

## Rule changes to the Liechtenstein Disclosure Facility (LDF)

### Background

On 14 August 2014 HMRC issued the Fourth Joint Declaration by the Government of Liechtenstein containing changes to the LDF.

### What are the changes?

Access to “full favourable terms” has been restricted to ensure that the criteria reflect the purpose of the LDF. The “full favourable terms” included the following:

1. A disclosure period limited from April 1999 onwards (as opposed to the 20 year period where deliberate behaviour is involved).
2. The option of using the Composite Rate Option up to April 2009 (and Single Charge Rate in 2010/11) where a flat rate of 40% is used to calculate unpaid taxes.
3. A 10% fixed penalty of the tax unpaid for the first ten years to April 2009 (rather than a maximum penalty of up to 200%)
4. Guaranteed immunity from prosecution for tax offences.
5. Exclusion from HMRC’s “naming and shaming list”.
6. Having seven or ten months to make a disclosure without any interference from HMRC.

The use of the composite rate is most advantageous when there is an inheritance tax (IHT) liability during the disclosure period or when a number of different types of taxes are involved such as income tax, IHT, corporation tax, stamp duty and VAT.

The circumstances where these restrictions apply fall into the following main categories:-

1. Cases where the relevant person enters the LDF to settle liabilities HMRC is already aware of. HMRC has stated that they wish to encourage settlement of these liabilities but do not believe it is “within the spirit of the LDF” to offer the full favourable terms.
2. Cases where the issue being disclosed has already been subject to an intervention (such as a former enquiry or compliance check) for more than 3 months, even if that intervention has been completed.

3. Cases where there is no substantial connection between the liabilities being disclosed and the offshore asset held by the relevant person on 1 September 2009 (the qualifying asset). These recent changes mean that it is now a requirement for a “substantial relationship” to exist between the liabilities being disclosed and the offshore asset held by the taxpayer on 1 September 2009. The substantial relationship test will assess whether 20% or more of the total liabilities being disclosed are connected to the qualifying asset.

It is still possible to use the LDF regardless of whether you are caught by the new rules, although it will simply mean that some of the favourable terms will not be available, including immunity from criminal prosecution and a single point of contact for disclosure.

### Who is affected?

Any LDF registrations made after 14 August 2014 will be affected by these changes. HMRC has confirmed they will not reopen cases that were settled under the practice they previously applied.

It is worth stressing, of course, you can still use the LDF regardless of whether you are caught by the new rules but it will mean that some of the preferential terms will not be available.

For further information or to discuss any of the issues raised in this briefing note, please contact a member of Rooks Rider Solicitors' Wealth Planning team:



Karen Methold  
Partner  
Head of Wealth Planning  
+44 (0)20 7689 7112  
kmethold@rooks rider.co.uk



Nicholas Jenkins  
Managing Partner  
Wealth Planning  
+44 (0)20 7689 7161  
njenkins@rooks rider.co.uk



Christopher Cooke  
Senior Partner  
Corporate & Wealth Planning  
+44 (0)20 7689 7110  
ccooke@rooks rider.co.uk



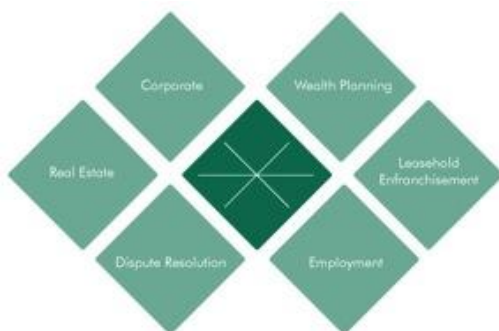
Robert Drysdale  
Associate  
Wealth Planning  
+44 (0)20 7689 7168  
rdrysdale@rooks rider.co.uk



Jeremy Duffy  
Solicitor  
Wealth Planning  
+44 (0)20 7689 7185  
jduffy@rooks rider.co.uk



Elena Tzialli  
Solicitor  
Wealth Planning  
+44 (0)207689 7141  
etzialli@rooks rider.co.uk



Rooks Rider Solicitors LLP  
Challoner House  
19 Clerkenwell Close ■ London ■  
EC1R 0RR

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