

**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 SIGNED ON 11 AUGUST 2009**

The Government of the Principality of Liechtenstein (Liechtenstein) and the Government of the United Kingdom of Great Britain and Northern Ireland (United Kingdom) have today signed an Agreement on Tax Information Exchange (TIEA).

The Government of Liechtenstein and Her Majesty's Revenue and Customs (HMRC) have also today signed a Memorandum of Understanding Relating to Cooperation in Tax Matters (MOU). The MOU concerns the introduction by Liechtenstein of a five-year taxpayer assistance and compliance program as well as the introduction by HMRC of a five-year special disclosure facility for persons wishing to regularise their UK tax affairs.

This declaration sets out various matters that have been agreed by the parties to be further set out in writing. Any terms used in this declaration will have, to the extent that the context so allows, the meaning given to them in the TIEA and the MOU as appropriate.

Next Steps Regarding a Tax Convention

In recognition of the steps taken by the Government of Liechtenstein in these matters and as an expression of the new spirit of co-operation between our Governments, HMRC will now begin discussions with representatives of the Government of Liechtenstein about a comprehensive convention on taxation of income and capital based on the OECD Model of 18 July 2008 (DTA). The discussions will examine the tax systems of the United Kingdom and Liechtenstein, including any changes contemplated, and will consider the incidence of double taxation, transfer pricing issues, and tax obstacles or areas of mutual co-operation which could be addressed by a DTA. The discussions will also include reference to the "business case" prepared by the Government of Liechtenstein in support of a DTA between the United Kingdom and Liechtenstein dated 1 June 2009 which has been reviewed with interest by HMRC.

These discussions will conclude within 12 months of the signing of the TIEA. During this period, HMRC and the Government of Liechtenstein will monitor the effectiveness of the taxpayer assistance and compliance program and the United Kingdom's commitment to its success. Having regard to the results of this exercise and the discussions, the United Kingdom will enter into substantive negotiations on a DTA one year after the signing of the MOU. HMRC will use its best efforts and resources to successfully conclude the negotiations within a reasonable period after the signing of the TIEA.

## Protection of Liechtenstein Financial Intermediaries Complying with the MOU

As outlined in the MOU, HMRC wishes to ensure that the disclosure facility described therein is successful and achieves the aim of the parties that by the “final compliance date” there will be no “relevant persons” (as defined in the MOU) liable to taxation in the United Kingdom who are using the laws of Liechtenstein to disguise such liability without accounting for any tax due as provided in the MOU. HMRC anticipates that Liechtenstein “financial intermediaries” (as defined in the MOU) will have an important and valuable role in ensuring that this objective is met.

Accordingly, HMRC recorded in the MOU that in view of the expected cooperative role that any persons providing financial services in Liechtenstein (such as Liechtenstein financial intermediaries and their executives and employees) will undertake in ensuring that the taxpayer assistance and compliance program as well as the disclosure facility are successful, HMRC views it to be highly unlikely to be in the public interest of the United Kingdom to undertake a criminal investigation against such persons for past actions or inactions relating to possible breaches of tax laws.

As also stated in paragraph 9 of Schedule 7 of the MOU, a relevant person who makes a full, accurate and unprompted disclosure to HMRC under the disclosure facility, will not be subject to criminal investigation by HMRC for a tax-related offence, unless the source of the funds from which the relevant person has benefited or may benefit constitutes “criminal property” within the meaning specified in section 340 of the Proceeds of Crime Act 2002 (provided that the definition of criminal property for this purpose will not include property that has arisen solely as a result of illegal tax evasion).

## The Disclosure Facility Offered under the MOU and the New Disclosure Opportunity (NDO) Announced by the United Kingdom on 22 April 2009

To facilitate the wish of both parties that the five-year disclosure facility under the MOU is a success for all sides involved, the MOU disclosure facility provides an incentive for persons with assets and interests in Liechtenstein to disclose previously undeclared income and gains to the UK by limiting the recovery of UK taxes to a defined 10-year period and providing an option for a simplified composite rate of tax in certain circumstances.

For avoidance of doubt and for comparison purposes, under the NDO, for persons who submit a notification of their intention to disclose to HMRC between 1 September and 30 November 2009 as announced, HMRC will assess liability to all UK taxes, where previously not assessed to UK tax, for up to 20 years as may be required in order to account for unpaid UK tax liabilities.

