

Additions following Fifth Joint Declaration

B1 – B5 - removed

B6 What happens if I want to make a disclosure after 31.12.15 to satisfy the requirements of my Financial Intermediary in Liechtenstein?

HMRC recognises that a person who is notified that they are a relevant person shortly before 31st December 2015, may wish to make a disclosure and may wish to do so after 31st December 2015. If you wish to register to make a disclosure between 1st January 2016 and 31st March 2016, you can do so by contacting the LDF Helpdesk. The Helpdesk will advise you how to make a disclosure and, if you have been notified that you are a relevant person, will issue appropriate registration and disclosure certificates that you can supply to your Liechtenstein Financial Intermediary to satisfy the requirements of the TACP. Anyone registering to make a disclosure after 31st December 2015 will not receive any of the favourable terms available under the LDF but will be dealt with in accordance with normal HMRC procedures.

A. Updates announced in August 2014 following the review of the LDF

A1 - What rules have changed about access to the favourable terms under the LDF?

Following a review of how the favourable terms should apply to LDF registrations, access to the favourable terms has been restricted to ensure that the criteria reflect the purpose of the LDF. The circumstances of these restrictions fall into three broad categories:

- Cases where the relevant person enters the LDF to settle liabilities HMRC is already aware of (see FAQ **A4**)
- Cases where the issue being disclosed has already been subject to an intervention that began more than three months before the date of application (see FAQ **A7**)
- Cases where there is no substantial connection between the liabilities being disclosed and the offshore asset held by the relevant person on 1st September 2009 (see FAQ **A14**)

A2 - removed

A3 - Which favourable terms are affected by the new restrictions and clarifications?

The favourable terms that are not available to people who fall within any of the three broad categories set out in FAQ **A1** are those that can lead to a reduction in the amount paid to HMRC (“the full favourable terms”). These are:

- A 10 per cent fixed penalty on the underpaid liabilities (for periods to 5 April 2009);
- Assessment period limited to accounting periods/tax years commencing on or after 1 April 1999, and
- The option to choose whether to use a single composite rate (or for some years after 2008/09, a Single Charge Rate) rather than calculate actual liability on an annual basis.

There are no new restrictions on access to the other favourable terms ("the limited favourable terms"):

- assurance about criminal prosecution
- single point of contact for disclosures

A4 - What is meant by 'cases where the taxpayer enters the LDF to settle liabilities that HMRC is already aware of'?

The LDF requires a taxpayer to make a disclosure and HMRC expects that to be a disclosure of something it does not already know. In some cases people have entered the LDF to settle liabilities that HMRC is already aware of. HMRC wants to encourage settlement of these liabilities, but does not believe it is within the spirit of the LDF for the shorter limitation period, fixed penalty or the composite rate option to apply. HMRC will therefore continue to allow access to the LDF in these circumstances but the taxpayer will only be able to benefit from the limited favourable terms.

In the vast majority of cases this will make no difference as most taxpayers who participate in the LDF do so to disclose new information. In cases where the disclosure involves a mixture of new and old information only the limited favourable terms will apply to the issues for which no new information is supplied. See examples at FAQ **A15**

Circumstances in which HMRC considers it is aware of liabilities include:

- Where a marketed avoidance scheme has been registered under DOTAS (see FAQ A5);
- Where the issue is subject to an intervention that began more than three months before the application to enter the LDF was made, this can include interventions relating to parties other than the person seeking to register under the LDF (see FAQs A7 et seq and example 9 in A15); and
- Where the liability has already been established in an intervention that is less than three months old (see example 2 at FAQ A15).

This list is not exhaustive and should not be read as being so. Other circumstances where HMRC considers it is aware of liabilities may be identified in the future and whenever possible we will update these FAQs to reflect this.

Situations where HMRC may hold third party information about someone but has not written to them about that matter will not be affected by this restriction. For example where HMRC holds information and may be planning to write to them, the issue of the letter will constitute an intervention (see FAQ A8 point 3) but until this point HMRC will not for these purposes consider that it is aware of the liabilities relating to that intervention (see FAQs A7 et seq).

For the avoidance of doubt, an issue under investigation in respect of which the taxpayer has a change of heart as to the appropriate treatment (e.g. they propose a different basis of tax treatment on a known issue) is not considered to be "new information".

A5 - How does this impact on marketed avoidance schemes that have been disclosed under DOTAS?

In any case where the use of the scheme by a particular taxpayer has or should have been disclosed to HMRC by the taxpayer (e.g. on a tax return), we consider that we know about the scheme and treat any disclosure relating to that scheme as not being a disclosure of new information. This is the case whether the LDF disclosure is by the taxpayer who used the scheme or by another taxpayer who has a liability as a direct result of the use of the scheme. FAQ **A15** provide examples of how this might work in practice.

It is always the case that the use of a scheme that has been notified to HMRC under the Disclosure of Tax Avoidance Schemes (DOTAS) regulations should have been disclosed to HMRC and it follows that if the scheme has been notified under DOTAS no disclosure relating to that scheme will attract the full favourable terms.

A6 - How does it impact on marketed avoidance schemes that have not been disclosed under DOTAS?

If the scheme does not have a DOTAS number, either because the promoter has failed to notify HMRC or it does not need to be notified under the DOTAS regulations, and no other restrictions apply, the taxpayer can access the full favourable terms.

A7 - How do the restrictions work for cases with an intervention more than 3 months old?

Where there has been an intervention that began more than 3 months ago (at the time of registration) access to the full favourable terms will not be available in relation to any issue that is the subject of the intervention. In such cases the full favourable terms will only be allowed in relation to any issues that are not connected to the intervention. Where the intervention is in depth and is likely to result in the taxpayer being asked to sign a certificate of full disclosure we consider that all matters related to that taxpayer's affairs are subject to the intervention and will only allow access to the limited favourable terms for all issues.

A8 - How do you define an 'intervention'?

It is impossible to provide a definitive list of all interventions but all of the following fall within the definition of intervention for these purposes:

1. Any issue that is the subject of litigation
2. Any civil enquiry of any kind that is supported by statutory information or investigation powers and is carried out for the purpose of ascertaining whether the UK tax liabilities of the relevant person are correct and up-to-date, such as:
 - a. Formal enquiries opened under TMA 1970 and any deemed subsequent enquiries (covers individual, trust and partnership returns).
 - b. Formal enquiries opened under Sch 18 FA 1998 (company tax returns).
 - c. Formal enquiries opened under Part 3 Sch 10 FA 2003 (Stamp Duty Land Tax returns)
 - d. Cases where returns for earlier years have been issued but not returned.
 - e. Cases where determinations or assessments have been issued.
 - f. Investigations that are underpinned by the ability to raise an assessment under s.29 TMA 1970 or equivalent legislation (discovery provisions).
 - g. Compliance checks that are underpinned by the powers contained at Sch 36 FA 2008 or its predecessors (Includes PAYE, CIS and VAT where the officer must notify the taxpayer that a compliance check is being commenced, or that there is an intention to visit the premises. Also includes ATED compliance checks which are brought into Sch 36 FA 2008 via Sch 34 FA 2013.)
 - h. Enquiries into tax-advantaged share schemes embedded in each of Schedules 2 to 5 of ITEPA 2003 (these powers apply with effect from 6 April 2014).
 - i. Any case where HMRC has notified a person that HMRC has requested information about them under Article 33 of the UK-Swiss Confederation Taxation Cooperation Agreement
3. Any co-ordinated, project-based enquiries by the competent authority of the UK into multiple identified or suspected taxpayers stemming from specific third party information.

A9 - What if it is not clear to me which issues are the subject of the intervention?

In most cases it is clear which issues are the subject of the intervention but where there is an ongoing (or closed) intervention at the time that you enter the LDF you should have an early discussion with your single point of contact (SPOC) to confirm that everyone is clear as to which issues are not subject to the full favourable terms.

As explained at FAQ 1.4, an adviser can contact the Liechtenstein Helpdesk for advice on matters connected with an LDF disclosure on a 'no names' basis. Such a discussion may help to provide clarity on this subject at an early stage.

A10 - Will these changes affect registrations where there was a previous intervention of the kind referred to in FAQ A8 that is now closed?

The restrictions apply to ongoing and closed interventions. Where there has been a previous intervention that began more than 3 months ago (at the time of registration), whether that intervention is still ongoing or was subsequently closed, access to the full favourable terms is not available for matters related to those that were the subject of the intervention.

Access to the full favourable terms is still available in relation to any element of the disclosure that is unrelated to the intervention.

A10A - Removed

A11 - Previously where there had been a Code of Practice 9 enquiry and the matters arising in the LDF disclosure should have been disclosed in the enquiry then the only restriction to the favourable terms was that an increased penalty was due. Do the new rules mean that the restricted tax recovery period and CRO are also no longer available in those circumstances?

Yes, in such cases only access to the limited favourable terms is allowed.

A12 - I have already settled my LDF disclosure using the full favourable terms but these restrictions would mean that only the limited favourable terms are now available, will my disclosure be reopened?

No, we will not reopen cases that were settled under the practice that previously applied.

A13 - I have already registered for the LDF and have received my registration certificate. These restrictions would mean that the full favourable terms are now not available to me but when I registered I believed that I would qualify for the full favourable terms. Will these restrictions apply to my disclosure?

No, where somebody has been issued with a registration certificate before the date of publication of these changes then those disclosures will continue to be dealt with in accordance with the practices that previously applied.

A14 - How will the restrictions work for cases where there is no substantial connection between the liabilities being disclosed and the offshore asset held by the taxpayer?

The LDF's purpose is to facilitate the disclosure of liabilities related to offshore assets. Currently the vast majority of taxpayers use the facility for this purpose but in a small number of cases there is little if any connection between the liabilities being disclosed and the offshore asset. In some cases, the disclosure has been related to wholly onshore matters. Such disclosures, whilst encouraged, are not within the spirit of the LDF.

A taxpayer has to produce a Confirmation of Relevance (COR) within 30 days of applying to participate in the LDF. A COR will only be issued if the relationship with the Liechtenstein Financial Intermediary (FI) is 'material'. One of the tests for establishing materiality for this purpose is that a substantial part of the assets affected by the disclosure is invested or managed in Liechtenstein according to Liechtenstein legislation.

Access to the LDF's full favourable terms is now in addition determined by a similar threshold test. If there is no substantial relationship between the liabilities being disclosed and the offshore asset held by the taxpayer on 1 September 2009 (the qualifying asset), the taxpayer is allowed to enter the LDF but will only have access to the limited favourable terms. Specifically, where less than 20% of the liabilities being disclosed are connected to the qualifying asset(s), the taxpayer is only able to access the limited favourable terms in relation to any part of their disclosure. Where more than 20% of the liabilities being disclosed are connected to the qualifying asset(s) (and no other restrictions apply) the taxpayer is able to access the full favourable terms in relation to all of their disclosure (subject to any other restrictions laid out in the FAQs).

The issuance of the COR by the FI remains a requirement for being eligible to participate in the LDF and the process set out in the TACP is unchanged.

FAQs **A15** provide examples of how this will work in practice.

A15 - Examples illustrating how all of these changes will affect access to the favourable terms.

Example 1 - W has been under enquiry for 6 months. The enquiry has asked questions about his trading income and bank interest and the investigator has stated that they are concerned that the levels of income and profits returned are insufficient to maintain W's lifestyle. W registers for the LDF and discloses that his trading profits are understated and that he has a further source of income that he has never returned. He also discloses that he has failed to return a chargeable gain on the sale of a property several years ago. A significant proportion of the undisclosed income and gains have been paid into an offshore bank account that was opened prior to 1 September 2009.

