and 5 April 2014, the retention rate will be *28.5%* total for any and all retention years up to and including 2013/2014. For the remaining last retention year ending 5 April 2015, additional retention of *1.5%* will be done if the retention interest is still held by the relevant person and the relevant person's failure to comply with the certification procedure continues.

- If calculating the retention amount is undertaken after 5 April 2014, the retention rate will be *30%* total for any and all retention years up to and including the last retention year of 2014/2015.

e) Calculate the retention amount;

f) Liquidate part or all of the relevant property in order to raise the necessary funds to cover the retention amount and the costs of this retention procedure;

g) Obtain from HMRC a Certificate of Tax Deposit ("CTD") (in the name of the financial intermediary with the unique reference number noted on the CTD) for an amount equal to the retention amount.

h) Notify the relevant person (i) that the CTD was obtained in accordance with paragraph 2(g) and that the CTD can be redeemed for UK tax due or repaid by HMRC once a full and complete disclosure has been submitted to HMRC in respect of the retention interest for the appropriate UK tax, interest and penalty charge and (ii) that unless and until a full and complete disclosure has been made to HMRC of the relevant interest by the relevant person (or their successor), and arrangements to the satisfaction of HMRC put in place for the payment of any outstanding tax in respect of the relevant interest, the CTD cannot be repaid or redeemed for UK tax due.

i) Keep for such period as the Panel may determine and provide to the Panel copies of valuations, calculations, the CTD and/or any other related documentation that may be requested by the Panel (or by the auditor under the audit procedure of Schedule 6 of the MOU); and

j) Undertake the actions under this paragraph 2 *within six months* of receiving the direction from the Panel to apply the retention procedure.

3) The relevant person (or any successor in interest or legal representative either of the relevant person or the successor in interest of the relevant person) may request and will receive repayment by HMRC of the CTD upon providing a full and complete disclosure and subject to payment of amounts outstanding to HMRC.

4) HMRC will treat the CTD as a payment on account to be credited towards any UK tax liabilities payable by the relevant person and (in the event that the value of the CTD exceeds the amount of outstanding UK tax payable by the relevant person) any repayment will be subject to the payment of credit interest by HMRC where appropriate.

    a) Interest on the value of the CTD will accrue at the official rate on a daily basis for up to six years. HMRC will treat both the CTD and any interest credited on the CTD as the property of the relevant person (and not of as the property of the financial intermediary).

    b) The payment to HMRC in order to obtain the CTD may result in a remittance or distribution chargeable to UK tax.

    c) Any interest credited to the relevant person for the CTD by HMRC is taxable in accordance with UK tax legislation.

5) HMRC may charge interest and penalties in respect of any unpaid UK taxes due and payable by the relevant person for the retention years.

    a) Such unpaid UK taxes will take into consideration, for the purposes of calculating any interest that may otherwise be due, the amount and period of holding of any CTD previously obtained under the retention procedure or otherwise.

    b) If the relevant person (or any successor in interest or legal representative either of the relevant person of the successor in interest of the relevant person) comes forward to make a disclosure to HMRC within the terms of the LDF before the 31 March 2015, then the full terms of the LDF will apply and any penalty due will be determined in accordance with those terms.

6) The financial intermediary will be required and authorised according to Liechtenstein law and without any need for the consent of the relevant person, or any other person with an interest in the assets of the relevant property, to follow this retention procedure, including to:

    a) identify the relevant property and retention interest;

    b) arrange any necessary and reasonable valuations of the market value of the relevant property and the retention interest according to paragraph 2(c) above;

    c) Liquidate within 6 months of receiving instructions part or all of the relevant property as necessary in order to raise the necessary cash to purchase a CTD; normal UK taxation rules may apply to the disposal of assets;

    d) If the financial intermediary is unable to raise the funds to purchase a CTD (and accomplish the actions under paragraph 2 above) within six months of receiving instructions from the Panel, such financial intermediary will explain the circumstances to the Panel and seek an extension to complete the retention procedure *as soon as practically possible*.

7) The Government of Liechtenstein will introduce legislation, and the Panel may subsequently issue rules and procedures including sanctions, to the extent considered necessary to implement this retention procedure. The audit in relation to the retention procedure will be in accordance with the audit procedure set out in Schedule 6 of the MOU. The Government of Liechtenstein and/or the Panel may issue further guidance specifying how the audit procedure will operate.
