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Date 24 September 2009
Our ref
Your ref

Dear Andrew

LIECHTENSTEIN DISCLOSURE FACILITY (LDF)

Thank you for your letter of 10 September 2009.

I hope the following comments address the areas of concern within your letter. I am seeking further clarification on your example 3 at point 4 and will get back to you shortly. I have replied subject to this point.

1. Human rights

The Commissioners for HMRC carefully considered the human rights implications of the NDO and LDF and do not consider that either are in breach of the Human Rights Act.

2. Liability to UK tax on Liechtenstein investments

The basis of the MOU is to enable persons who have, or believe that they may have, undeclared tax liabilities to participate in the LDF and I believe that the MOU as a whole makes this clear. For example, may I refer you to recitals B, D and G of the MOU. Paragraph 6 of schedule 4 and paragraph 5 of schedule 7 also make it clear that the basis of participating in LDF is for persons with undeclared tax liabilities.

However, in order to avoid any argument that the wording in the MOU is misleading the FAQ wording will be amended appropriately. Thank you for bringing this to my attention.

Director: Marie-Claire Uhart



INVESTOR IN PEOPLE



3. Eligibility to participate in the LDF

I am happy to confirm that the LDF is open to persons under HMRC enquiry provided the nature of the enquiry is outside the definition of 'under investigation' as described in Schedule 1. For clarity, this excludes persons who are registered for a Code of Practice 9 enquiry.

I am unable to accept your wider reading of the Memorandum of Understanding in relation to COP 9 enquiries. Clause 4a) of Schedule 7 says that any person already 'under investigation' cannot participate and as you point out in the earlier part of your request, COP9 is a type of investigation specifically excluded from participation within the LDF under Schedule 1.

4. Acquiring 'relevant property'

Example 1 – Provided the bank accounts are not opened through a UK branch or agency and subject to the eligibility criteria, I can agree your understanding. But if the individual chooses to delay registering his disclosure under the LDF beyond 30 November 2009 he faces the risk of being registered for enquiry and, depending on the nature of the enquiry, exclusion from participation in the LDF if this constitutes an 'investigation' within the meaning of Schedule 1. I would also comment that participation in the NDO is not obligatory, but there remains the ongoing requirement to notify a UK tax liability irrespective of the existence of the disclosure facilities.

Example 2 – on the basis of the facts stated the disclosure would qualify under the LDF but the liability will not be eligible for the shorter limitation period of 10 years. The update to the published FAQs is intended to clarify HMRC's treatment around the wording in clause 4d) of Schedule 7 relating to the status of the non-UK/Liechtenstein bank account. As explained, "...in relation to that account..." covers the unpaid taxes on the closed account and HMRC's view is that liabilities will apply to the full 20-year period.

Example 3 – I will get back to you on this point shortly.

You ask me to define the meaning of UK branch or agency. This is simply a definition that is used for the purposes of this MOU and is intended to have its common meaning.

5. Legal requirements of the MOU

The terms of the agreement are based on the understanding that Liechtenstein will implement the appropriate legislation. HMRC will consider its position in the unlikely event that the legislation is not enacted by the proposed dates.

However, whether or not the legislation is implemented does not alter the fact that there are many people who are eligible to participate under LDF with undeclared tax liabilities and such persons are strongly encouraged to take advantage of the beneficial terms at the earliest opportunity. The beneficial terms under LDF come into effect immediately.

6. Other Matters

I appreciate that the matters raised are important to you and to the wider public. HMRC is committed to addressing all legitimate concerns and the FAQ page on the HMRC internet is one of the ways in which we intend to clarify our understanding of the terms of the LDF. The Second Joint Declaration is intended to further clarify the arrangements and is expected to be published by the end of November.

Please ring me if you need any further clarification on any of these issues.

Regards

Andy Cole
SI Deputy Director