W may enter the LDF but will only be eligible for the limited favourable terms in relation to any of the matters disclosed. The enquiry began more than three months ago and is such that a certificate of full disclosure would be sought at the end of the enquiry. Consequently all matters

should ultimately be disclosed as part of an existing enquiry and although W may enter the LDF he will only access the limited favourable terms.

Example 2 – the position is similar to example 1 but the enquiry has been ongoing for less than three months. The fact that W has failed to return a chargeable gain has already been established. Although questions have been asked about other matters nothing has been established or disclosed.

W can only access the limited favourable terms in relation to the chargeable gain as its existence is not new information at the time he registered for the LDF. However, as the disclosure in relation to his trading profits and further source of income are 'new information', the enquiry is less than 3 months old and there is a substantial connection between the liabilities and the qualifying offshore asset, he will be able to access the full favourable terms in relation to these issues.

Example 3 – X has previously been the subject of an HMRC enquiry that began more than 3 months ago. The enquiry concerned her use of a company car and was settled for £5,000. X registers for the LDF and discloses that there is further information about her use of the company car that means that further liabilities totalling £7,000 are due. In addition she discloses that she has failed to declare a chargeable gain on the sale of a property and the tax on this issue is £20,000. The proceeds of the sale of the property were used to buy a property in France in 2008.

X may enter the LDF. Because her use of a company car was subject to a previous enquiry that began more than 3 months ago, only the limited favourable terms will apply to the liabilities relating to this matter. However the undisclosed chargeable gain is unrelated to that enquiry; there is a substantial link between the undisclosed liabilities and the qualifying asset; and the disclosure of the gain is new information. X can therefore access the full favourable terms in relation to the chargeable gain.

Example 4 – the position is similar to example 3 but the property in France was sold in March 2009 and the money placed in a Swiss bank account which was still held on 1st September 2009.

The position remains the same as in example 3. The fact that the qualifying overseas asset held on 1st September 2009 is now the Swiss bank account makes no difference as there is a clear trail between the undisclosed liabilities and the qualifying asset.

Example 5 – Y has taken part in a tax avoidance scheme that has been registered under DOTAS. Y should have entered a DOTAS scheme reference on his tax return but did not do so. No enquiry into this matter has been opened by HMRC. Y enters the LDF, discloses his use of the scheme and accepts that tax is payable in line with HMRC's view of the scheme.

Y may enter the LDF but will only be able to access the limited favourable terms as the scheme has been notified under DOTAS and a DOTAS number has been issued (see FAQ **A5**).

Example 6 – Z is a plumber and she enters the LDF to disclose that she has understated her trading income. The additional liability involved is £50,000. She held an offshore asset on 1 September 2009 in the form of a Swiss bank account. The only funds in this account are rental income from a property in Spain that she has also failed to declare. The tax due on the rental income is £5,000.

There is no connection between the understated trading income and the offshore asset. Although there is a connection between the undeclared rental income and the offshore asset, because less than 20% of the disclosed liabilities are connected to the offshore asset HMRC will not accept that there is a substantial connection between the qualifying asset and the disclosed liabilities. Z will be allowed to enter the LDF but will only have access to the limited favourable terms in relation to all of the liabilities being disclosed.

However, if the only liability being disclosed was the rental income on the Spanish property, Z would be eligible for the full favourable terms.

Example 7 – the circumstances are similar to those in example 6 but on this occasion the tax due on the trading income is £20,000 and on the rental income it is £30,000.

There is still no connection between the understated trading income and the offshore asset. There is a connection between the undeclared rental income and the offshore asset and the majority of the disclosed liabilities are therefore connected to the qualifying asset. Because more than 20% of the disclosed liabilities are connected to the offshore asset HMRC will accept that there is a substantial connection between the qualifying asset and the disclosed liabilities. Z will be allowed to enter the LDF and will have access to the full favourable terms in relation to all of the liabilities being disclosed.

Example 8 – AA has received payments via an Employee Benefit Trust (EBT) operated by her employer B Ltd. The EBT arrangements are disclosable under DOTAS and HMRC are enquiring into them. AA registers for the LDF to disclose the liabilities relating to the payment she has received from the EBT.

AA may enter the LDF but as the EBT arrangements are already known to HMRC she is only eligible to gain access to the limited favourable terms. Her disclosure is not a disclosure of new information. This would be the case even if the extent to which AA has received payments via the EBT were not known by HMRC.

Example 9 – BB has received payments via an Employee Benefit Trust (EBT) operated by her employer C Ltd. The EBT arrangements are not disclosable under DOTAS but HMRC are

enquiring into them. BB registers for the LDF to disclose the liabilities relating to the payment she has received from the EBT.

BB may enter the LDF but as the EBT arrangements are already known to HMRC she is only eligible to gain access to the limited favourable terms. Her disclosure is not a disclosure of new information. This would be the case even if the extent to which BB has received payments via the EBT were not known by HMRC.

Example 10 – CC has been subject to an HMRC enquiry that began more than three months ago. The enquiry is examining whether the foreign income shown on CC’s return for 2011/12 is correct. CC registers for the LDF to disclose liabilities relating to undeclared foreign income for the years 2008/09 to 2011/12.

CC may enter the LDF but as the level of her foreign income was already subject to an HMRC enquiry that began more than three months ago she is only able to gain access to the limited favourable terms. This applies for all years because the levels of foreign income for years before 2011/12 are considered to be connected to the enquiry into the 2011/12 return. HMRC will apply the presumption of continuity that means the irregularities for the earlier years should be disclosed as part of the ongoing enquiry.

Example 11 – DD Ltd has operated an Employee Benefit Trust. These arrangements are not disclosable under DOTAS but HMRC are enquiring into them and has been for more than 3 months. The company registers for the LDF to disclose the liabilities that arise on the company as a result of the EBT arrangements.

The company may enter the LDF but as the EBT arrangements are already known to HMRC it is only eligible to gain access to the limited favourable terms. The disclosure is not a disclosure of new information.

Example 12 – In 2008 EE paid £100,000 in to a Trust resident outside of the UK. The trust has invested these funds in assets in both the UK and overseas. The trust has a liability to UK tax in relation to these assets. The liability only arises in relation to the assets that are situated in the UK. The trust wishes to enter the LDF to make a disclosure of these liabilities.

Although it might be argued that the trust’s liabilities are not connected to its offshore assets, HMRC will accept that for the purposes of the substantial connection test the payment(s) into the offshore trust is the offshore asset. As in this case the payment was made prior to 1st September 2009, and all of the liabilities being disclosed are connected to that payment, HMRC accepts that the substantial connection test is satisfied and the NR trust will be able to access the full favourable terms.

1. About LDF

1.1 What is the LDF?

The Government of Liechtenstein committed to introduce a five year taxpayer assistance and compliance programme under which financial intermediaries in Liechtenstein needed to be satisfied that, where appropriate, clients are declaring Liechtenstein investments to HMRC.

HMRC launched the LDF to help UK taxpayers make a disclosure where appropriate.

1.2 What is special about the LDF?

The facility was introduced to help UK taxpayers with undeclared investments in Liechtenstein to come forward and get their past and future tax affairs on the right footing. By coming forward under LDF, they are able to take advantage of a number of special terms:

- a 10 per cent fixed penalty on the underpaid liabilities for periods until April 2009 (full interest will have to be paid)
- no penalty where an innocent error has been made
- assessment period limited to accounting periods/tax years commencing on or after 1 April 1999
- the option to choose whether to use a single composite rate of 40 per cent or to calculate actual liability on an annual basis
- assurance about criminal prosecution
- single point of contact for disclosures

1.3 What is the advantage of a single point of contact?

This provides a specific service which HMRC has introduced to support people taking part in LDF. It recognises that people with investments in Liechtenstein often have specific needs due to the complexity of their financial affairs. Contact the helpdesk for further details (see [What are my obligations under the facility?](#)).

1.4 - removed

1.5 Could I be criminally investigated by HMRC if I take part in the LDF?

HMRC will not start a criminal investigation for a tax-related offence if you make a full and accurate disclosure to us and the source of the funds is not from 'criminal activity'. Criminal activity, in this respect, does not include tax evasion.

1.6 If, subsequent to making my disclosure, there is a fundamental change on a decision of fact will this leave me open to criminal investigation?

There may be occasions when HMRC will take a different view to that contended in a disclosure but if a full disclosure is made and accurate information presented you will not be subject to criminal investigation.

1.7 What are my obligations under the facility?

Once you are registered, HMRC will send you a registration certificate within 60 days of receiving your notification. You need to send the certificate (or a notarised copy of it) to your FI. You must do this within 30 days of receiving the certificate.

You should make your disclosure by sending the information described at [What do I have to include in my disclosure?](#) within:

- seven months of the registration certificate date if you want to use the single composite rate
- ten months of the registration certificate date if you are going to calculate your liability on an actual basis

HMRC will send you a disclosure certificate within 30 days of receiving your disclosure providing it is complete. You need to send the certificate (or a notarised copy of it) to your FI. You must do this within 30 days of receiving the certificate. If HMRC have agreed to give you additional time to complete the disclosure (see [What if I cannot complete my disclosure within the time limits?](#)) they will send you a letter confirming the extended time period. You will need to send this letter (or a notarised copy of it) to your FI within 30 days of receiving it.

You should provide any additional information in support of your disclosure that HMRC may ask for in order to check accuracy and completeness.

1.8 What happens if I take part in this disclosure facility but later decide not to go through with it or I refuse to answer further questions from HMRC?

- You will not be able to satisfy or benefit from the conditions of the LDF.
- You will have to move your investments out of Liechtenstein (or exceptionally, keep your investment but face sanctions).
- HMRC may commence a civil investigation or in exceptional circumstances a criminal investigation which could include making an Exchange of Information request to the government of Liechtenstein for details of your investments
- Their investigation may lead to your name being published as a deliberate tax defaulter as announced in the April 2009 Budget and effective for failures on returns from 1 April 2010. This means that subject to all appeal opportunities expiring, HMRC will consider for a period of 12 months, publishing on the HMRC website with a notice to the press, your name, address, nature of business, amounts of tax and penalty.

1.9 What are the time limits for LDF?

You will have 18 months from the date you receive notification from your FI to satisfy them that you have complied with your UK tax obligations. If you choose to participate in the LDF then within this period you:

- **Should** send your full disclosure to HMRC within seven months (if you are using the composite rate) or ten months (if you are going to calculate your liability on an actual basis) of the registration certificate date. HMRC will send you a disclosure certificate within 30 days of receiving your disclosure providing it is complete.
- **Should** send the disclosure certificate to your FI within 30 days of receiving it.

1.10 How can the LDF that is established pursuant to the MOU be clarified, varied or terminated?

The MOU sets out the joint understanding of the Liechtenstein Government and HMRC as to how the LDF will 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 will issue clarification regarding issues relating to the MOU in order to ensure the orderly running of the facility, in accordance with the joint understanding between the parties as to how the facility will operate. The parties will provide any necessary further clarification through joint declarations and FAQ's.

1.11 A client has assets in Liechtenstein or wants to transfer assets to Liechtenstein and wants to make a disclosure under the LDF. Do I need to report this activity?

The LDF does not affect your legal obligations to consider whether you should make a report, accordingly you may satisfy yourself that you fall within the privilege exemptions and will not need to make a report. If you make a report then HMRC recommends that you add a note to say that it is linked to an intended disclosure under the LDF, and ask for a copy to be sent to the [HMRC Liechtenstein Desk](#). This will enable HMRC to ensure that the LDF procedures are applied correctly.

