

**THIRD JOINT DECLARATION**  
**BY**  
**THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN AND**  
**HER MAJESTY'S REVENUE AND CUSTOMS**  
**CONCERNING**  
**THE MEMORANDUM OF UNDERSTANDING RELATING TO**  
**COOPERATION IN TAX MATTERS**

The Government of Liechtenstein and Her Majesty's Revenue and Customs (HMRC) have previously agreed to issue periodic public statements on the progress of the Liechtenstein Disclosure Facility (LDF), the Taxpayer Assistance and Compliance Programme (TACP), the double taxation agreement (DTA) negotiations and other associated arrangements as appropriate. This Third Joint Declaration recognises the unprecedented success of the unique historic arrangements that exist between the United Kingdom and the Principality of Liechtenstein following the implementation of the groundbreaking Memorandum of Understanding Relating to Cooperation in Tax Matters (MOU) signed in August 2009. This declaration also supplements and further clarifies the MOU. Any terms used herein will have the meaning given to them in the MOU unless the context requires otherwise.

1) DOUBLE TAXATION AGREEMENT (DTA)

Today, after two years of discussions, the UK and Liechtenstein are pleased to announce that they have signed a *comprehensive double taxation agreement* (DTA). The DTA supports the commitment of the two countries to cooperate in tax matters. It will lower tax barriers to cross-border investment and business activity and give residents of both countries certainty about aspects of their tax treatment. The DTA will now be submitted for ratification in each country and is expected to take effect from 1 January 2013.

The DTA supplements the tax information exchange agreement (TIEA) which was signed on 11 August 2009 and which remains in force.

2) MOU EXTENSION

The parties are delighted with the success of the MOU as a unique customer-oriented approach that effectively regularises past offshore tax non-compliance. By April 2012, nearly 2,500 taxpayers registered to use the LDF and £363 million had been accounted for in settlement of outstanding liabilities. In addition, it is recognised that the LDF supports and enables the correct completion of present and future tax returns which is beneficial to both those using the LDF and HMRC. In view of the real and recognisable benefits that are being delivered, the parties have agreed to extend the terms of the MOU to 5 April 2016.

Accordingly, the *final compliance date* under Schedule 1 paragraph 1(f) is amended to 5 April 2016. This extension includes the availability of the LDF as a time-limited opportunity with unique terms for UK taxpayers to legitimise their worldwide tax affairs for the past as appropriate whilst ensuring they are tax-compliant for the future.

In addition, the duties of financial intermediaries in Liechtenstein under the TACP (i.e. the identification of new relevant persons, notification in respect of beneficial interests, tax compliance certification, and MOU audit) will similarly be extended.

### 3) SINGLE CHARGE RATE (SCR)

Following further detailed consideration, HMRC has decided to make available a **Single Charge Rate** (SCR) at 50% for the 2010/11 tax year in limited terms. HMRC will publish the full details of the SCR arrangement, including the limitations of eligibility, in frequently asked questions on this subject providing further details in due course.

The earlier decision not to allow a SCR for 2009/10 remains unchanged.

After the expiration of the return filing date for each respective tax year 2011/12 to 2015/16, HMRC will consider whether a SCR will be made available as an alternative to the statutory basis of taxation. The decision of HMRC will be published together with full details of agreed arrangements if it is decided to make a SCR available.

### 4) CAPITAL LOSSES

HMRC has become aware that some UK taxpayers regularising their historic tax affairs have incurred capital losses in tax years that are considered to be “out of time” to claim tax relief under normal time limits. The issue is of specific concern to persons regularising their tax affairs under the LDF as this situation is frequently encountered when examining the tax position of historic investment portfolios. Members of various representative bodies have made technical representations to HMRC to assist in the consideration of this issue and to request that such losses are allowed in calculating the Capital Gains Tax due to HMRC.

Following detailed consideration of the helpful representations made and analysis of the appropriate statute, HMRC accept that UK legislation permits that a measure of relief may be admitted for a “newly discovered” capital loss (which would normally be considered to be “out of time” to claim relief) in calculating the tax due outside normal time limits in certain circumstances. As this is a complicated area further guidance on this will shortly be made available via “frequently asked questions”, more specific advice may be obtained via the LDF bespoke service arrangements on a case-by-case basis.

