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KPMG LLP (UK)

Tax disclosure opportunities for UK clients

With the government keen to raise revenues in order to relieve financial pressures, the focus on tax collection has increased.

The government introduced the Liechtenstein Disclosure Facility (LDF) to provide a framework for the disclosure of UK tax irregularities connected with overseas assets held anywhere in the world with unique benefits and on favourable terms.

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Who is eligible to participate?

The LDF is available to the end of 2015 for those with undisclosed tax liabilities connected with:

- existing assets in Liechtenstein as at 1 September 2009.
- overseas assets outside of Liechtenstein but who acquired an asset or an interest in an asset in Liechtenstein any time between 2 September 2009 and the end of 2015.

It is not necessary for all overseas assets to be transferred to Liechtenstein to qualify for the LDF. Provided a Liechtenstein connection is established with sufficient funds (such that the Liechtenstein financial intermediary can issue a Confirmation of Relevance) the LDF can then be used as an umbrella for the disclosure of any tax liability connected with an overseas asset.

Trustees and Directors of offshore structures can also participate in the LDF. Where UK tax liabilities have arisen, for example, UK source income and Inheritance Tax in respect of ten year anniversary charges, such liabilities can also be settled using the LDF.

What are the unique benefits of the LDF?

The tax liability is limited to the period from 6 April 1999 as opposed to the normal 20 year rule. Other benefits include:

- A guaranteed immunity from prosecution for tax related offences.
- Ability to have initial "no names" discussions with HMRC, prior to making a disclosure.
- There is no time limitation for the recovery of undisclosed Inheritance Tax (IHT) liabilities. Under the LDF Inheritance Tax will also be limited to the period from 6 April 1999, which is a significant concession in relation to inherited wealth.
- A simplified Composite Rate Option (CRO) of tax with the potential for significant IHT savings.

What will happen once the LDF closes at the end of 2015?

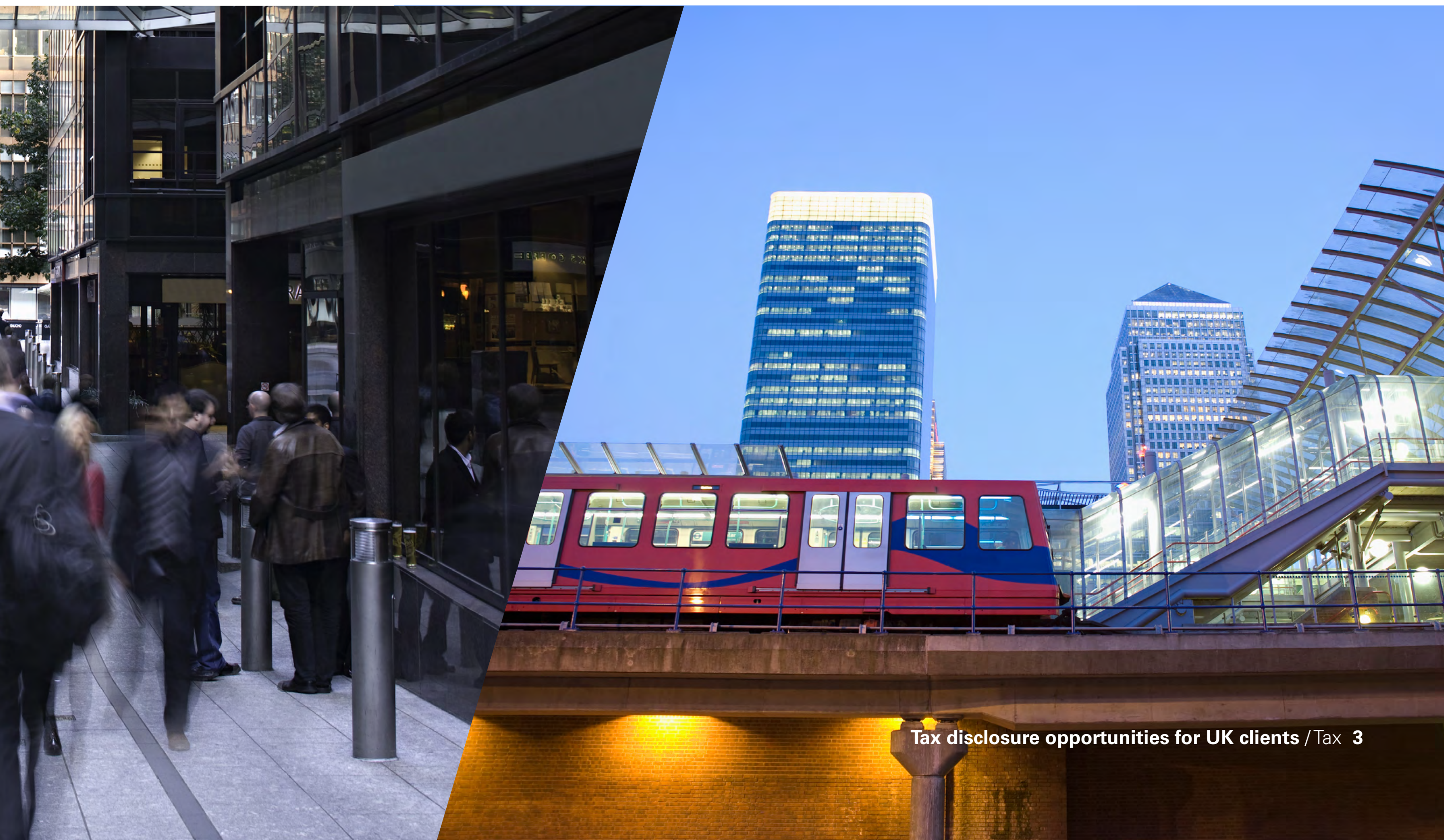
The LDF will close to new registrations after the end of 2015. A tougher "last chance" disclosure facility will be offered between 2016 and mid 2017, with penalties of at least 30% (instead of 10% in the LDF) and no guaranteed immunity from prosecution. This coincides with the provision of tax information under the Inter-Governmental Agreements with Crown Dependencies and British Offshore Territories in 2016 and the OECD Common Reporting Standard from 2017