1.12 What use will HMRC make of the information given by the report?

A report does not affect the terms of the LDF. Provided all the conditions and time limits of the LDF are satisfied, HMRC will not use the receipt of a report as a reason to commence a criminal investigation or a civil investigation under Code of Practice 9.

1.13, 1.14 and 1.15 - removed

1.16 My Liechtenstein FI has notified me that they consider that I am a 'relevant person'. What must I do to ensure that my Liechtenstein FI is permitted to continue providing services to me?

A. No tax liability in the UK

If you are **not liable to UK taxation** in relation to the relevant property, you should provide one of the following to your FI:

- 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 (an '**Appropriately Qualified UK Adviser**'), that you are not liable to UK taxation in relation to the relevant property; **or**
- a written waiver and identification form authorising your FI to forward the same to HMRC and subsequently provide to HMRC a copy of any tax information that is foreseeably relevant to your tax obligations in relation to the relevant property; or
- a 'Certification of Tax Compliance', duly completed and signed in original (photocopies will not be accepted) - [see FAQ 1.19](#); **or**

either:

1.1 written confirmation (or a certified or notarised copy thereof) by an Appropriately Qualified UK Adviser that you have:

(a) submitted an application to make a disclosure to HMRC under the Liechtenstein Disclosure Facility (**LDF**) confirming that you are not liable to UK taxation in relation to the relevant property (if your application to make a disclosure under the LDF is refused by HMRC, you must notify your FI of this within 30 days of being notified by HMRC); or

(b) made a disclosure to HMRC under the LDF confirming that you are not liable to UK taxation in relation to the relevant property

or:

1.2 the original registration certificate* sent to you by HMRC following acceptance of your application to make a disclosure under the LDF or outside of the LDF after 31.12.15;

and:

2. the original disclosure certificate* sent to you by HMRC following the submission of your disclosure (*or a certified or notarised copy thereof).

B. Compliant with UK tax obligations

If you **are compliant with your obligations to UK tax** in relation to the relevant property, you should provide one of the following to your FI:

- written confirmation (or a certified or notarised copy thereof) by an Appropriately Qualified UK Adviser that you are compliant with your tax obligations in the UK in relation to the relevant property; **or**
- a certified or notarised copy of your tax filing, in part or in whole, showing that the relevant property has been declared to HMRC; **or**

- a written waiver and identification form authorising your FI to forward the same to HMRC and subsequently provide to HMRC a copy of any tax information that is foreseeably relevant to your tax obligations in relation to the relevant property; **or**
- a 'Certification of Tax Compliance', duly completed and signed in original (photocopies will not be accepted) - [see FAQ 1.19](#).

C. Disclosure of UK tax liabilities under the LDF:

If you **are liable to UK taxation** in relation to the relevant property, you should provide one of the following to your FI:

either:

1.1 written confirmation (or a certified or notarised copy thereof) by an Appropriately Qualified UK Adviser that you have:

(a) submitted an application to HMRC to disclose the relevant property under the LDF (if your application to make a disclosure under the LDF is refused by HMRC, you must notify your FI of this within 30 days of being notified by HMRC); or

(b) have disclosed the relevant property to HMRC under the LDF;

or:

1.2 the original registration certificate* sent to you by HMRC following acceptance of your application to disclose the relevant property under the LDF (*or a certified or notarised copy thereof);

and:

2. the original disclosure certificate* sent to you by HMRC following the submission of your disclosure (*or a certified or notarised copy thereof).

Note: failure to satisfy your FI that you are UK tax compliant in relation to the relevant property may result in financial services being withdrawn ([see also FAQ 1.18](#)).

1.17 What nature should the written confirmation from my adviser take? What period should be covered by the certification of tax compliance?

Your adviser should review your tax affairs for the four tax years prior to you being notified by your FI. The review should determine whether you are compliant with your UK tax obligations in respect of the relevant property. The written confirmation should state the nature of the asset being certified as UK tax compliant. If you have an interest in relevant property managed by more than one FI you should ensure that each source is separately certified within the written confirmation.

1.18 I do not have a liability to UK tax so why should I incur the expense of appointing an adviser to certify that I am tax compliant?

Obtaining confirmation from a qualified UK adviser is just one of the ways in which you can demonstrate to your FI that you are UK tax compliant. Alternatively, you may register under the LDF to disclose to HMRC that you do not have a UK tax liability. HMRC will need to be satisfied that you have no liability to UK tax. HMRC will not charge you for this service.

1.19 Can I self certify to my FI that I have no liability to UK tax?

If you have been notified by your FI that they consider you to be a relevant person and you wish to demonstrate that you are not liable to UK taxation, or are compliant with your obligations to UK tax in relation to the relevant property, you may 'self certify' by making a declaration using a Certification of Tax Compliance. A Certification should only be used in circumstances where you are certain that you are not liable to UK tax, or are UK tax compliant, in relation to the relevant property for the period covered by the Certification. Please ask your FI for the Certification appropriate to your circumstances. This will depend upon the date you established your business relationship with the FI, either on or after 1 June 2012 or before that date.

It should be noted that the ownership or occupation of residential property outside the UK, or the establishment or declaration of tax residence and/or domicile in a country other than the UK, is not in itself sufficient to enable you to declare that you are not liable to UK tax or that you are UK tax compliant in relation to the relevant property that is held, managed or administered in Liechtenstein.

If you are unsure about your status or obligations, you should seek advice from an Appropriately Qualified UK Adviser before using the Certification of Tax Compliance. Making an incorrect, inaccurate or misleading statement or failing to comply fully with the terms of the Certification can have serious consequences under Liechtenstein law and in the UK ([see FAQ 5.21](#)).

Please note that the Certification is in a format approved by HMRC. It cannot be altered, qualified or annotated in any way. If it is altered, qualified or annotated in any way or is otherwise incomplete, unsigned or its terms have not been fully complied with, it will be rejected and/or there may be serious consequences under Liechtenstein law and in the UK.

[See also FAQ 1.16](#) regarding other methods of demonstrating UK tax compliance.

1.19A – removed

1.20 What use will HMRC make of information provided within an LDF disclosure and under what circumstances may HMRC disclose to other parties?

HMRC will use the disclosure to determine the tax liability of the relevant person and they may also use the information with regard to UK tax liabilities of third parties. Where HMRC receive a formal request under an exchange of information agreement they may disclose where they are obliged to do so.

1.21 What format will HMRC approve that enables me to evidence compliance to my FI in respect of my UK tax obligations?

If you want to adopt this process and can demonstrate that you are UK tax compliant in respect of the relevant property, you may seek a letter of assurance from HMRC to give to your FI. You can contact the HMRC Liechtenstein helpdesk for advice. Alternatively you may adopt one of the other options - see [My Liechtenstein FI has identified me as a relevant person. What must I do to ensure that I do not have my financial services terminated?](#)

1.22 and 1.23 - removed

1.24. Will I be allowed to participate in the LDF if I was previously investigated under Code of Practice 9 or for a criminal tax matter?

Provided you are not 'under investigation' when you apply to register for the LDF and you meet the terms of eligibility, you will be able to participate.

However, if you knowingly did not disclose your interest in any relevant property during the investigation, you will be subject to a significantly higher penalty. See the example at [FAQ 6.6](#)

1.25. I have appointed a new adviser to assist me with my LDF disclosure although I continue to retain the services of my existing adviser. Will HMRC be able to communicate with both advisers?

If you have appointed a new adviser to act in respect of your LDF registration and disclosure, you will need to provide HMRC with a written authority that allows us to exchange and disclose confidential information about your tax affairs. You should forward the signed authorisation with your registration application. Where your new tax adviser will act on your behalf for all your future tax affairs, including tax matters outside the LDF disclosure, please use HMRC Form 64-8 for authorisation.

Where you have retained the services of more than one tax adviser, you will need to clarify which adviser HMRC should approach to discuss any issues concerning your LDF disclosure. You should also ensure that the tax adviser you appoint to complete your returns is aware of all your future tax liabilities.

1.26 - removed

1.27. What connection to Liechtenstein do I need in order to qualify for the LDF?

You must hold relevant property or have an interest in relevant property as defined in the MOU which broadly means:

- A bank or financial (portfolio) account in Liechtenstein.
- A company*, 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 (*including a corporation and an institution structured as a corporation as well as a company without a legal personality). For the avoidance of doubt, this definition:
 - includes any such entity or legal structure that merely holds or has an interest in UK property (including an account or immovable property (for example land or real estate) in the UK)
 - includes a foreign (non-UK) entity or legal structure that is administered or managed in Liechtenstein

Please also see FAQ 5.1 [What do you mean by an asset or an interest in an asset in Liechtenstein?](#)

1.28 If at any time, before or after my application to register for the LDF has been accepted, HMRC knows or suspects that my disclosure relates wholly or partly to property that constitutes the proceeds of crime, can I: (a) be made subject to a criminal tax investigation? (b) proceed with my LDF disclosure?

(a) a person who makes a full, accurate and unprompted disclosure to HMRC under the LDF will not be subject to criminal investigation by HMRC for a tax related offence, unless the source of the assets or funds constitutes 'criminal property' within the meaning specified in section 340 of the Proceeds of Crime Act 2002 (except that the definition of 'criminal property' for these purposes shall not include property that has arisen solely as a result of tax evasion).

See also LDF Factsheet Liechtenstein Disclosure Facility (LDF) and HM Revenue & Customs (HMRC) Investigations.

(b) if at any time HMRC knows or suspects that assets or funds which comprise the disclosure under the LDF are wholly or partly comprised of 'criminal property' as defined above, HMRC shall in its sole discretion be entitled to refuse any application to participate in the LDF or to withdraw the terms of the LDF as appropriate.

Please also see FAQ 1.5 and FAQ 1.6

2. Financial intermediary (FI)

2.1 What is an FI?

A financial intermediary is a person subject to supervision by Liechtenstein's Financial Markets Authority who provides a service to those holding investments in Liechtenstein.

2.2 What do I have to do if a FI tells me I may be liable to UK tax?

You will have to provide the FI with one of the following:

- written confirmation from a legal, tax or accounting adviser that you have complied with UK tax obligations for your Liechtenstein investments or have applied to disclose under another HMRC tax disclosure facility
- evidence to prove you have already met UK tax obligations for your Liechtenstein investments
- a certified or notarised copy of your Self Assessment tax return showing that your Liechtenstein investments have been declared to HMRC
- evidence that you are not a UK taxpayer
- registration and disclosure certificates which we will send to you if you register and make a full disclosure to HMRC under LDF (see [What are my obligations under the facility?](#))

Alternatively, you can provide permission for your FI to provide HMRC with all your details that they hold.

2.3 What do I do if I have investments in Liechtenstein but do not receive a notice or do not know who my FI is?

It is your responsibility to report any interest in relevant investments to HMRC and to satisfy your liability for all taxes due under UK law. If you do not know who your FI is, you should contact the financial institution in which you have your Liechtenstein Investments to obtain their contact details.

2.4 Will HMRC provide information about me to the FI?

Taking part in the LDF does not change our duty of confidentiality to you. HMRC will only provide information if they deem it to be necessary and they have your authority to do so.

2.5 Why do I need to send the certificates to the FI?

You must send the certificates to your FI to prove to them that you have satisfied the conditions of the LDF.