### 5) CONFIRMATION OF RELEVANCE

The parties wish to confirm that with effect from 1 December 2011, HMRC has required sight of a **Confirmation of Relevance** (COR) before an LDF registration application can be accepted. The COR is evidence that the recipient has relevant property (in Liechtenstein) at the point of LDF registration. The requirement for the UK taxpayer to produce a COR is only part of the process in determining LDF eligibility criteria. HMRC has discretion to refuse an LDF registration application where the taxpayer does not fulfil the other LDF eligibility requirements irrespective of whether a COR is produced.

## 6) SELF CERTIFICATION

Where a person has been notified by their financial intermediary that they consider them to be a relevant person for MOU purposes, then that person must certify their UK tax compliance to retain the services of their financial intermediary. Where it is clear that the person is compliant with their UK tax obligations or they are certain that they are not taxable in the UK in relation to the relevant property, they may self-certify by making a declaration using the *Certification of Tax Compliance* document, which is available from the financial intermediary.

The Certification of Tax Compliance is in a format approved by HMRC and cannot be altered, qualified or annotated in any way. If it is amended or annotated or is otherwise incomplete, unsigned or its terms have not been fully complied with, it will be rejected.

The Certification of Tax Compliance will enable the intermediary to be satisfied that the taxpayer is UK tax compliant and will allow them to continue to provide services with regard to the relevant property. The certification procedure does not bind HMRC in any way and it is not regarded by HMRC as proof that the person is indeed not taxable or is tax compliant in the UK.

The parties are discussing the introduction of a similar *certification of tax compliance* procedure for *new clients* who establish a relevant property interest with a Liechtenstein financial intermediary after 31 May 2012; once it is agreed, a further announcement will be made.

## 7) AUDIT MATTERS

- i) In accordance with the MOU Schedule 6 in relation to the *audit procedure*, the parties have agreed the financial intermediaries to be included. The Government of Liechtenstein reiterates its intention to set out in the near future the details regarding the operation of the audit procedure and the review procedure (including the retention procedure).
- ii) For the purposes of determining compliance under the audit procedure, the parties to the MOU hereby affirm their earlier agreement that all financial intermediaries who had established business relationships up to and including 1 December 2011 were under a responsibility to:
  - Identify all relevant persons with a beneficial interest in relevant property for which the intermediaries were providing services; and
  - Notify within three months all relevant persons so identified of their obligation to certify their UK tax compliance within 18 months of the receipt of the notification letter.

In view of various factors that may have prohibited the accurate and timely identification and notification of relevant persons, the parties agreed to extend effectively the notification deadline for the above-mentioned relationships to 31 March 2012. Therefore, in all above-identified cases, the notification pursuant to the

MOU Schedule 3 should have been completed by the intermediaries before 1 April 2012 (or if not practically possible by that time, as soon as possible thereafter).

#### 8) ARRANGEMENTS WITH SWITZERLAND

If and when third-party tax arrangements regarding regularisation of the past are implemented by the UK and the Government of Switzerland, the parties to the MOU agree to consider the proper mechanisms for allowing eligible persons to participate in the LDF whilst recognising the effect of such third-party arrangements in respect of assets covered by them.

#### 9) FUTURE ARRANGEMENTS

The parties to the MOU will discuss in the near future the respective rights and duties that may apply after 5 April 2016 with the purpose of agreeing appropriate mechanisms not already in force at the time for identification and documentation of relevant persons and for UK clients regularising previously undisclosed UK tax liabilities.

The parties will also continue to monitor the effectiveness of the tax arrangements and intend to issue further joint press releases and/or joint declarations in due course. Additional answers to frequently asked questions will be published on an ongoing basis to address the more technical issues that arise in relation to the operation of the LDF and the understanding and application of the TACP.

This Third Joint Declaration is signed in duplicate, one original for each party, in London, this 11<sup>th</sup> day of June 2012 by

Dave Hartnett, CB, Permanent Secretary for Tax

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

Prime Minister Klaus Tschüscher

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