



UK Residents and Non-UK Domiciles New Disclosure Opportunity, Lichtenstein Disclosure Facility

The Government of the United Kingdom has recently taken a purposeful initiative to increase the tax compliance of certain UK residents by the implementation of two Offshore Disclosure Initiatives, namely the New Offshore Disclosure Opportunity ("NDO") and the Liechtenstein Disclosure Facility ("LDF").

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New Disclosure Opportunity

The NDO is the result of an announcement by Her Majesty's Revenue & Customs ("HMRC") in August 2009.

It is a general unilateral disclosure facility allowing those individuals with unpaid UK taxes relating to previously undisclosed income and/or capital gains linked to offshore accounts and/or assets to settle related tax liabilities at a favourable 10% penalty rate.

The NDO provisions apply for all UK Resident or certain non-UK Domiciled individuals who have any interest in any Offshore (Worldwide) Accounts, Trusts, Regulated Trusts, Stiftungs, Foundations, Anstalts or Corporate entities that would otherwise be subject to UK tax.

The provisions of the NDO were implemented on 1 September 2009. A formal notification must be given to HMRC in the UK by 30 November 2009 at the latest. The actual disclosure must be submitted together with payment of related taxes and penalty charges by 12 March 2010.

Liechtenstein Disclosure Facility

The LDF is a special disclosure facility under an agreement between HMRC and the Principality of Liechtenstein, following the execution of a Memorandum of Understanding between the two Revenue collecting authorities on 11 August 2009. The LDF allows individuals with unpaid UK taxes relating to previously undisclosed income and/or capital gains linked to offshore accounts and/or assets held in the Principality of Liechtenstein to settle related tax liabilities at a favourable 10% penalty rate.

The LDF provisions apply for all UK Resident or certain non-UK Domiciled individuals who have any interest in any Accounts, Trusts, Regulated Trusts, Stiftungs, Foundations, Anstalts or Corporate entities held, operated and/or managed in the Principality of Liechtenstein and would otherwise be subject to UK tax.

The provisions of the LDF were implemented on 1 September 2009 and the facility will continue until 2015 unless the individual is notified directly by a Liechtenstein Financial Institution, in which case other time limits will apply. The time limit for participation in the LDF is more generous than that of the NDO, but, nevertheless, any delay may increase the penalty charge to, possibly, as much as 30% of the tax outstanding.

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LOW PENALTY RATES

Under these provisions of both the NDO and the LDF, an individual may be able to claim immunity from criminal prosecution if he or she makes a full declaration of their previously undeclared assets and income held offshore. This amnesty will apply if any income, capital gains and inheritance tax outstanding is paid in full together with an additional minimum of 10% penalty charge. Ordinarily HMRC can, in extreme cases, apply a penalty of 100% of the tax outstanding and recommend criminal prosecution leading to a conviction of upto 7 years imprisonment.

Both sets of the provisions are complicated in some cases, the NDO may lead to tracking changes in UK tax, trust and residency laws for the 20 years prior to 2009 and applying those changes retrospectively. The time period for the LDF is less, standing at 10 years from 2009. There are further regulations that would allow a composite rate of tax at 40% to be applied to the taxable amount, but which would, in its turn, involve an intensive and time consuming scrutiny of the movement of an individual's funds to ascertain the taxable amounts.

DO NOT DELAY

Our advice to UK resident and non-UK domiciled clients is to obtain immediate advice on these matters and ensure that they are satisfied that they are compliant with their UK Tax obligations with regard to the NDO and LDF as the 30 November deadline approaches.

As an *aide memoire* the table below sets out the that will need to be resolved and the time scale to be adhered to in order to claim the benefits of the LDF and NDO respectively:

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NDO – Worldwide Assets/IncomeTiming

- Notify intention to disclose between 1 September – 30 November 2009
- Disclosure and payment of liabilities 1 September – 12 March 2010

Key features

- No penalty if tax <£1,000
- Otherwise max penalty limited to 10% of tax due
- 30-100% penalty due after March 2010
- Interest also payable on tax due
- No immunity from criminal prosecution
- 20 years period of disclosure, ie from April 1989

Procedure

- Paper notification or on line application to HMRC
- Calculation of net Capital Gains Tax, Inheritance Tax and VAT liabilities for each year over the last 20 years
- Collating old records and forensic analysis of raw data from bank accounts to determine UK tax figures
- Tax calculations required include tracking back figures and applying the relevant years tax legislation for that year
- Calculation of interest and penalties due

After the submission

- Further HMRC correspondence if required
- Possible criminal prosecution
- HMRC will use UK bank information to make cross examine and make checks
- No time period for finality

LDF – Liechtenstein Assets /IncomeTiming

- 5 year window to disclose from 1 September 2009 for those with Relevant Property and 1 December 2009 for those who have since acquired Relevant Property

Key features

- Offer of composite rate of tax (40%)
- Fixed 10% penalty of tax due
- Interest also payable on tax due
- Immunity from criminal prosecution if full disclosure and no proceeds of crime
- 10 year period of disclosure, ie from April 1999

Procedure

- Bespoke service offered by HMRC
- Disclosure reference and certificate issued within 60 days after initial disclosure to HMRC
- Full disclosure report submitted to HMRC including computation of overall tax liability within 7 months (if composite rate used) or 10 months in other cases
- Election of composite tax rate of 40% (covering all UK taxes incl inheritance tax)
- Collating old records and forensic analysis of raw data from bank accounts to determine UK tax figures
- Calculation of interest and penalties due

After the submission

- Further HMRC correspondence if required
- Disclosure Certificate issued by HMRC as guarantee of finality