2.6 What happens if I do not comply with the FI's notice?

The FI will require you to move your investments out of Liechtenstein or exceptionally, will keep your investment but you will face sanctions.

3. Registration

3.1 - removed

3.2 How many registrations and disclosures has HMRC received under the LDF to date?

Details are in this table

[Liechtenstein Disclosure Facility registrations and disclosures \(PDF 9K\)](#)

3.3 What is HMRC's policy on publishing the number of LDF registrations and the yield generated from disclosures?

Previously HMRC agreed to publish the number of LDF registrations as at 31 March and 30 September each year and the amount paid by those that have registered under the LDF.

From 1 April 2012 HMRC will publish the following statistics on a monthly basis:

- the number of LDF registrations
- the number of disclosure reports received
- the yield generated from settled LDF cases
- payments made in LDF cases not yet settled

The numbers of settlements there have been in each of the following categories:

- under £100,000
- between £100,000 and £1 million
- between £1 million and £5 million
- over £5 million
- the average settlement figure to date under the LDF

Details are in this table

[Liechtenstein Disclosure Facility \(LDF\) yield \(PDF 14K\)](#)

The figures will continue to be published through the LDF pages of the HMRC website. Figures should be available by the end of the following month.

3.4 – 3.7 - removed

3.8 Are there any circumstances in which the Confirmation of Relevance may be withdrawn and my LDF registration rescinded?

The Confirmation of Relevance is accepted by HMRC at the point of registration. HMRC will not suspend or withdraw your LDF registration because of variations in your Liechtenstein investment.

3.9 – 3.13 - removed

4. Disclosure

4.1 What do I have to include in my disclosure?

HMRC will help by providing a disclosure form, complete with guidance. It will explain that you will need to provide HMRC with sufficient information and evidence to show that you are properly reporting any UK liabilities payable under this facility.

The information needed may include but will not necessarily be limited to:

- Your full name, address and date of birth.
- A copy of your passport, birth certificate or other certified copy documentation to prove your identity.
- Your National Insurance number or any other Unique Tax Reference number (if you have one).
- Information and documentation showing you are eligible to use this facility *including details of any ongoing or concluded related compliance check or enquiry anywhere within HMRC*
- Full details of all previously undisclosed tax liabilities for each tax year since 6 April 1999, (or earlier if applicable) for a natural person, or accounting period since 1 April 1999 (or earlier if applicable) for a legal person, and ending with the UK tax year covered by the disclosure or an offer for tax based on estimated figures where you do not know the actual amount. You will need to supply suitable evidence to support your estimates.
- A statement saying whether you are to calculate your liability on the actual basis or use the composite rate.
- Information showing how you have calculated your overall tax liability. This may best be presented in the form of a disclosure report.
- A declaration that your disclosure is correct and complete.
- Full contact details for your professional adviser (if you have one).
- A payment covering all your tax liabilities, interest and penalties. If you cannot pay this amount, you will need to provide us with evidence you cannot pay at this time as well as a proposal for how and when you intend to make payment.

4.2 Do I need to disclose all of my assets or interests under the LDF?

HMRC will expect a disclosure under LDF to be full and complete. This will generally include world wide income, profits, gains, assets and liabilities. If you are not domiciled for the purposes of UK tax you will need to declare income, profits, gains, assets and liabilities relating solely to your UK tax liability.

HMRC will not expect to receive and will not request information on any assets or interests of a UK taxpayer that are not relevant to the UK tax liabilities under the LDF.

4.3 I hold joint assets with my partner/spouse. Can I make a joint disclosure?

Each person seeking to disclose under the LDF must be an eligible person and make a disclosure in their own name. Income and gains accruing on a joint asset should be divided according to legal ownership.

4.4 In relation to completing a disclosure what additional documents does HMRC require?

The Disclosure Pack contains forms that must accompany your disclosure. HMRC will require:

- An adopted disclosure report tailored to the complexity of the disclosure, explaining, where necessary, how you arrived at the figures within your disclosure.
- A disclosure certificate covering the full disclosure period (a draft form is within the Disclosure Pack).
- A completed statement of worldwide assets and liabilities for individuals who are UK resident and domiciled. For non-domiciled individuals and other persons, a shortened version limited to UK assets and liabilities only (a draft form is within the Disclosure Pack).

For further guidance please contact the Liechtenstein Helpdesk.

4.5 How far back does an LDF participant need to pay any unpaid UK liabilities?

Where deliberate behaviours are demonstrated, payment of UK tax liabilities under the LDF go back:

- to April 1999 where the full favourable LDF terms apply
- 20 years where the full favourable terms don't apply, including where the account is opened through a UK branch/agency, no offshore asset is held or the disclosure relates to *circumstances described in FAQ A1*

Where exceptionally, behaviours are not considered deliberate and the full favourable terms apply the following time limits will apply:

- where reasonable care is demonstrated and an incorrect tax return has been submitted, four full tax years (from the end of the tax year in which the disclosure is made)
- where there has been a failure to notify and reasonable excuse for the failure is demonstrated, four full tax years from the end of the tax year in which the disclosure is made

- where careless behaviour is demonstrated and an incorrect tax return has been submitted, six full tax years (for VAT, four full tax years) from the end of the tax year in which the disclosure is made

(Inheritance Tax time limits differ from the above exceptions.)

4.6 How do I complete my next tax return if I am aware that I have offshore investments that I have previously not disclosed and have yet to participate in the LDF?

You should always complete any tax returns on time and as accurately as possible. In particular, you should not delay notifying HMRC while you are waiting for your Liechtenstein FI to provide you with details of your income and gains. You will protect yourself from ongoing penalties by informing HMRC of the source of the income and gains and putting a realistic estimate of your liabilities on your return.

Once you have established the correct figure of income and gains you must notify HMRC of the corrected figure. If this is increased from your original estimate, HMRC will charge interest on the increased liability or compute repayment interest if there is a reduced liability. HMRC will only charge a penalty if you knowingly underestimated your liability, failed to take reasonable care in establishing a realistic estimate or delayed notifying HMRC of the corrected figure in a reasonable time once this became available.

HMRC will not normally accept any part of a disclosure that relates to liabilities that can still be included in a tax return, where the statutory filing date has not yet passed.

4.7 What if I cannot complete my disclosure within the time limits?

You must contact the Liechtenstein Helpdesk immediately if you will not be able to make your disclosure within the time limits. HMRC will consider your reasons and where appropriate, agree to give you additional time to complete your disclosure. If HMRC agree to extend the time limit we will send you a letter confirming the extended time period you have been given and you will need to send this to your FI.

4.8 Does the Disclosure Certificate mean that my disclosure is agreed?

No. The disclosure certificate allows you to satisfy the FI that you have complied with the LDF so your investments can remain in Liechtenstein. HMRC will write to you separately to either confirm your offer has been accepted or to ask for further information if this is needed and they will aim to do this within six months of receiving your disclosure.

4.9 If I transfer my investment to Liechtenstein, how will HMRC determine from where my investment originated and the basis on

which I qualify to participate in the disclosure facility in relation to that investment?

HMRC will examine all disclosures made under the disclosure facility to determine whether they are full and complete and whether they have been made on the correct basis.

4.10 Am I required to submit a disclosure report or narrative with my LDF disclosure?

You will need to provide HMRC with sufficient information to show that you have properly accounted for all UK liabilities payable under this facility. In the case of a straightforward disclosure a simple narrative may be sufficient. Where the acquisition of the funds or the nature of the investment is complex, HMRC will expect your disclosure to be sufficiently detailed to explain how you acquired the funds to ensure that all associated tax liabilities are accounted for within your disclosure. In all cases we will need to know the source of the funds even where these originated outside of the disclosure period.

4.11 Will my disclosure be subject to a formal investigation?

When HMRC receive a disclosure they may need to contact you to seek assurances that the disclosure meets the full terms of the LDF. HMRC will carry out a risk assessment in all cases and where HMRC suspect that there are material omissions from your disclosure they may withdraw the LDF terms and commence either a criminal or civil investigation. Where HMRC have an alternative view on the tax treatment of your disclosure they may commence a civil investigation ([see Investigation factsheet \(PDF 82K\).](#))

You can minimise the risk of being investigated by setting out fully the source of the funds, the tax treatment you have adopted and how you arrive at the tax liability when submitting your disclosure (see FAQ above.)

4.12 How can a FI be satisfied that the disclosure made to HMRC under the LDF is accurate and that it fully reflects all of the assets managed within Liechtenstein?

The certification procedure is intended to demonstrate to the FI that the person has registered and subsequently made a disclosure to HMRC under the terms of the disclosure facility. There is no requirement on the FI to establish that the disclosure is complete. HMRC will be responsible for agreeing the disclosure and if it is found to be incomplete then HMRC will take appropriate action.

4.13 What is HMRC's approach where there is suspicion of a false or incomplete LDF disclosure?

You will only be eligible for the terms of the LDF if you make a complete and accurate disclosure of all your UK tax liabilities. Where HMRC suspect

that your disclosure is incomplete, they may withdraw the terms of the LDF.

How HMRC decide to pursue further enquiries will depend on the nature and extent of the suspected omissions and the information we hold. Where HMRC establish that there are deliberate and material omissions, they may refer the matter for criminal tax investigation.

4.14 What position will HMRC take if I fail to submit my LDF disclosure within the specified time limit?

HMRC expect disclosures to be made within the LDF time limit but if you need further time to make your disclosure, you are encouraged to contact the Liechtenstein Helpdesk. If HMRC can agree to an extension of the time limit, they will expect to receive the disclosure by the agreed date. See also [FAQ 4.7](#)

If you do not submit your disclosure within the specified time limit (or following any extension that HMRC agree), you will not be able to benefit from the terms of the LDF and HMRC will withdraw the LDF registration. See also [FAQ 1.19](#)

4.15 I have settled tax liabilities that are currently unpaid. Can I include the outstanding liability in my LDF disclosure?

The LDF is only available in relation to previously undisclosed liabilities. It is not available to cover settled UK liabilities or liabilities that are final but remain unpaid.

4.16 If I make a disclosure under the LDF do I have to include details of a Swiss account that has been subjected to the one-off payment under Article 9 of the UK-Swiss Confederation Taxation Cooperation Agreement?

If you register for the LDF **before** you instruct your Swiss paying agent to make the one-off payment or, in the event of your providing no instruction, before the one-off payment is levied, you must include full details of the Swiss account in your LDF disclosure. The one-off payment will be treated as a payment on account when it is levied.

If you register for the LDF **after** you instruct your Swiss paying agent to make the one-off payment or, in the event of your providing no instruction, after the one-off payment has been levied and the one-off payment clears **all** liabilities associated with the Swiss account, you need not include details of the account in your disclosure. Where appropriate you should seek professional advice to determine whether or not the one-off payment does clear **all** liabilities associated with the Swiss account.

5. Technical matters

5.1 What do you mean by 'an asset or an interest in an asset in Liechtenstein'?

An asset or an interest in an asset in Liechtenstein refers to 'relevant property' or an interest in relevant property. The meaning of relevant property is explained within the [Memorandum of Understanding \(PDF 108K\)](#) on page 9.

5.2 What are some examples of an offshore trust or company that will be considered 'relevant property'?

In relation to an offshore trust, the trust will be 'relevant property' if, for example:

- it is established under Liechtenstein law
- it has at least a majority of Liechtenstein resident trustees
- it is administered or managed in Liechtenstein

In relation to an offshore company, the company will be 'relevant property' if, for example:

- it is formed, incorporated or otherwise established under Liechtenstein law
- it has at least a majority of Liechtenstein directors
- it is administered or managed in Liechtenstein

5.3 Is there a minimum amount that needs to be invested in relevant property in order to qualify for the LDF?

All persons acquiring a Liechtenstein asset will be expected to have a meaningful connection with Liechtenstein. Although no financial limits are set by HMRC, financial intermediaries are expected to apply minimum investment levels or other qualifying terms.