We expect that when all facilities expire HMRC will intensify the number of investigations and those who have not disclosed will be penalised heavily, including criminal prosecutions in appropriate cases.

Who is currently using the LDF?

A diverse range of people are currently taking advantage of the LDF:

- Those who have "inherited" a problem.
- Professionals (eg lawyers, accountants, barristers) with overseas assets who are particularly at risk in terms of prosecution.
- Those who have unrecorded trading income going back many years.
- Taxpayers who have been through a previous investigation but who did not disclose all overseas assets.
- Under the UK / Swiss Agreement:
  - UK resident non-doms who opted out of the Agreement
  - Discretionary structures (with UK settlors or beneficiaries) that were not within the scope of the Agreement
  - One off charge was applied to the account balance but UK tax clearance was not achieved
  - Capital flight from Switzerland pre the Agreement
  - Anyone who was not identified as UK resident
- Elderly people who want their tax affairs resolved to ensure future generations do not inherit a problem.
- Those who are genuinely worried about the existence of the overseas asset and want their tax affairs to be in order.
- Those who require an injection of capital in the UK- whether to purchase an asset or to invest funds into a UK business given the difficulties borrowing from Financial Institutions in the current economic climate.
- Trustees and Directors of overseas companies who wish to resolve legacy issues.



How can KPMG help

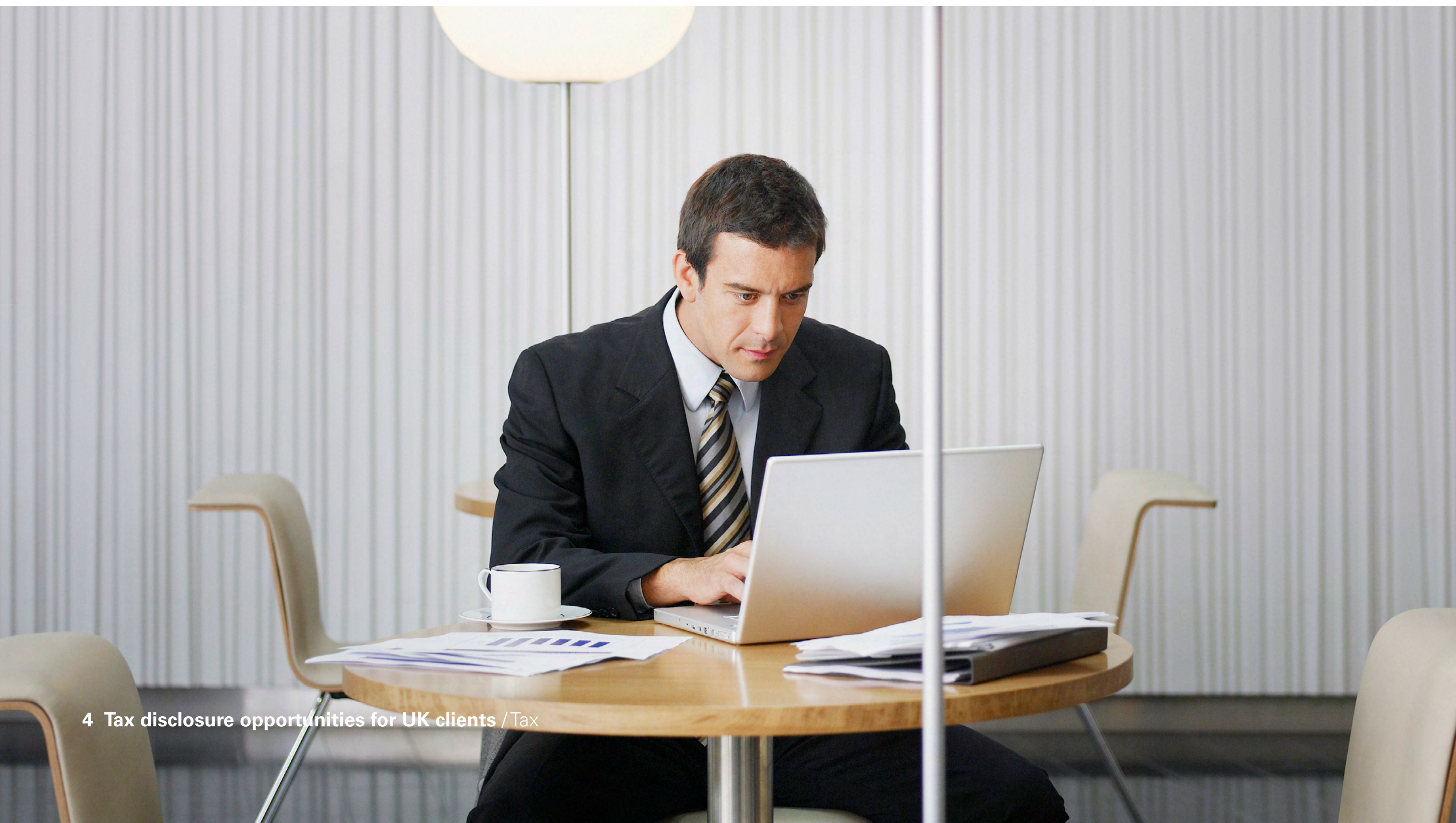
- We have a dedicated team which has significant experience in handling many types of enquiries and investigations by HMRC.
- We have particular experience of complex investigations involving offshore bank accounts, structures and other assets.
- We can risk assess a client's situation, explain and quantify the tax risks and how they might be resolved.
- As well as looking to deal with any disclosure issues for the past it is equally important to help ensure the client's tax position is optimised going forward using any planning opportunities which are available.
- As specialists in this area with a track record of success, we can advise clients with the decision making process.

Professional Privilege

In February 2006, money laundering reporting obligations for UK tax advisers were revised under S330 (6) The Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 Amendment) Order 2006.

The amendments extended professional privilege to include 'relevant professional advisers', which are defined as UK accountants, auditors or tax advisers who are a member of a UK professional tax or accounting body.

This enables fully confidential discussions to take place in the UK or overseas.



