

1 About the Guernsey Disclosure Facility (GDF)

1.1 What is the GDF?

Following an agreement between HMRC and the Government of Guernsey, HMRC made available a disclosure facility, (GDF) from 6 April 2013 until 31 December 2015. Persons eligible to participate in the GDF were able to apply the terms of the facility to regularise their UK tax affairs with HMRC. The Government of Guernsey required Financial Intermediaries in Guernsey to contact their clients who may have qualified to make them aware of the disclosure facility.

1.2 What is special about the GDF?

The facility was introduced to help UK taxpayers with investments in Guernsey, and who had irregularities in respect of their UK tax affairs, to come forward and get their past and future tax affairs on the right footing. By coming forward under the GDF, they were eligible for specific terms:

- a 10% fixed penalty on the underpaid liabilities (full interest will have to be paid) for years up to and including 2007-2008 and a 20% fixed penalty for 2008-2009 onwards (for most cases).
- no penalty where reasonable care had been taken
- an assessment period limited to accounting periods/tax years commencing on or after 1 April 1999 (for most cases). See FAQ4.5 for more detail; and
- a single point of contact for disclosures

1.3, 1.4 and 1.5 Removed

1.6 Could I be criminally investigated by HMRC if my disclosure is accepted in the GDF?

The GDF does not provide automatic immunity from prosecution and HMRC retain sole discretion to apply their published criminal investigation policy in appropriate cases. However, HMRC are extremely unlikely to 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. Please see HMRC's [published criminal investigation policy](#) and FAQs 1.20 for further information.

1.7 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.

1.8 Removed

1.9 What happens if I apply to participate 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 GDF
- HMRC may commence a civil or a criminal investigation which could include making an Exchange of Information request to the Government of Guernsey for details of your investments
- HMRC's investigation may lead to your name being published as a result of the criminal investigation or 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

1.10 What are the time limits for the GDF?

Following an application to participate in the GDF, a payment on account should be made within 30 days as directed by HMRC.

A full and complete disclosure should be submitted to HMRC as soon as possible and, in any case, within 6 months of applying to participate in the GDF.

Provided full and accurate disclosure is made promptly HMRC expect to facilitate the determination of the persons' liability within 9 months of receiving their application to participate in the GDF.

1.11 Removed

1.12 A client has assets in Guernsey or wants to transfer assets to Guernsey and wants to make a disclosure under the GDF. Do I need to report this activity?

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

1.13 What use will HMRC make of the information provided in the suspicious activity report?

The receipt of a suspicious activity report does not affect the terms of the GDF. Provided an application to disclose under the terms of the GDF is

made and all the conditions and time limits of the GDF are satisfied, HMRC will not use the receipt of a suspicious activity report as a reason to commence a criminal investigation or a civil investigation.

1.14 and 1.15 Removed

1.16 What use will HMRC make of information provided within a GDF 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 relevant information from the content of a GDF disclosure where they are obliged to do so.

1.17 Removed

1.18. I have appointed a new adviser to assist me with my GDF 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 GDF application and disclosure, you will need to provide HMRC with a written authority that allows them to exchange and disclose confidential information about your tax affairs. You should forward the signed authorisation with your application to participate. Where your new tax adviser will act on your behalf for all your future tax affairs, including tax matters outside the GDF 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 GDF disclosure. You should also ensure that the tax adviser you appoint to complete your returns is aware of all your future tax liabilities.

1.19. Removed

1.20 If at any time before or after my application to participate in the GDF HMRC knows or suspects that my disclosure relates wholly or partly to property that constitutes the proceeds of crime, can I proceed with my GDF disclosure?

If at any time HMRC knows or suspects that assets or funds which comprise any disclosure are wholly or partly comprised of '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) HMRC shall:

- a. refuse any application to participate in the GDF; or
- b. withdraw the terms of the GDF as appropriate where a disclosure has been made

1.21 Removed

1.22 Do the terms of the GDF apply only to the relevant assets in Guernsey?

No. The terms of the disclosure facility apply to all previously undisclosed tax liabilities and not just those arising from relevant assets situated in Guernsey.

2. Removed

3. Application to participate in the GDF

3.1 Removed

3.2 What happens following my application to participate?

Once you have applied to participate in the GDF, you will be sent an acknowledgement of your application. Your acknowledgement will contain your reference number, which is the number you must quote when making your payment on account, together with a disclosure pack.