All financial intermediaries are expected to issue a Confirmation of Relevance to investors seeking to qualify for the LDF. You will need to provide this to HMRC within 30 days of applying to participate in the Liechtenstein Disclosure Facility. Failure to provide the COR within this period of time will preclude participation in the LDF pursuant to the application.

5.4 How is interest calculated?

Interest is calculated from the date tax should have been paid until the date you actually pay that tax to HMRC. [HMRC's published rates of interest](#) will apply within LDF. If you elect for the Composite Rate Option interest is chargeable from 1 July next following the accounting year, assessment period or charging period in which the liability arises.

5.5 I have failed to declare my Liechtenstein investments but consider this is due to innocent error, what should I do?

If you consider the failure is due to innocent error you should call the helpdesk before making your disclosure. As part of the LDF bespoke

service HMRC will discuss the circumstances with you and they may request documentary evidence to support what you say before HMRC reach a decision on whether innocent error applies. Where HMRC accepts that the loss of tax was wholly attributable to innocent error they will explain what you need to do.

5.6 What action should I take if I have any difficulties in understanding the terms of the disclosure facility?

Either you or, if applicable, your professional adviser, should contact the Liechtenstein Helpdesk at HMRC who will give you any necessary assistance. The contact details can be found at [What are my obligations under the facility?](#)

5.7 I acquired my father's estate on his death in 2005 and disclose liabilities relevant to me up to 2009. What is my obligation to disclose undeclared liabilities for periods prior to that date?

You will declare personal liabilities from 2005 and give sufficient details of the source of the funds to enable HMRC to consider the completeness of your disclosure. Your father's estate and executors may have liabilities prior to 2005. HMRC may seek to recover the earlier liabilities.

If you elect for the CRO you will be responsible for all liabilities that are in date for assessment for the period commencing April 1999. HMRC will not take any further action against the estate or executors regarding this source as it is now covered by LDF terms.

5.8 How do I arrive at the cost of an asset disposed of during the ten year period ended in April 2009?

You will calculate the gain in the normal way using the original cost or value at the acquisition date. If you opt for CRO you will not allow reliefs or deductions. If you do not opt for the CRO you may utilise all appropriate reliefs and deductions.

5.9 I have an offshore bank account that was not opened through a UK branch or agency. Wire transfers from the UK were made into that account. Will I still qualify for the favourable LDF terms?

Yes, provided you are otherwise eligible for the Liechtenstein Disclosure Facility *and the full favourable terms* and you held (i) an offshore account or asset as of 1 September 2009 and (ii) relevant property as of the date of your registration and disclosure under the LDF, you will qualify for the favourable LDF terms.

If you do not have an offshore account or asset as of 1 September 2009 you will not qualify for the shorter limitation period, the fixed penalty or the composite rate option.

5.10 I am concerned that if my disclosure is incorrect my offer may be rejected and the subsequent outcome may lead to an increase in penalty.

HMRC expects a full and complete disclosure to be made. However, if a simple error has occurred this should not effect the penalty percentage level. If HMRC is deliberately misled or your disclosure is found to be materially incomplete the LDF terms may no longer apply to your disclosure.

LDF offers a bespoke service to assist you in clarifying any areas of doubt. You should contact the [Helpdesk](#) should you require any help.

5.11 Will you be seeking information relating to non UK beneficiaries of a trust?

No. HMRC will only seek information in relation to the eligible person who is making the disclosure. This would not generally extend to non UK beneficiaries of a trust who do not have UK tax liabilities.

5.12 In many cases the LDF disclosure will not account for Capital Gains Tax before April 1999. Does this mean that I compute the capital gain using the market value of the asset at April 1999?

No. The cost of the asset and the capital gain is computed in accordance with the law. The original value is determined under normal rules.

5.13 How is interest calculated on liabilities disclosed under the LDF?

Interest should be properly payable in accordance with UK law and must take account of the increased liabilities on the payment on account that should have been made for subsequent years. For example, if tax is increased for 1999-00 you will need to consider the adjustment required to the payments on account for the following year (2000-01) due on 31 January 2001 and 31 July 2001.

5.14 I intend to keep my investment with my FI for many years. How frequently will I be expected to demonstrate that I have no UK liability or that I am UK tax compliant?

Each FI will carry out a review before 31 December 2015 to identify those clients who may be liable to UK taxation. If you are notified by your FI you will be asked to demonstrate that you are UK tax compliant or that you have no liability to UK taxation. You will generally only be expected to do this once (for each FI who manages investments on your behalf) during the period ended 31 December 2015.

5.15 What if my circumstances change so that I suddenly become liable to UK tax where previously I had not been?

Where you previously provided confirmation that you had no UK tax liability, your FI will need assurances that the changed circumstances do not affect your UK tax liability. You have a legal obligation to notify HMRC once you become liable to UK taxation and you should not rely solely on any confirmation you previously gave to your FI.

If you have registered for the LDF and provided your FI with a disclosure certificate, or you had provided your FI with alternative written confirmation from HMRC certifying that your tax affairs are in order, then your FI will continue to offer financial services.

There are tax geared penalties if you fail to notify HMRC within the time limits.

5.16 I am a Liechtenstein FI who has dealt with my client's affairs over many years. I already know that my client is UK tax compliant so why should I put them to the trouble of certifying their compliance?

The FI is under a duty as part of the TACP to notify all persons with a beneficial interest in relevant property who may be liable to UK taxation. FI's may not have sufficient facts or knowledge of UK tax legislation to be in a position to independently accept that a client has met all of their tax obligations. For example, there may be information that has a bearing on a person's domicile or residence status that is unknown to the FI.

The evidence or certification produced by the client is intended to show that they:

- have notified HMRC of their potential UK liability
- are compliant with their UK obligations
- are not liable to UK taxation

5.17 I am UK resident but not domiciled. My FI has identified me as being a relevant person who may have a liability to UK tax in relation to relevant property that is held, managed or administered in Liechtenstein. However, I have no liability because I make no direct remittances to the UK. To what extent will I have to satisfy HMRC or a qualified agent that I have not made remittances to the UK?

Although you are not domiciled in and make no direct remittances to the UK, this does not necessarily mean that you have no UK tax liability to address or that you are compliant with your UK tax obligations. For example, you may have an undisclosed tax liability where the income arising on your overseas investment is from the UK, or where it is considered that you have made indirect remittances to the UK from other investments held worldwide or from connected parties. Additionally, you may not have paid UK Inheritance tax regarding investments settled overseas or you may not have completed your UK Tax Returns correctly to claim the Remittance Basis or pay the Remittance Basis Charge that is due.

As your FI has identified you as a relevant person, you will need to provide evidence certifying your UK tax compliance to permit your FI to continue providing relevant services. [FAQ 1.16](#) explains how you may demonstrate your UK tax compliance to satisfy your FI.

If you are certain that you are not liable to UK tax or are UK tax compliant in relation to the relevant property, you may complete a Certification of Tax Compliance ([see FAQ 1.19](#)). You may however consider that registering to make a disclosure under the terms of the LDF may be more appropriate in view of the complexity of your tax affairs ([see FAQ 1.16](#)). The bespoke service provided by the LDF may assist your understanding of your tax position. Nil tax disclosures can be made under the terms of the LDF.

5.18 - removed

5.19 Although I have retained records to identify the growth in my investments, it would be far simpler to use estimates to construct a record of income and gains accruing throughout the LDF period. Is this permissible?

No. The use of estimates is only permissible where it is not possible to determine the liability using existing records.

5.20 What is HMRC's approach to issuing protective assessments in LDF cases?

HMRC may learn of a situation that could restrict its ability to assess in full arrears of tax that would otherwise be due under a complete and accurate LDF disclosure. In appropriate circumstances, HMRC may raise protective assessments in accordance with UK law before the relevant time limits expire.

5.21 If I self certify that I am not liable to UK tax or that I am UK tax compliant using the Certification of Tax Compliance, does this mean that HMRC accept that I am not taxable? What are the consequences if I self certify incorrectly?

The Certification of Tax Compliance will enable your FI to be satisfied that you are UK tax compliant and will allow the FI to continue to provide services to you with regard to the relevant property. HMRC does not accept the Certification as proof that you are not taxable or that you are tax compliant in the UK. If you are liable to tax in the UK, HMRC will seek to recover any tax due irrespective of the fact that the Certification has been completed.

If HMRC discover that your Certification of Tax Compliance is incorrect, inaccurate or misleading, the matter will be viewed very seriously and various options will be considered to rectify the position, including:

- 1) commencing a criminal investigation

- 2) commencing a Code of Practice 9 investigation incorporating the 'Contractual Disclosure Facility' (CDF) where we suspect tax fraud
- 3) recovering tax, interest and penalties for a 20 year period
- 4) seeking an increased penalty (up to a maximum of 200 per cent of the tax due) under the new offshore penalties legislation
- 5) publishing your name as a deliberate tax defaulter

The commencement of an investigation under (1) or (2) above will deny you the opportunity to register for participation in the LDF.

In addition, action may be taken by the Liechtenstein Government in relation to any breach of Liechtenstein law that may have occurred as a consequence of an inaccurate, incomplete or misleading Certification.

5.22 When considering the 'Certification of Tax Compliance' for the purposes of satisfying my FI that I am UK tax compliant/not liable to UK tax, I have realised that although I am not liable for the period covered by the Certificate (the four complete tax years and the period falling before the date of signature), I am liable to tax for an earlier period which I deliberately did not disclose previously. If I submit the Certificate, does this mean that HMRC will accept that I have no tax liability to account for the period not covered by it?

No. The Certification does not bind HMRC in any way; it is only used to satisfy your FI that they can continue to provide services to you in relation to the relevant property.

If you believe that you may have undisclosed UK tax liabilities, you should notify HMRC immediately to resolve the position. You may also consider other methods of regularising your tax affairs which may be more appropriate to your circumstances. For example, if you register for the LDF, you may benefit from the restricted tax recovery period and limited penalty that is applicable.

If you take no action and HMRC discover that you have failed to notify your liability to UK tax or that you have deliberately submitted incorrect tax returns, then HMRC will take appropriate action to rectify the position ([see FAQ 5.21](#)).

5.23 My FI has identified me as a 'relevant person' according to the definition in the Memorandum of Understanding. I do not believe that I am a 'relevant person'. What do I do?

You must satisfy your FI that you are not a relevant person. Alternatively, if you do not have a liability to UK tax in relation to the relevant property or you are compliant with your UK tax obligations, you may certify that using a Certification of Tax Compliance ([see FAQ 1.19](#)).

It should be noted that the ownership or occupation of residential property outside the UK, or the establishment or declaration of tax residence and/or domicile in a country other than the UK, is not in itself sufficient to

enable you to declare that you are not liable to UK tax or that you are UK tax compliant in relation to the relevant property that is held, managed or administered in Liechtenstein.

If you are unsure about your UK tax status or obligations, you should seek advice from an Appropriately Qualified UK Adviser before using the Certification of Tax Compliance. Making an incorrect, inaccurate or misleading statement or failing to comply fully with the terms of the Certification can have serious consequences under Liechtenstein law and in the UK ([see FAQ 5.21](#)).

