

*Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act
2006, for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

2010 No.

TAXES

The International Tax Enforcement (Liechtenstein) Order 2010

Made - - - - [day] [Month] 2010

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(1) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the International Tax Enforcement (Liechtenstein) Order 2010.

Tax information exchange agreement to have effect

2. It is declared that—
 - (a) the agreement set out in the Schedule to this Order has been made with the Government of the Principality of Liechtenstein with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the agreement; and
 - (b) it is expedient that the agreement should have effect.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK
Statutory Instrument: *The International Tax Enforcement (Liechtenstein) Order 2010 No. 2678*

Name
Clerk of the Privy Council

SCHEDULE

Article 2

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND
THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN
ON TAX INFORMATION EXCHANGE**

Preamble

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Principality of Liechtenstein (together “the Contracting Parties”) desiring to:

- (a) regulate the exchange of information with respect to taxes between the Contracting Parties and facilitate tax cooperation and taxpayer assistance, and
- (b) assist the maintenance and development of the Principality of Liechtenstein’s financial services industry,

have on this date reached an understanding covering various matters including the introduction by the Government of the Principality of Liechtenstein of a five-year taxpayer assistance and compliance programme and the introduction by the competent authority of the United Kingdom of a five-year special disclosure facility.

It is the Contracting Parties’ intention that by the conclusion of the five year period contemplated by the taxpayer assistance and compliance programme, there will be no beneficial owners who are liable to taxation within the jurisdiction of one Contracting Party who are using the laws of the other to disguise such liability without paying appropriate tax in the manner contemplated by the understanding.

In furtherance of these objectives, the Contracting Parties have agreed as follows:

Article 1

Object and Scope of this Agreement

The Contracting Parties, through their competent authorities, shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Party concerning taxes covered by this Agreement;
- b) include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters; and
- c) be treated as confidential as set forth in this Agreement.

Article 2

Jurisdiction

A Contracting Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of this Article, “authorities” includes all government agencies, political subdivisions, and local authorities.

Article 3

Taxes Covered

1. This Agreement shall apply to all taxes imposed by the Contracting Parties on a national or countrywide level.
2. The taxes covered may be modified by mutual agreement of the Contracting Parties in the form of an exchange of letters.
3. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement where such changes may be relevant to the operation of this Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;
 - b) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - c) “competent authority” means:
 - i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - ii) in the case of Liechtenstein, the Government or its authorised representative;
 - d) “Contracting Party” means the United Kingdom or Liechtenstein as the context requires;
 - e) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
 - f) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
 - g) “formally commenced a criminal investigation” means that the person in question has been formally notified that a criminal investigation has commenced, or has been arrested for, or charged with, a criminal tax offence or given a police caution (or, in the United Kingdom, a caution under the Police and Criminal Evidence Act 1984) with respect to such an offence;
 - h) “information” means any fact, statement or record in any form whatever;
 - i) “information gathering measures” means administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - j) “Liechtenstein” means the Principality of Liechtenstein;
 - k) “person” means a natural or legal person, a company, or any other body of persons;
 - l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - m) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public (i.e. where the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors);
 - n) “recognised stock exchange” means any stock exchange agreed upon by the competent

authorities of the Contracting Parties;

- o) “Requested Party” means the Contracting Party that has received a request to provide information under this Agreement (hereinafter referred to as “request”) or that has provided such information in response to such request;
 - p) “Requesting Party” means the Contracting Party that has submitted a request or that has received such information in response to such request;
 - q) “tax” means any tax to which this Agreement applies but not including customs duties;
 - r) “tax disclosure facility” means a voluntary disclosure or similar programme for persons subject to and/or obligated to pay any taxes as determined by the tax laws of a Contracting Party and shall include all such programmes whether available on a national, unilateral, bilateral, or multilateral basis or otherwise; and
 - s) “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree on a common meaning pursuant to the procedures for reaching a mutual agreement under this Agreement, shall have the meaning which it has at that time under the laws of that Contracting Party, the meaning under the applicable tax laws of that Contracting Party prevailing over the meaning given to the term under other laws of that Contracting Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of a Contracting Party shall have the right to submit a request to the competent authority of the other Contracting Party for the purposes referred to in Article 1. The competent authority of the Requested Party shall provide upon request by the Requesting Party information for the purposes referred to in Article 1 and in accordance with and subject to this Agreement.
2. Upon receiving a request, the competent authority of the Requested Party shall acknowledge receipt of the request to the competent authority of the Requesting Party, shall advise if there are any unexpected delays in obtaining the requested information, and shall forward with the least possible delay the requested information to the Requesting Party for the purposes referred to in Article 1 and in accordance with and subject to this Agreement. Such information shall be exchanged without regard to whether the conduct being investigated by the Requesting Party would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.
3. Each Contracting Party shall ensure that it has the authority, for the purposes referred to in Article 1 and subject to Article 2 and paragraph 2 of Article 6, to obtain and provide, through its competent authority and upon receiving a request:
 - a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity; and
 - b) information regarding the ownership of legal persons, including companies, partnerships, collective investment funds or schemes, “Anstalten” (where appropriate), and other persons, including, within the constraints of Article 2, information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations information on founders, members of the foundation council and beneficiaries; and equivalent information in the case of entities that are neither trusts nor foundations.
4. The competent authority of the Requesting Party shall make a request only when it is unable