Case Study 1

Mrs Thompson was UK resident and domiciled for tax purposes. She died in 2002. A bank account held in Guernsey was funded from a non taxable source not disclosed as part of her estate and has remained undeclared thereafter. The beneficial owner of the bank account is now her daughter, also UK resident and domiciled.

Financial information regarding the account is as follows:

- Income and gains 1990 to 1999, £400k.
- Income and gains 1999 to 2002, £250k.
- Value of bank account at date of death £2m.
- Income and gains post death to 2009 – £200k.

The analysis set out below compares the normal tax position with the LDF on the basis an asset is acquired in Liechtenstein.

Tax	Normal position	LDF	LDF-CRO
Income and gains (1990-2002)	*	*	*
IHT charge £2m @ 40%**	800	800	-
Income and gains post death , £200k at 40%	80	80	80
TOTAL	**880**	**880**	**80**

* Income and gains pre death now out of date for assessment.

** IHT is liability of Mrs Thompson's estate.

The IHT liability falls away completely if the CRO is used.

The potential tax saving is £800k.

In addition to any tax savings there would be the corresponding savings on interest and penalties.

Case Study 2

Mr Jones is UK resident and domiciled for tax purposes. He inherited a Swiss bank account and an investment portfolio (worth £750k) on his father's death in 1985. The Swiss investments were not declared to the UK tax authorities on his father's death and remained undeclared thereafter.

In 1990 Mr Jones transferred the account and portfolio (worth £1m) to a Panama Foundation which is treated as a discretionary trust. At April 2000 the Foundation was worth £2m. The Foundation has distributed £100k to Mr Jones during the last ten years. The income and gains arising within the Foundation in the period April 1990 to 5 April 1999 was £800k and for the period 6 April 1999 to 5 April 2009 £1m. The analysis set out below compares the normal tax position with the LDF on the basis an asset is acquired in Liechtenstein.

Tax	Normal position	Normal position Foundation	LDF Taxpayer	LDF Foundation	LDF Taxpayer CRO	LDF Foundation CRO
IHT on death estate £750k at 40%	300					
IHT on transfer to trust £1m at 20%	200					
IHT 10 year charge £2m at 6%		120		120		
IHT exit charges- £100k at 6%		6		6		
Income and gains 6 April 1990 to 5 April 1999 - £800k at 40%	320					
Income and gains 6 April 1999 to 5 April 2009 - £1m at 40%	400		400		400	
TOTAL	**1,220**	**126**	**400**	**126**	**400**	**0**

If the CRO is used the IHT liability for the foundation falls away completely.

The potential tax saving is £946k (1220 + 126 – 400).

In addition to any tax savings there would be the corresponding savings on interest and penalties.

Case Study 3

Mr Villa established a discretionary trust in Jersey in 1995. He was UK resident but non domiciled at this time. Mr Villa became deemed domiciled for IHT purposes in 2005.

Mr Villa settled £1m into the trust in 1995 from foreign assets. The trustees subsequently used most of this amount to acquire a UK property that has been let out since 1995.

The relevant financial information is as follows:

- Rental income received by trustees 1995 to 1999, £200k (tax paid NRLS £40k).
- Rental income received by trustees 1999 to 2009, £500k (tax paid NRLS £100k).
- MV of the trust at 10 year anniversary, £1.8m.

The analysis set out below compares the normal tax position with the LDF on the basis an asset is acquired in Liechtenstein.

Tax	Normal position	Normal position Trustees	LDF Taxpayer	LDF Trustees	LDF Taxpayer CRO	LDF Trustees CRO
IHT on transfer to trust *						
Income and gains 6 April 1995 to 5 April 1999 -£200k at 40% less tax paid	40		-			
Income and gains 6 April 1999 to 5 April 2009 -£500k at 40% less tax paid	100		100		100	
IHT 10 year anniversary -£1.8m @6 %		108		108		
TOTAL	**140**	**108**	**100**	**108**	**100**	**0**

*Excluded property for IHT purposes

If the CRO is used the IHT 10 year anniversary charge on the trustees falls away completely.

The potential tax saving is £148k (140 + 108 – 100).

In addition to any tax savings there would be the corresponding savings on interest and penalties.

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