Please note that the Certification is in a format approved by HMRC. It cannot be altered, qualified or annotated in any way. If it is altered, qualified or annotated in any way or is otherwise incomplete, unsigned or its terms have not been fully complied with, it will be rejected and/or there may be serious consequences under Liechtenstein law and in the UK.

5.24 When considering my undisclosed offshore investment I have identified capital losses which I have not previously notified to HMRC. When I make a disclosure, can I get relief for capital losses which I did not claim at the time they arose?

If you are within the normal time limit for making a claim in respect of those losses you should tell HMRC about them when you make your disclosure. The losses aren't allowable for relief unless you give HMRC notice of them. HMRC may accept a late notice in certain limited circumstances.

5.25 I have identified capital losses which I have not previously notified to HMRC and which are outside the normal time limit for making a claim to relief - can I now claim relief in my LDF disclosure?

You may be able to get relief if HMRC could assess the capital gains in your disclosure because there was a loss of tax brought about carelessly or deliberately (this is also the case where HMRC accept your offer in settlement rather than making an assessment). The losses can be deducted from the gains but they aren't available to set against gains in any other assessment or self assessment. The relief is restricted to the loss of tax brought about carelessly or deliberately.

5.26 I have identified capital losses which I have not previously notified to HMRC. In accordance with FAQ5.25 I am able to claim relief in my disclosure. Is there any restriction to the amount of loss relief that I may claim?

If the losses are for the same year as the gains in your disclosure and there was a loss of tax brought about carelessly or deliberately, you can deduct them from the additional gains assessable for that year. If you have unused capital losses for an earlier year, you can deduct them from the additional gains of a later year in your disclosure which were brought

about carelessly or deliberately providing the previously undeclared losses fall within the normal time limit for claiming losses for the year in which the additional gain arose.

5.27 I am resident but not domiciled in the UK and use the remittance basis to calculate my liability to UK tax. If I settle my liability under the LDF by transferring money into the UK from overseas, can the payment be disregarded as a taxable remittance?

No, if you are a remittance basis user you will need to consider whether the amount remitted to the UK to settle your tax liability in the LDF is taxable in accordance with the law and ensure that any tax due as a consequence is returned to HMRC in the appropriate manner.

However, although payments to HMRC to settle tax liabilities in the LDF are not disregarded as a taxable remittance, not all payments to the UK are taxable. For example payments made to specifically pay the Remittance Basis Charge, payments of clean capital and amounts which have already been taxed under the Composite Rate Option will not be subject to tax as a remittance.

5.28 In April 2013 the UK introduced new measures to tax high value UK residential properties. The rules apply to UK residential property owned by certain companies, partnerships with company members, trusts investing via companies and managers of collective investment schemes (collectively referred to as non-natural persons (NNPs)) which own residential property in the UK worth over £2 million. They do not apply to property owned by "natural persons", i.e. by individuals, by nominees for natural persons or to property owned directly by UK or foreign trusts. How are Liechtenstein foundations to be regarded for these new UK tax charges? Are Liechtenstein foundations "non natural persons" and so caught by the new rules or are they regarded as foreign trusts and therefore not liable to the new measures?

The characterisation, recognition and treatment guidance set out in the First and Second Joint Declarations to the Memorandum of Understanding (MOU) entered into between Liechtenstein and the UK will apply for the purposes of the ATED. The Appendix A of the first joint declaration foresees that Liechtenstein trusts ("Treuhandschaften") and foundations ("Stiftungen") are to be characterised, recognised and treated as trusts for UK tax purposes. However, nothing contained in that guidance affects the ability of affected persons to rely on UK law or practice permitting alternative characterisation, recognition and treatment based on the specific facts of the case in question.

6. Penalties

6.1 In respect of disclosures for the tax years ended up to 5 April 2009, what exceptions are there to the fixed 10 per cent penalty?

The exceptions are where:

- you did not have an offshore account or asset at 1 September 2009 or your account was opened via a UK branch or agency
- you were previously investigated under Code of Practice 9 and you knowingly did not disclose your offshore interests
- you have been contacted by HMRC under the terms of the Offshore Disclosure Facility or the New Disclosure Opportunity (NDO)
- *you do not make a disclosure of new information (see FAQ **A4**)*
- *the issue you are disclosing is already subject to an intervention that began more than 3 months ago (see FAQ **A7**)*
- *there is no substantial connection between the liabilities being disclosed and the offshore asset that was held by you on 1st September 2009 (see FAQ **A14**)*
- innocent error applies or reasonable care is demonstrated, in which case no penalty will be applicable

6.2 I am a beneficiary of an offshore trust that was settled by a member of my family years ago from money held offshore. I have received income and capital gains in the UK which was not declared to HMRC. I would like to make a disclosure under the terms of the LDF. What is the penalty position for the tax years to and from April 2009?

Where you have not previously been subject to investigation nor been contacted by HMRC, a penalty of 10 per cent will apply to 5 April 2009. For subsequent tax years, provided you make a full and complete disclosure under the terms of the LDF, a penalty of 20 per cent will apply as you failed to notify HMRC that you were chargeable to tax.

Where you can demonstrate that you had a reasonable excuse for your failure no penalty will be sought. HMRC will consider the circumstances of each case.

6.3 I did not pay tax on profits earned in the UK and I invested the cash proceeds in a Liechtenstein foundation of which I am the beneficiary. I would like to make a disclosure under the LDF. What is the penalty position for the tax years to and from April 2009?

Where none of the exceptions under the LDF apply, a penalty of 10 per cent will be chargeable for tax years up to 5 April 2009. For tax years following this date the penalty will be based on the minimum level appropriate under UK legislation for deliberate behaviour.

For 2009-10, provided you make a full and complete disclosure under the LDF, the penalty will be 20 per cent.

6.4 I received a letter from HMRC that referred to the possibility of disclosure under the Offshore Disclosure Facility (or the NDO). I decided not to make such a disclosure. What is the penalty under the LDF for the tax years to and from April 2009?

Provided a full and complete disclosure is made in accordance with the LDF, a penalty of 20 per cent will be chargeable for tax years up to 5 April 2009. For tax years after this date the penalty will be based on the minimum level appropriate under UK legislation for deliberate behaviour.

For 2009-10, provided you make a full and complete disclosure under the LDF, the penalty will be 20 per cent.

6.5 I became a beneficiary of an offshore foundation in 1980 and have received taxable payments from the foundation every year since entitlement began. HMRC were unaware that the payments had been received. I made a disclosure under the terms of the LDF. What is the penalty position for the tax years to and from April 2009?

Where none of the exceptions under the LDF apply the fixed penalty of 10 per cent will be chargeable for tax years up to 5 April 2009. As you have received taxable income from the offshore foundation for many years it is considered that you have consistently failed to notify your chargeable income to HMRC and your behaviour is deliberate. In these circumstances the penalty will be based on the minimum level appropriate under UK legislation for deliberate behaviour.

For 2009-10, provided you made a full and complete disclosure under the LDF, the penalty will be 20 per cent.

6.6 I was previously the subject of an enquiry/investigation under Code of Practice 9 and I failed to disclose offshore investments. I have applied to register for the LDF. What is the penalty position for the tax years to and from April 2009?

HMRC take the view that you deliberately concealed your investment. On the assumption that you now make a full and complete disclosure, settling all outstanding liabilities in full, HMRC will apply a penalty of 30 per cent for the tax years up to 5 April 2009. For tax years following this date the penalty will be based on the minimum level appropriate under UK legislation for deliberate and concealed behaviour. For 2009-10, provided you made a full and complete disclosure under the LDF, the penalty will be 30 per cent.

6.7 I am a UK trader who diverted profits to an offshore account having falsified my invoices to conceal the diversions. What level of penalty will be chargeable under the LDF for the tax years before and after April 2009?

If a full and complete disclosure is made in accordance with the LDF the fixed penalty of 10 per cent will apply for tax years up to 5 April 2009 provided none of the exceptions under the LDF are applicable. For tax years following this date the penalty will be based on the minimum level appropriate under UK legislation for deliberate and concealed behaviour. For 2009-10, provided you made a full and complete disclosure under the LDF, the penalty will be 30 per cent.

6.8 - A new penalty regime providing for penalties of up to 200 per cent for those who evade their tax obligations by investing offshore in certain circumstances applies from 6 April 2011. How does this impact on the LDF?

Provided you make a full and complete disclosure under the LDF, the fixed penalty of 10 per cent will apply to 5 April 2009, assuming none of the exceptions under the LDF are applicable. If a penalty is due for later years it will be charged in accordance with the law applicable at the time and may reflect any future budget changes.

6.9 - I have previously submitted incorrect tax returns to HMRC and as I qualify for the full terms of the LDF will have to pay a penalty of 10 per cent for the years to April 2009. What will the level of penalty be for the two years 2009/10 and 2010/11?

For the 2009/10 and 2010/11 tax years the penalty due under the LDF will be based on the appropriate level due under UK legislation for the respective behaviours. Provided you co-operate fully and make a complete disclosure under the terms of the LDF, the minimum penalty will be applied as follows:

- no penalty where reasonable care is agreed or unprompted disclosure of careless behaviour has been claimed and accepted by HMRC
- 20 per cent for unprompted disclosure of deliberate behaviour
- 30 per cent for unprompted disclosure of deliberate and concealed behaviour

HMRC will carefully consider the circumstances of each case.

6.10 - With effect from 24 July 2013 Liechtenstein was moved from category 2 to category 1 for offshore penalty purposes. What is the practical effect of this?

The penalties chargeable on potential lost revenue (PLR) relating to a source in Liechtenstein will be determined as follows:

- If a 2011/12 or 2012/13 return containing a careless or deliberate inaccuracy is submitted on or after the date of the re-categorisation order (24 July 2013) the level of penalty will be set by reference to category 1. If the return is submitted before the date of the order the level of penalty will be set by reference to category 2.
- If an amended 2011/12 or 2012/13 return containing a careless or deliberate inaccuracy is submitted on or after the date of the order the level of penalty will be set by reference to category 1, unless the inaccuracy was present in the original return and that return was submitted before the date of the order. In that case the level of penalty will be set by reference to category 2.

- The level of penalty relating to inaccuracies in documents supplied on or after the date of the order will be set by reference to category 1. Inaccuracies in documents supplied before the date of the order will attract a penalty under category 2, unless the person discovers the document to be inaccurate after the date of the order and takes reasonable steps to inform HMRC once the inaccuracy has been discovered.

7. Composite Rate Option (CRO)/Single Rate Option (SRO)

7.1 What is the CRO?

A person eligible to participate within the LDF must calculate their UK liability in accordance with UK law and make an appropriate disclosure to HMRC. Alternatively, a single composite rate, the CRO, may be used to calculate the amount due. Where an election to apply the CRO is made, the calculation will be accepted by HMRC in lieu of all UK taxes otherwise due on the actual basis for the tax years of disclosure up to 5 April 2009.

7.2 For what period does the CRO apply?

If an election is made for the CRO, it must be applied for all tax years that are included in the disclosure from 6 April 1999 (1 April 1999 for legal persons) to 5 April 2009. The CRO ends on 5 April 2009 (31 March 2009 for legal persons) and from this date normal UK taxation rules apply for each following year. However, see the example below.

7.3 How is the CRO calculated?

(i) The election to calculate and pay under the CRO is irrevocable. A UK taxpayer electing for the CRO must:

- Accept and agree that no tax relief, deduction or allowance will be made in calculating the CRO. However, 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 tax due on disclosure.
- Accept and agree that no tax relief, deduction or allowance will be available to carry forward or utilise in any UK tax year post disclosure.
- Accept and agree not to make any future claim in relation to such relief, deduction or allowance.