## Guidance on Liechtenstein Structures

The Government of Liechtenstein and HMRC have agreed to consider and establish written guidance and approaches to characterisation, recognition and treatment of legal entities and fiduciary relationships in Liechtenstein with a view to assisting financial intermediaries in Liechtenstein to address their obligations as contemplated

in the MOU as well as to provide clarification to “relevant persons” making use of Liechtenstein legal entities or fiduciary relationships.

Accordingly, the Government of Liechtenstein and HMRC have generally agreed on the written guidance and approach concerning companies, trusts and foundations for purposes of the MOU as detailed in the enclosed Appendix A to this declaration. No later than 3 months of the signing of the MOU, HMRC will confirm the generally agreed guidance of Appendix A. For avoidance of doubt, nothing contained in Appendix A is to affect the ability of affected persons to rely on UK law or practice permitting alternative characterisation, recognition and treatment. The parties further recognise in respect of Appendix A that the ultimate UK taxation consequences for UK taxpayers will depend on the particular facts as is the case where UK or other common law entities or fiduciary relationships, such as trusts, are involved.

Furthermore, the Government of Liechtenstein and HMRC will agree no later than 3 months of the signing of the MOU on written guidance and consistent approach to characterisation, recognition and treatment of a trust enterprise (trust reg.) (“Treuunternehmen”) and an establishment (“Anstalt”) in Liechtenstein for the purposes of the MOU. HMRC acknowledges the guidance and approach (enclosed here as Appendix B) proposed by the Government of Liechtenstein. For avoidance of doubt, nothing contained in Appendix B is to affect the ability of affected persons to rely on UK law or practice permitting alternative characterisation, recognition and treatment. The parties further recognise in respect of Appendix B as well that the ultimate UK taxation consequences for UK taxpayers will depend on the particular facts as is the case where UK or other common law entities or fiduciary relationships, such as trusts, are involved.

#### Possibility of Deduction, Retention and Other Procedures

According to the MOU, where a Liechtenstein financial intermediary identifies relevant persons who may be liable to taxation in the United Kingdom, notification procedures are required to be undertaken so as to ensure compliance with UK tax obligations. To the extent the relevant person does not take required steps to assure the intermediary of such compliance, the financial intermediary is required to cease providing “relevant services” (as defined in the MOU) to the relevant person or to follow any other directions according to procedures to be approved and agreed by HMRC and the Government of Liechtenstein. To this end, HMRC and the Government of Liechtenstein plan to develop procedures that can be part of the review procedure outlined in Schedule 5 of the MOU.

HMRC and the Government of Liechtenstein have discussed and will continue to consider procedures that may be approved and agreed between them in this regard, which procedures may include fines to be imposed on the “relevant property” (as defined in the MOU), deduction or retention taxes and/or other approaches designed to provide economic incentives, or sanctions, to the relevant person to take one of the steps contemplated by the MOU.

As part of the process of discussion in this area, HMRC and the Government of Liechtenstein have considered the possible use of a retention tax on account, similar in operation to UK taxes paid in advance, as well as possible approaches to an

alternative final tax that might be imposed in certain circumstances. However, this is intended to be imposed only as a last resort where it is not legally possible or practicable for the relevant person to report or account for his interest in an account/asset to HMRC. Accordingly, it is envisaged that a retention tax or similar arrangement will only be applied in exceptional circumstances.

Where possible, such steps, approaches, and arrangements will be with a view to ensure that the relevant person duly accounts for his liability to tax in the United Kingdom, in keeping with the objective of the Government of Liechtenstein that by the conclusion of the special disclosure facility under the MOU there will be no relevant persons with a “beneficial interest” (as defined in the MOU) in relevant property who are liable to taxation in one party but are using the laws of the other party to disguise such liability without paying appropriate tax in the manner contemplated by the MOU.

#### Rights and Duties After 31 March 2015

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

#### Reciprocity

As also stated in the Preamble to the MOU, the parties may agree, as appropriate, to subsequent memoranda whereby the Government of Liechtenstein would establish a similar special disclosure facility and the Government of the United Kingdom would establish a similar taxpayer assistance and compliance program.

#### Information Exchange under the TIEA and MOU

As also stated in the Preamble to the MOU, on the basis that they meet their respective obligations under the TIEA and the MOU, it is their intention to use the TIEA and the MOU as the means to make requests for information in relation to tax matters falling within the scope of the MOU.

#### Non-Discrimination

As also stated in the Preamble to the MOU, the parties confirm that they fully subscribe to the concept of non-discriminatory treatment for each other’s nationals and residents. However, each party may tax its residents on a different basis than it taxes non-residents.