There will be two different disclosure packs – Pack A and Pack B. Pack A will cover the situation where your disclosure is limited to details of a bank account which has been funded by sums on which you have paid the correct amount of tax, but in relation to which you have previously failed to disclose the interest arising,

Pack B will cover all other eventualities.

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

3.3 What does the reference to 'financial commitment' in the Memorandum of Understanding mean?

One of the conditions for participation in the GDF is that the applicant will make a financial commitment. Once their application for participation has been processed, it is expected that the applicant will make a payment on account of the overall UK tax liability that they expect to disclose.

Failure to make this payment, or failure to provide evidence of the inability to make such payment together with a proposal for payment and an appropriate payment on account, could lead to the terms of the GDF being withdrawn.

As the disclosure is progressed, it is expected that as any additional liabilities are identified further payments on account will be made. If there is a significant discrepancy between the payment(s) on account and the final tax liability, not including interest and penalty, where HMRC consider the taxpayer has not taken reasonable care in estimating the ultimate tax liability, then this also may result in the terms of the GDF being withdrawn.

3.4 If I am UK resident but not UK domiciled and need to remit funds in order to make the financial commitment, will this be considered a remittance for the purposes of S809L of ITA2007?

Yes. It will where the conditions outlined in S809L (1) ITA 2007 are met. The conditions can be found [here](#).

4. Disclosure

4.1 What do I have to include in my disclosure?

HMRC will help by providing a disclosure pack, 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
- 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. This will be documentary evidence that you have had a beneficial interest in relevant property at some time during the period from 6 April 1999 to 31 December 2013 inclusive (1 April 1999 to 31 December 2013 for a legal person); confirmation that you are resident in the UK for UK tax purposes (or incorporated in the UK for a legal person); a copy of your original application to participate in the GDF; and either confirmation that you have paid all tax, duty, interest and penalties disclosed in the report or a cheque for the full amount, less any amount already paid, with the disclosure
- full details of all previously undisclosed tax liabilities and not just your liabilities arising from relevant assets situated in Guernsey for each tax year since 6 April 1999, for a natural person, or accounting period since 1 April 1999 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
- information showing how you have calculated your overall tax liability. The level of detail will depend upon the complexity of your disclosure; for complex disclosures this may best be presented in the form of a disclosure report and for simple disclosures a brief explanation of how the undisclosed asset came about would usually be sufficient
- a declaration that your disclosure is correct and complete
- if you are UK resident and domiciled, a statement of worldwide Assets and Liabilities at the most recent April 5 prior to submission of the disclosure.
- If you are UK resident but non-domiciled, a statement of UK assets and liabilities only at the most recent April 5 prior to the submission of the disclosure. See also FAQ 4.4
- full contact details of any person who has provided professional advice in relation to making the application to participate in the GDF

- a payment covering the remainder of your tax liabilities not already paid plus interest and penalties. If you cannot pay this amount, you will need to provide HMRC with evidence corroborating the explanation as to why 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 GDF?

HMRC will expect a disclosure under the GDF to be full and complete. This will generally include worldwide income, profits, gains, assets and liabilities. If you are resident but 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 GDF.

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

Each person seeking to disclose under the GDF 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?

Both disclosure packs contain forms that must accompany your disclosure. HMRC will require:

- a certificate of full disclosure 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)
- where necessary, an adopted disclosure report tailored to the complexity of the disclosure, explaining how you arrived at the figures within your disclosure

For further guidance please contact HMRC's Offshore Helpdesk.

4.5 How far back does a GDF participant need to pay any unpaid UK liabilities?

Payment of UK tax liabilities under the GDF go back:

- to April 1999 where favourable GDF terms apply; and/or
- 20 full tax years back from the beginning of the tax year in which the full disclosure is made for unpaid taxes in relation to a bank account (including a financial (portfolio) account) outside the UK or Guernsey which is in the UK taxpayer's name and was opened through a UK branch or agency of that bank

Where, exceptionally,

- 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); or
- 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)

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 GDF?

You should not delay notifying HMRC while you are obtaining details of your previously undeclared income and gains. You can 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.

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

You must contact HMRC's Offshore 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.

4.8 If I transfer my investment to Guernsey before 31 December 2013, 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.

4.9 Am I required to submit a disclosure report or narrative with my GDF 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 HMRC will need to know the source of the funds even where these originated outside of the disclosure period.

4.10 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 GDF. HMRC will carry out a risk assessment in all cases and where HMRC suspect that there are omissions from your disclosure they may withdraw the GDF 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.

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 4.9 above.)