(ii) Each UK taxpayer that discloses under the LDF may choose whether to elect for the CRO or to calculate the UK liability on the actual basis in respect of their interest.

- (iii) The CRO covers all UK taxes and duties included in the LDF disclosure for all UK tax years from 6 April 1999 (1 April 1999 for legal persons) to 5 April 2009. For avoidance of doubt there will be

no separate inheritance tax imposed in respect of those tax years covered under the CRO. For LDF purposes, the phrase 'any other sums properly chargeable to tax in the UK' will not include capital that may be subject to Inheritance Tax under UK tax law and practice. The phrase may include, (but is, not limited to), in the case of trusts for example, the value of the benefit (power to enjoy) from:

- interest-free loans, loans at less than a commercial rate of interest, rent-free occupation of commercial trust property, or use of trust property at less than market rental.

However, the value of the benefit (power to enjoy) will not include a benefit or power in respect of which there is no unpaid UK tax liability under UK tax law and practice in respect of the UK taxpayer (or the relevant predecessor-in-interest). (See also point (vi) below.)

(iv) The CRO may also cover taxes due during the disclosure period by any deceased predecessor-in-interest, such as a deceased parent and the executors of their estate in the case of an inheritance. Either the executor or the successor-in-interest, or both, can disclose under the LDF any unpaid UK taxes in respect of the interest asset for the respective applicable periods.

Where the predecessor-in-interest is living (or existing, in the case of legal entities) at the time of disclosure, then such predecessor-in-interest should disclose under the LDF any unpaid UK taxes in respect of the interest or asset for the period during which such predecessor-in-interest held it. In addition in that case, the successor-in-interest should disclose under the LDF any unpaid UK taxes in respect of the interest or asset for the period during which such successor-in-interest held the interest or asset.

A Liechtenstein fiduciary and entities such as foundations may themselves register under the LDF and pay under the CRO unpaid UK tax liabilities (if any) in respect of the settled property for which they are liable in respect of their fiduciary capacity.

The CRO calculation will apply to any income, profits, gains and other sums properly chargeable to tax from the property that gave rise to the unpaid UK tax liability under UK tax law and practice.

(v) Capital gains and losses within a UK tax year may be aggregated in determining the figure to which the CRO applies.

(vi) The CRO does not apply to income, profits, gains and other sums properly chargeable to tax previously disclosed. Any allowances, reliefs or deductions previously claimed against disclosed income will remain undisturbed and no settled liabilities will be reopened.

(vii) Where there is no unpaid UK tax liability in respect of the UK taxpayer (or the relevant predecessor-in-interest) in respect of an asset/property (or interest therein), then income, profit and gains from

such asset/property (or interest therein) will not be included in the UK tax calculation under the CRO.

(viii) Under the CRO the same income, profits and gains will be subject to UK taxation only once (rather than twice - at the level of the legal/fiduciary entity and also at the level of the shareholders/beneficiaries).

7.4 Will the CRO be extended beyond 5 April 2009?

No. The CRO will end at 5 April 2009.

However, HMRC is considering whether a Single Charge Rate (SCR) will be available as an alternative method of calculating liabilities under the LDF. HMRC will consider each tax year (to 2014-15) in isolation after the year has ended. If a SCR is made available HMRC will announce publicly the terms, procedures and rate of charge at the appropriate time.

7.5 How does the composite rate of tax work?

The composite rate is a single rate of 40 per cent which can be used as a means of calculating an amount which HMRC will accept in satisfaction of past tax liabilities. The amount will cover all UK taxes (including UK Inheritance Tax, Income Tax, Corporation Tax, Capital Gains Tax, Stamp Duty and Value Added Tax and, without limitation, National Insurance contributions). The rate will be applied to all income, profits, gains and other sums chargeable with no reliefs or other deductions to be allowed. Interest and penalties will be due in addition to the composite rate.

The only exception to this is that tax withheld under the European Union Savings directive or under the Agreement on the Taxation of Savings between the EU and Liechtenstein may be offset.

You do not have to use the composite rate. You can choose to calculate your liability using the normal rules, which will mean you are able to claim any reliefs and deductions due.

You may want to seek advice from your tax agent or advisor about whether the composite rate will be of benefit to you.

7.6 Can I elect to have actual and composite rate tax for different years?

No. If an election is made it has to cover all years April 1999 - April 2009 for which an LDF disclosure is made. The CRO does not extend to disclosure periods after April 2009.

7.7 The higher rate of tax is 40 per cent to 5 April 2009, so how can anyone benefit from electing for the composite rate?

Firstly, the CRO allows a simple and quick method of calculation of liability. Secondly, certain transactions may attract tax on more than one

head of duty and hence the effective rate may be greater than 40 per cent.

7.8 I have diverted funds from a close company that I own. This creates a tax liability both for me and the close company. Can I apply the CRO to the transaction?

Yes. The CRO allows the liabilities of more than one person to be settled as they relate to connected transactions.

7.9 I have not kept adequate records regarding the split between income and capital in my offshore accounts. If I apply the CRO to the growth over that period that will mean I do not have to try to reconstitute the records. Is this correct?

Yes.

7.10 I inherited a Liechtenstein trust in 1990 following the death of my parents. The income and gains has never been declared and I propose to disclose under the LDF. What is the extent of the liabilities that will be chargeable using both the CRO and not?

Under the CRO you will be chargeable on all liabilities going back to 1999. This will include taxes due from any predecessor in interest and the executors of their estate. On the actual basis unassessed liabilities prior to 1999 will not be assessed if they arise on you.

7.11 I have elected for the CRO and want to utilise losses from 1997 against my 2017 gain. Is this permissible?

No. The losses accruing in or prior to 1997 may not be utilised in a later year. Nor may the loss be carried forward to utilise in a future period beyond the disclosure period.

7.12 I have elected for the CRO and want to utilise losses from 2000 against my 2001 gain. Is this permissible?

No. Losses may not be carried forward. Losses/gains within a year may be aggregated in arriving at the figure for applying the CRO.

7.13 I inherited a Liechtenstein trust in 1990 following the death of my parents and wish to apply the CRO. In 2003 I made a trading loss on my self employment and offset this against my salary from my employment. I received a refund of PAYE in 2004. How does the CRO affect this?

The CRO is applied against previously undisclosed sources of income. You need not disturb previously relieved losses, nor may you open previously settled years to reallocate losses in preference to undisclosed liabilities.

7.14 I recently made a disclosure of omitted liabilities and have chosen to apply the CRO. Do I disturb existing settled

computations on earlier year's liability when applying the CRO or is the CRO only applied to the undeclared sources?

The CRO is only applied to sources disclosed under the LDF. Existing settled computations of liability should not be disturbed. For the avoidance of doubt, if the original computations carried forward excess losses to a later year these should remain undisturbed notwithstanding that there is now undisclosed income available to utilise the losses in the current period.

7.15 My settled liability for 1999 included losses brought forward from 1998. If I elect for the CRO do I have to reopen the 1998 computations to deny the losses brought forward?

No.

7.16 I have elected for the CRO. What is the due and payable date for interest purposes?

Interest is chargeable from 1 July next following the accounting year, assessment period or charging period in which the liability arises.

7.17 I have elected to use the CRO. Can I choose which omitted income or gains I apply this to?

No. If you elect to use the CRO you must apply it to all undisclosed income, profits, gains and other sums chargeable for the entire period to 5 April 2009 with no reliefs or other deductions to be allowed.

7.18 As executor, I have applied the CRO which means that IHT falls out of charge. Is the Inheritance Tax nil rate band available to carry forward to the spouse?

No. Reliefs, deductions and allowances are not available to bring forward or carry forward under the CRO.

7.19 The Second Joint Declaration states that HMRC will consider after the end of each year whether a single charge rate will be available as an alternative under the LDF to the actual calculation of UK taxes. For which years is a single charge rate available?

While a single charge rate will not be available for the tax year 2009-10, it has been announced that a single charge rate is available for the years 2010-11, 2011-12, 2012-13 and 2013/14 in limited circumstances, see [FAQ7.26](#). There will not be an SCR for any years after 2013/14.

7.20 I am a remittance-basis taxpayer and have three offshore accounts (A, B & C) that hold my investments. I have a disclosure to make and intend to elect for the CRO to apply. My account details are as follows:

Account A - has been fully disclosed and all taxable remittances accounted for to HMRC. No additional tax is due in relation to this account.

Account B - taxable income of £50,000 per annum has been remitted to the UK from this account that has not been previously disclosed. The account earns income of £100,000 per annum.

Account C - has not been disclosed to HMRC as it does not hold any UK taxable amounts and neither have I remitted anything to the UK from it.

How is the tax under the CRO calculated?

Following an election for the CRO to apply, you will need to consider the income, profit, gains and other sums chargeable to tax in respect of all your asset/property when making the CRO calculation. If any account is not subject to taxation in the UK under normal tax rules, it may be excluded from this consideration. However, if it is taxable in the UK in any way, then it will need to be included in the overall consideration and calculation of the tax due under the CRO.

As Account A has been taxed correctly and Account C is not taxable under normal rules, both may be excluded from the CRO calculation. Account B will need to be included in the CRO calculation.

As the composite rate is not calculated by reference to taxable amounts remitted the CRO calculation in this case will be made by reference to the income of £100,000 per annum that is earned by account B and will be taxed at the 40 per cent composite rate for each tax year up to 5 April 2009 that is included in the disclosure.

There are times when the strict statutory basis may be more appropriate than the CRO. It is important that you fully consider the options available to you before making an irrevocable election for the CRO to apply.

7.21 I am a remittance-basis taxpayer and wish to elect for the CRO when making my disclosure under the LDF. As my offshore accounts contain a mix of income, gains and capital, is it agreed that I can regard them all as 'clean capital' accounts at 6 April 2009 following payment of the tax due under the CRO?

No. Each of your accounts will need to be considered to establish from the facts available whether the amounts held within the account contain income, gains or capital. Where the income, profit or gains have been taxed under the CRO calculation for LDF purposes, then the amount included in the CRO calculation may be regarded as income that has already suffered UK tax. If you are uncertain about the precise nature of your offshore holdings, please discuss the matter with HMRC Liechtenstein (LDF) technical support team member.

7.22 I am a UK resident domiciled taxpayer and the settlor and beneficiary of an offshore discretionary trust. I settled £1 million in 1980 to evade UK tax liability on this sum. The trust has earned £50,000 per annum on it since. In each of 2001 and 2002, upon my request I received an income distribution of £20,000 that I did not declare to HMRC. If I make a disclosure under the LDF and elect the CRO, on what sum do I base the CRO calculation?

As the income arising in the offshore settlement is deemed to be yours in accordance with the Transfer of Assets Abroad legislation, the CRO calculation will be based upon the income of the settlement for each year up to 5 April 2009 covered by your disclosure. If the full favourable terms of the LDF apply, then the £1 million settled in 1980 will be outside of the time limit but the £50,000 earned income per annum will need to be taken in to account under the CRO calculation for taxable years from April 1999 to April 2009.

7.23 I am not the settlor of an offshore discretionary trust that was settled in 1950. The trust income is £50,000 per annum. In 2006 I was appointed a beneficiary and received an income distribution of £20,000. I am resident and domiciled in the UK and have failed to notify HMRC of the £20,000 received. If I make a disclosure under the LDF and elect for the CRO, on what sum do I base the CRO calculation?