As further stated in the Preamble to the MOU, the parties agree that, given the MOU and the TIEA, no discriminatory treatment or any restrictions to market access can be justified on the grounds of the lack of fiscal supervision, fiscal cohesion, collection of taxes, or abuse of law or on the grounds of difficulties in obtaining relevant information between the parties.

This declaration is signed in duplicate, one original for each party, in Vaduz, Liechtenstein, this 11<sup>th</sup> day of August, 2009 by

H.S.H. Prince Nikolaus of Liechtenstein, Ambassador of the Principality of Liechtenstein to the European Union

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

Dave Hartnett, CB, Permanent Secretary for Taxation

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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

## APPENDIX A

TO

### JOINT DECLARATION BY THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN AND HER MAJESTY'S REVENUE AND CUSTOMS ON THE OCCASION OF THE SIGNING ON 11 AUGUST 2009 OF MEMORANDUM OF UNDERSTANDING RELATING TO TAXES

The Government of the Principality of Liechtenstein has considered and agreed with HMRC the following written guidance and consistent approach on characterisation, recognition and treatment of legal entities and fiduciary relationships for purposes related to the MOU, provided that provisions under Liechtenstein and UK law remain the same as currently as related to such characterisation, recognition, and treatment.

For avoidance of doubt, nothing contained herein is to affect the ability of affected persons to rely on UK law or practice permitting alternative characterisation, recognition and treatment. The parties further recognise that the ultimate UK taxation consequences for UK taxpayers will depend on the particular facts as is the case where UK or other common law entities or fiduciary relationships, such as trusts, are involved.

- 1) The European Union harmonised company forms, such as “Aktiengesellschaft” or “AG”; “Gesellschaft mit beschränkter Haftung” or “GmbH”; “Societas Europaea” or “SE”, to be characterised, recognised and treated as a *company* for UK tax purposes.
- 2) Entities formed as “Kommanditgesellschaft” or “KG” or “Kollektivgesellschaft” to be characterised, recognised and treated as a *partnership* for UK tax purposes.
- 3) Trusts (“Treuhandschaften”) and foundations (“Stiftungen”) to be characterised, recognised and treated as *trusts* for UK tax purposes.

For avoidance of doubt, a business activity is only allowed in case of charitable foundation or private foundations where a respective law specifically permits it. In case of family foundations, business activity is not permitted. Accordingly, while a foundation has its own legal personality, its essence and purpose is to preserve and maintain assets for the beneficiaries, as is that of a trust.



## APPENDIX B

TO

### JOINT DECLARATION BY THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN AND HER MAJESTY'S REVENUE AND CUSTOMS ON THE OCCASION OF THE SIGNING ON 11 AUGUST 2009 OF MEMORANDUM OF UNDERSTANDING RELATING TO TAXES

The Government of the Principality of Liechtenstein has proposed to and considered with HMRC the following written guidance and consistent approach on characterisation, recognition and treatment of legal entities and fiduciary relationships for purposes related to the MOU, provided that provisions under Liechtenstein and UK law remain the same as currently as related to such characterisation, recognition, and treatment.

For avoidance of doubt, nothing contained herein is to affect the ability of affected persons to rely on UK law or practice permitting alternative characterisation, recognition and treatment. The parties further recognise that the ultimate UK taxation consequences for UK taxpayers will depend on the particular facts as is the case where UK or other common law entities or fiduciary relationships, such as trusts, are involved.

- 1) An establishment (“Anstalt”) in Liechtenstein to be characterised, recognised, and treated for UK tax purposes as follows:
  - a) An establishment that according to its articles is permitted to undertake a business activity (“nach kaufmännischer Art geführtes Gewerbe”), and therefore is obliged to have an audit, to be characterised, recognised, and treated for UK tax purposes as a *company*.
  - b) An establishment that according to its articles is *not* permitted to undertake a business activity (“nach kaufmännischer Art geführtes Gewerbe”), and therefore is *not* obliged to have an audit, to be characterised, recognised, and treated for UK tax purposes as follows:
    - i) *An establishment with founder’s rights or shares* to be characterised, recognised and treated as a *company*.
    - ii) *An establishment with no founder’s rights or shares* to be characterised, recognised and treated as a *trust*.

For avoidance of doubt, in case of an establishment with founder’s rights as used above, the founder (settlor) with founder’s rights has full powers to decide upon who the beneficiaries are and to change the beneficiaries, and such powers are transferrable.

- 2) A trust enterprise (“Treuunternehmen”) in Liechtenstein to be characterised, recognised, and treated for UK tax purposes in an analogous way as an establishment.