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

You will only be eligible for the terms of the GDF 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 GDF.

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

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

HMRC expect disclosures to be made within the GDF time limit but if you need further time to make your disclosure, you are encouraged to contact HMRC's Offshore 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 GDF and HMRC will withdraw the GDF registration.

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

The GDF 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.

4.14 What initial checks will my disclosure be subject to?

Once your disclosure is received, it will be subject to some initial checks. These will check that

- a Certificate of Full Disclosure is included and has been signed
- a Statement of Worldwide (UK for non-UK domiciles) Assets and Liabilities has been completed to the previous 5th April and has been signed

- a Letter of Offer is included that matches the amount of tax, interest and penalty that the disclosure calculation shows is due and has been signed
- any balance outstanding that has not been paid should either be included with the disclosure as a cheque or confirmation that an electronic payment for the balance has been made to the reference number originally provided. Should the cheque be dishonoured or the electronic payment not made then the terms of the GDF may be withdrawn
- an eligible person has applied to participate in the GDF. If it is established that an ineligible person has applied, then their disclosure may be subject to further enquiry and any payment made will be accepted purely as a payment on account of the final liability that has yet to be determined. Acceptance of any payment will not commit HMRC to any particular course of action; and
- full details of all previous HMRC investigations of whatever nature are supplied, even if it is believed that they are not 'in depth'. This would include investigations that are considered to be of a 'technical' nature. Sufficient information should be provided so that it can be established what each investigation covered including the reference number that the investigation was carried out under

If any of the required items are missing, you will be advised which element is incorrect and what you must submit to ensure that your disclosure can pass the initial checks. Until all elements are complete you cannot be said to have made the full and complete disclosure expected under the MOU. If all elements are not received by the deadline specified by HMRC's Offshore Helpdesk, or any extension negotiated, then the terms of the GDF may be withdrawn.

4.15 If I make a disclosure under the GDF 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 GDF **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 GDF disclosure. The one-off payment will be treated as a payment on account when it is levied.

If you register for the GDF **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 Guernsey'?

An asset or an interest in an asset in Guernsey refers to 'relevant property' or an interest in 'relevant property'. The meaning of relevant property is explained within the [MOU \(PDF 612K\)](#) (paragraph 1 of Schedule 1 of the MOU, on page 4).

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 Guernsey law; or
- it has at least a majority of Guernsey resident trustees; or
- it is administered or managed in Guernsey

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

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

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

No.

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 the GDF.

5.5 I have failed to declare my Guernsey investments but consider that I have taken 'reasonable care' and have made an innocent error, what should I do?

If you consider that you have taken 'reasonable care' and that the failure is due to innocent error you should call HMRC's Offshore Helpdesk before making your disclosure. As part of the GDF 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 reasonable care applies. Where HMRC accepts that reasonable care was taken 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 HMRC's Offshore Helpdesk who will give you any necessary assistance. The contact details can be found [here](#).

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

You will need to make a full and complete disclosure of your personal liabilities from your father's death and give sufficient details of the source of the funds to enable HMRC to then consider the completeness of your disclosure. Your father's estate and executors may have additional tax liabilities to address. HMRC may also seek to recover the additional tax liabilities and for further information in respect of this matter you should contact HMRC's Offshore Helpdesk.

5.8 How do I arrive at the cost of an asset disposed of?

You will calculate the gain in the normal way using the original cost or value at the acquisition date. You may utilise all appropriate reliefs and deductions.

5.9 In many cases the GDF 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.

5.10 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 GDF terms?

Yes, provided you are otherwise eligible for the GDF and you held relevant property under the GDF, you will qualify for the favourable GDF terms.

5.11 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 affect the penalty percentage level. If HMRC is deliberately misled or your disclosure is found to be incomplete the GDF terms may no longer apply to your disclosure and you may be considered for a potential criminal investigation.

The GDF offers a bespoke service to assist you in clarifying any areas of doubt. You should contact HMRC's Offshore Helpdesk should you require any help.

5.12 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.

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

Interest is 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 1999-2000 you will need to consider the adjustment required to the payments on account for the following year (2000-2001) due on 31 January 2001 and 31 July 2001.

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

You have a legal obligation to notify HMRC once you become liable to UK taxation. There are tax geared penalties if you fail to notify HMRC within the time limits.

5.15 The definition of 'relevant person' for a natural person requires two tests to apply, beneficial interest and UK residence. Do both of these conditions have to be satisfied at the same time?