As you are not subject to the Transfer of Assets Abroad legislation and the trust is discretionary, the income of the trust cannot be deemed to be yours. In the circumstances, the CRO calculation will be based upon the £20,000 income you have received and failed to declare to HMRC.

7.24 I have elected to use the CRO and wish to declare the UK tax due on dividends that I have received and invested overseas. Do I use the net dividend received after foreign tax deduction to calculate the tax due under the CRO?

The tax due on dividends under the CRO is calculated without reference to reliefs or deductions. In contrast, tax withheld on interest under the European Union Savings Directive (or under the Agreement between the European Community and Liechtenstein providing for equivalent measures) will be allowed. The foreign tax deducted from your dividend does not fall within the European Union Savings Directive and must not be taken into account when calculating the tax due under the CRO. Your CRO calculation must be based upon the gross amount of the dividend disregarding the foreign tax deduction that was applied.

7.25 I am a director/shareholder of an UK close company and have diverted company profits to my offshore account. I wish to make a disclosure under the LDF and elect the CRO. What are the consequences for the company?

The CRO election will enable you to settle the tax liabilities for yourself and the company for the tax periods ending in April 2009. However, the

CRO does not displace the company's requirement to submit accurate financial statements/accounts, nor does the CRO cover any tax liabilities that may be due for 2009-10 and thereafter. The company's accounts will need to be adjusted to reflect properly the profit that has been extracted during all disclosure periods. Any tax liabilities that may arise as a consequence of this adjustment must be calculated and submitted for each tax year after 2008-09 in accordance with the appropriate UK legislation.

7.26 HMRC has announced that a Single Charge Rate (SCR) is available in 'limited terms' for the 2010-11, 2011-12, 2012-13 and 2013-14 tax years. What are the limited terms

For the years 2010-11, 2011-12 and 2012-13, the SCR rate will be 50%. For the year 2013-14 the rate is 45%. For all years the SCR is available subject to the following:

1. An election to apply an SCR will be required and can only be made by those persons who held relevant property (as defined by the Memorandum of Understanding (MOU)) in Liechtenstein at 1 September 2009 *and are eligible for the full favourable terms.*
2. The SCR will not apply to any amount that has already been reported to HMRC.
3. The SCR will be denied if any artificial arrangement(s) based upon its application is/are entered into by the person making the SCR election.
4. *Following the announcement in the Fourth Joint Declaration, any SCR election must cover all years for which an SCR is available and a disclosure is being made.*

7.27 I have an account in an offshore jurisdiction other than Liechtenstein which I have held *prior to 1st September 2009* and for which I need to make a disclosure to HMRC. I opened an investment account in Liechtenstein for the first time in 2012 and have recently registered for and have been accepted in to the LDF. Can I elect for the SCR to apply for 2010-11 to calculate the tax payable?

As you did not hold relevant property in Liechtenstein at 1 September 2009 you are not able to elect for the SCR to calculate your tax liability for 2010-11; the statutory basis of taxation must apply for that year.

However, providing your offshore account was not opened through a UK branch or agency, *and you are eligible for the full favourable terms*, you may elect for the Composite Rate Option (CRO) to apply to calculate your tax liabilities for the period April 1999 to April 2009 if you so wish.

7.28 I have an investment in Liechtenstein that I have held for thirty years. I have a disclosure to make to HMRC and have registered with the LDF. I am considering making an election to apply the CRO to calculate my tax liability for the years to April

2009. As the SCR is now available for some later years, do I also have to apply the SCR to calculate my tax liability for those years?

No. The CRO and the SCR are separate calculations and a specific election is required for each to apply. Providing you *are eligible for the full favourable terms*, you are able to elect as you consider appropriate to your circumstances. This may mean that you elect to apply both the CRO and the SCR, you may decide that you will only elect to apply one of the options or you may decide not to elect at all and to apply the statutory basis of calculation.

Whatever you decide, you must make your disclosure within seven months of LDF registration where you elect for the CRO or SCR or within ten months if the statutory basis of assessment is used.

See FAQs 7.2 and 7.26 for more information about the years to which a CRO or SCR election applies.

7.29 I am able to elect for the SCR to calculate my tax disclosure in the LDF for the years 2010-11, 2011-12, 2012-13 and 2013-14. How is the SCR applied?

Where the SCR applies it covers the same taxes, it is calculated in the same way and it carries the same restrictions with regard to reliefs, deductions and claims as the CRO (see Chapter 7 Composite Rate Option (CRO) of the FAQs for further guidance). The SCR is however 50 per cent for the years 2010-11, 2011-12 and 2012-13 and 45% for 2013-14 and these are the rates that will need to be applied where an election is made.

7.30 HMRC will deny the SCR if any artificial arrangements based upon its application are entered into by the person making an SCR election. What does this statement mean?

The SCR enables the simple calculation of tax for complicated financial arrangements that have taken place. In the majority of cases it is expected that LDF disclosures incorporating an election to use the SCR will be straightforward and accepted without challenge.

Where considering disclosures received, HMRC may identify that retrospective arrangements have been entered into by the person making an SCR election and those arrangements create or produce additional tax liabilities on the statutory basis that fall out of consideration for the SCR tax charge. In such cases HMRC will review the facts and will withdraw the SCR availability in respect of such an arrangement if it can reasonably be concluded that the main reason for the retrospective arrangement was to obtain a tax benefit via the operation of the SCR method of calculation. Such an abusive arrangement is not considered to fall within the spirit of the MOU.

8. Examples of when the terms of LDF apply

8.1 - removed

8.2 I have an offshore account outside of Liechtenstein that I opened through a UK branch or agency. I would like to take advantage of the ten year limitation period, the fixed penalty, and the composite rate under the LDF in respect of the tax due from that account. Can I do so?

No. A person who participates in the disclosure facility and has as of date of signing of the MOU a bank account, including a financial (portfolio) account, outside the UK or Liechtenstein which is in his or her 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 under the LDF.

8.3 What if I close the offshore account that I opened through a UK branch or agency and move the investment to Liechtenstein, will I benefit from LDF terms?

You will still not qualify for the ten year limitation period, the fixed penalty, and the composite rate in respect of the tax due from the investment in the prior offshore account that you opened through a UK branch or agency. The words 'in relation to that account' cover any unpaid taxes on that prior account. In other words, if you move the funds later, the unpaid back taxes prior to the move would still be 'in relation to that account' and not in relation to the new account.

8.4 I have undisclosed UK profits/gains arising over 20 years invested in a Liechtenstein account. The account was open on 1 September 2009. Will LDF terms apply?

The LDF terms available to you will depend on your specific circumstances as explained throughout these FAQs.

8.5 I have undisclosed UK profits/gains arising over 20 years invested in an offshore account opened through a UK branch. I transferred my capital to Liechtenstein on 1 October 2009. Will LDF terms apply to my disclosure?

The ten year limitation period, the fixed penalty and the composite rate option do not apply to the tax due in relation to offshore accounts opened through a UK branch or agency. Both the income accruing on the investment and the profits/gains will be assessable for all in date years with interest and penalty. If you registered for the NDO by 4 January 2010 you will qualify for penalty rates under those terms.

8.6 I have undisclosed UK profits/gains arising over 20 years invested in an offshore account opened through a UK branch. I transferred my capital to Liechtenstein on 1 January 2010 but did not register for the NDO prior to its closure. Will LDF terms apply to my disclosure?

The ten year limitation period, the fixed penalty and the composite rate option do not apply to the tax due in relation to offshore accounts opened through a UK branch or agency. The NDO ceased to apply from 4 January 2010 so you will run the risk of HMRC commencing an investigation unless you register under the LDF or make a voluntary disclosure to an HMRC office. Both the income accruing on the investment and the profits/gains will be assessable for all in date years with interest and penalty. Although you will not be eligible to the fixed penalty the voluntary nature of the disclosure will be reflected in the level of penalty charged.

8.7 I have undisclosed UK profits/gains arising over 20 years invested in an offshore account which I did not open through a UK branch or agency. I transferred the capital to Liechtenstein on 1 November 2009. Will LDF terms apply to my disclosure?

Both the income accruing on the offshore investment and the profits/gains will be assessable from April 1999 under the terms of the LDF with interest and penalty. Because the funds have not been held in an offshore account opened through a UK branch or agency HMRC will not extend the period of assessment to UK tax years prior to 1999-00.

8.8 - removed.

8.9 I have submitted my disclosure report but this has not been agreed by HMRC because of a dispute on the interpretation of a point of law. Do I qualify for the favourable terms of the LDF?

Where you have made a full disclosure of the facts and the dispute is one of interpretation you will be treated as having made a full disclosure. However, HMRC reserves the right to undertake the necessary action to resolve the issue.

8.10 I did not have an overseas asset or investment at 1 September 2009 but I have a tax disclosure to make. I have since acquired a Liechtenstein asset. Can I benefit from the terms of the LDF?

As you acquired a Liechtenstein investment after 1 September 2009 and did not hold an offshore investment at that time you may qualify for the LDF but you will not be eligible for the shorter limitation period, the fixed penalty and the Composite Rate Option. However, you may benefit from other terms, such as the bespoke service and the assurance against criminal tax investigation provided you qualify.

8.11 The only overseas asset I held at 1 September 2009 was an offshore bank account opened through a UK branch or agency which was not held in Liechtenstein. I have a tax disclosure to make and have since acquired a Liechtenstein asset. Can I benefit from the terms of the LDF?

As you have acquired a Liechtenstein investment you may qualify for the LDF but because the only overseas asset at 1 September 2009 was an

offshore bank account opened through a UK branch or agency you will not benefit from the shorter limitation period, the fixed penalty or the CRO in relation to your disclosure.

8.12 A Liechtenstein trust or entity (including a Foundation or Establishment) has invested in a portfolio of assets via a UK broker. The broker holds and manages the account in the name of the Liechtenstein trust or entity. Will the LDF terms apply to the disclosure?

Yes. If there are UK tax liabilities that have not previously been disclosed, the legal representatives of a trust or entity (for example the trustees, directors, etc) may make a disclosure on behalf of the trust or entity. Similarly, a beneficiary, beneficial owner, shareholder, settlor, etc, may also register for the LDF in respect of any previously undeclared tax liabilities.

The fact that a UK broker holds and manages the account does not affect the availability of the full terms of the LDF (unless the bank account of the non-UK entity or trust was opened through a UK branch or agency of that bank - in which case see [FAQ 8.6](#))

8.13 I am resident outside the UK and the trustee of a trust that is also not UK resident. As I have a UK tax liability to disclose can I make a disclosure under the LDF?

Yes, if there are UK tax liabilities that have not previously been disclosed, the legal representatives of a trust or entity (e.g., trustees, directors, etc) may make a disclosure under the LDF on behalf of the trust or entity with regard to its UK tax liabilities. A beneficiary, beneficial owner, shareholder or settlor may similarly register for the LDF and disclose any UK tax liabilities for which they are accountable.

8.14 I am resident outside the UK and the trustee of a trust that is also not UK resident. I have registered for the LDF and my application has been accepted. If the only asset of the offshore trust is managed by a UK broker, what are the favourable terms that will apply to my disclosure?

If the trust was resident offshore at 1 September 2009 the full favourable terms of the LDF will apply except where the asset of the trust is a bank account which was opened through an UK branch or agency *or any of the other restrictions described in these FAQs apply.*

If the trust was settled offshore after 1 September 2009 then the time limitation period, the fixed penalty and the composite rate option will not apply if you register as trustee for the LDF.