No. The definition of 'relevant person' for a natural person says that they must have had a beneficial interest in relevant property and have been resident in the UK for UK tax purposes for any part of the period commencing on 6 April 1999 and ending on 31 December 2013.

While there is a requirement for both conditions to be satisfied, this does not extend to both conditions being satisfied for either the whole period or for the same part of the whole period.

5.16 and 5.17 Removed

5.18 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 GDF period. Is this permissible?

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

5.19 What is HMRC's approach to issuing protective assessments in GDF 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 GDF disclosure. In appropriate circumstances, HMRC may raise protective assessments in accordance with UK law before the relevant time limits expire.

5.20 Removed

5.21 What does the term 'in depth investigation' mean?

It is not the intention of HMRC to penalise people who were subject to a brief investigation that only considered a very small aspect of their tax affairs and would not have prompted the person being investigated to consider assets held offshore; an enquiry into a P11d matter (benefits in kind), for example, an enquiry into the business use of a privately owned asset, or a routine VAT inspection. In these circumstances, it will be possible to participate in the GDF and apply the favourable terms.

When the disclosure is made, the applicant should provide confirmation that they have not been subject to an in depth enquiry, if that is the case.

If, in fact, the applicant has been subject to an in depth enquiry then brief details should be provided about each enquiry.

For the avoidance of any doubt, an investigation that ended with a Letter of Offer, whether a penalty was charged or not, a Statement of Assets and Liabilities and a Certificate of Full Disclosure will be considered an 'in depth' investigation no matter what the investigation covered. This extends to a criminal investigation and an investigation where Code of Practice 9 has been issued.

For the avoidance of doubt, no disclosure that includes any liability relating to a scheme that has been disclosed to HMRC under DOTAS can be settled via this facility on the favourable terms.¹

5.22 Who is a 'relevant person' for the purposes of the Agreement between the Swiss Confederation and the UK (the Agreement)?

This definition is provided at Article 2 (h) of the Agreement and the full text of the Agreement can be found [here](#).

5.23 and 5.24 Removed

5.25 When defining a beneficial interest in relevant property Paragraph 2(a) of Schedule 1 of the MoU refers to Collective Investment Vehicles. In contrast, the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended provides reference to Collective Investment Schemes. Are these the same thing?

It is appropriate, for the purposes of the GDF, to interpret references to Collective Investment Vehicles within the MoU and any associated guidance, including FAQs, as a reference to Collective Investment Schemes as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended.

5.26 The definition of relevant property in Paragraph 1 of Schedule 1 of the MoU includes the terms 'other financial institution' and 'other fiduciary entity'. Do these terms mean that Collective Investment Vehicles are relevant property?

No. Collective Investment Vehicles are not relevant property for the purposes of the MoU. This is the case whether or not the Collective Investment Vehicle is a legal person.

5.27 When defining a beneficial interest in relevant property Paragraph 2(a) of Schedule 1 of the MoU only appears to exclude an interest in Collective Investment Vehicles in the case of Collective Investment Vehicles which are legal persons. Is this correct?

No. An interest in any Collective Investment Vehicle, however structured, is excluded from the MoU definition of a beneficial interest in relevant property. See also FAQ 5.26.

5.28 Paragraph 2(b) of Schedule 1 of the MoU states that, subject to the conditions at (i) to (v) of that subparagraph, a qualifying interest in 'other fiduciary entities' reflects a beneficial interest in

¹ This sentence added in May 2015.

relevant property. Does this mean that, despite any exclusion created by Paragraph 2(a) of Schedule 1 of the MoU, a qualifying interest in any type of Collective Investment Vehicle nevertheless reflects a beneficial interest in relevant property by virtue of Paragraph 2(b)?

No. An interest in any Collective Investment Vehicle, however structured, is excluded from the MoU definition of a beneficial interest in relevant property. See also FAQs 5.26 and 5.27.

6. Penalties

6.1 In respect of disclosures for the tax years ended up to 5 April 2008, what exceptions are there to the fixed 10 per cent penalty?

The exception is where 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. What is the penalty position for the tax years to and from April 2008?

Where none of the exceptions under the GDF apply, a penalty of 10% will apply to 5 April 2008. For subsequent tax years, provided you make a full and complete disclosure under the terms of the GDF, a penalty of 20% will apply if you have submitted an incorrect return. Alternatively, if you have failed to notify HMRC that you were chargeable to tax then there will be a 10% penalty up to and including 2008-2009 and a 20% penalty from 2009-2010. There may be additional penalties for 2011-2012 onwards if the inaccuracy relates to countries that are in either Category 2 or Category 3 (See FAQ 6.7).

Any Inheritance Tax liabilities for 2008-2009 only may also have a fixed penalty of 10%.

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 all my profits earned in the UK and I invested the cash proceeds in a Guernsey trust of which I am the beneficiary. What is the penalty position for the tax years to and from April 2008?

Where none of the exceptions under the GDF apply, a penalty of 10% will be chargeable for tax years up to 5 April 2008. For subsequent tax years, provided you make a full and complete disclosure under the terms of the GDF, a penalty of 20% will apply if you made an incorrect return.

If, however, you failed to notify HMRC that you were chargeable to tax, then different penalty provisions apply. For years up to and including 2008-2009, there will be a fixed penalty of 10%. For subsequent years the penalty will be 20%.

There may be additional penalties for 2011-2012 onwards if the inaccuracy relates to countries that are in either Category 2 or Category 3 (see FAQ 6.7).

6.4 I became a beneficiary of an offshore trust in 1980 and have received taxable payments from the trust every year since entitlement began. HMRC were unaware that the payments had been received. What is the penalty position for the tax years to and from April 2008?

Where none of the exceptions under the GDF apply the fixed penalty of 10 per cent will be chargeable for tax years up to 5 April 2008 if you made an

incorrect return. In these circumstances the penalty will be based on the minimum level appropriate under UK legislation for deliberate behaviour. For 2008-2009, provided you made a full and complete disclosure under the GDF, the penalty will be 20%.

If, however, you failed to notify HMRC that you were chargeable to tax, then different penalty provisions apply. For years up to and including 2008-2009, there will be a fixed penalty of 10%. For subsequent years the penalty will be 20%.

There may be additional penalties for 2011-2012 onwards if the inaccuracy relates to countries that are in either Category 2 or Category 3 (see FAQ 6.7).

6.5 I was previously the subject of an 'in depth' enquiry/investigation that closed prior to 6 April 2013 and I failed to disclose offshore investments. What is the penalty position?

Providing you are otherwise eligible you will be able to participate in the GDF but you will not be able to apply the GDF favourable terms on penalties or the limited assessable period. In this situation you will need to make a disclosure of all tax and interest due for all years that are chargeable together with a penalty based upon normal rules. You may wish to discuss this further with HMRC's Offshore Helpdesk before making your disclosure.

6.6 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 GDF for the tax years before and after April 2008?

If a full and complete disclosure is made in accordance with the GDF the fixed penalty of 10% will apply for tax years up to 5 April 2008 where an incorrect return was lodged provided none of the exceptions under the GDF are applicable. For 2008-2009 and later, provided you made a full and complete disclosure under the GDF, the penalty will be 20%.

If, however, you failed to notify HMRC that you were chargeable to tax, then different penalty provisions apply. For years up to and including 2008-2009, there will be a fixed penalty of 10%. For subsequent years the penalty will be 20%.

There may be additional penalties for 2011-2012 onwards if the inaccuracy relates to countries that are in either Category 2 or Category 3 (See FAQ 6.7).

6.7 New powers to charge penalties of up to 200% for those who evade their tax obligations by investing offshore in certain circumstances are now in force. Will this impact on the GDF?

Yes. The new [offshore penalties legislation](#) applies from 2011/2012 in respect of income or gains arising outside the UK. A penalty of 20% will be charged in respect of income or gains arising in a Category 1 territory; income and gains from a Category 2 territory will attract a penalty of 30%; and income and gains from a country that is in Category 3 will suffer a penalty of 40%.

6.8 Where can I find out which category the country in which I have investments is in?

Legislation defines which countries are in Category 1 and which countries are in Category 3. All other countries are in Category 2. The list can be found [here](#).

7. Examples of when the terms of the GDF apply

7.1, 7.2 and 7.3 Removed

7.4 My client has an open enquiry and I am concerned that this may develop into an investigation of suspected serious fraud. Can my client participate in the GDF? No. Your client cannot participate in the GDF if they were the subject of any sort of criminal investigation or non-criminal 'in depth' investigation on 6 April 2013 and the investigation had not been closed by the end of that day.

In addition, if your client comes under criminal investigation after 6 April 2013 following their application to participate in the GDF, but before HMRC have facilitated the determination of that person's liability to pay outstanding UK tax, interest and penalties, they will no longer be eligible for the terms of the GDF.

7.5 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 GDF?

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.

7.6, 7.7 and 7.8 Removed