to obtain the requested information by other means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or any collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request, the Requested Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not, at that time, need such information for its own tax purposes.
6. Any request made by a Requesting Party shall be framed with the greatest degree of specificity possible to demonstrate the foreseeable relevance of the information to the request. In all cases, a request shall specify in writing the following:
 - a) the identity of the person under examination or investigation;
 - b) the period of time with respect to which the information is requested;
 - c) the nature of the information requested and the form in which the Requesting Party would prefer to receive it;
 - d) the matter under the Requesting Party's tax law with respect to which the information is sought;
 - e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the Requesting Party, with respect to the person identified in paragraph 6(a) of this Article;
 - f) grounds for believing that the information requested is present in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
 - g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
 - h) a statement that the request is in conformity with the law and administrative practice of the Requesting Party;
 - i) a statement that the Requesting Party would be able to obtain and provide the requested information if a similar request were made by the Requested Party; and
 - j) a statement that the Requesting Party has pursued all reasonable means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.
7. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article to the extent allowable under its domestic laws in the form of depositions of witnesses and authenticated copies of original documents.
8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information pursuant to a request under this Agreement.
9. Only information with respect to the person identified in a request according to paragraph 6(a) of this Article may be requested by the Requesting Party, and identifying information about other persons of the Contracting Parties (or of any other taxing jurisdiction) may be redacted so that such information is not visible in the information exchanged under this Agreement.

Article 6

Possibility of Declining a Request

1. The Requested Party may decline a request by the Requesting Party where:

- a) the request is not made in conformity with this Agreement, provided that if a request is believed to be deficient in some respect, but other parts of such request meet the requirements of this Agreement, the competent authority of the Requested Party shall provide any information that is responsive to that part of the request that meets the requirements of this Agreement;
- b) the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances;
- c) the Requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty;
- d) the disclosure of the information requested would be contrary to the public policy of the Requested Party;
- e) the request is made on or before 31 March 2015 and does not relate to a criminal tax matter in respect of which the Requesting Party has formally commenced a criminal investigation, and the person identified in a request according to paragraph 6(a) of Article 5 has not applied to disclose under a tax disclosure facility of the Requesting Party where he is eligible to do so; accordingly, for avoidance of doubt, the competent authority of the Requested Party may not decline a request by the Requesting Party for information relating to a person who has applied to disclose under a tax disclosure facility of the Requesting Party, whether or not such person has subsequently withdrawn that application;
- f) the request does not relate to a criminal tax matter in respect of which the Requesting Party has formally commenced a criminal investigation and the information requested relates to
 - i) bank and financial accounts in the Requested Party existing as of the date of signing of this Agreement, or
 - ii) any company, partnership, collective investment fund or scheme, trust, foundation, establishment, or other legal person, fiduciary relationship or insurance policy issued, formed, incorporated, administered or managed in the Requested Party existing as of the date of signing of this Agreement, and

the person identified in a request according to paragraph 6(a) of Article 5 is eligible to apply to disclose under a tax disclosure facility of the Requesting Party, and on or before 31 March 2015 such accounts are closed or transferred out of the Requested Party or such legal persons, fiduciary relationships or insurance policies are liquidated, terminated or transferred out of the Requested Party.

2. This Agreement shall not impose on a Contracting Party the obligation to:
- a) supply information which would disclose any trade, business, industrial, commercial or professional secret, or any trade process, provided that notwithstanding the foregoing, information of the type referred to in paragraph 3 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph;
 - b) supply information held by any authorities primarily involved in intelligence gathering activities, and in the case of authorities primarily involved in supervision activities insofar as the information has been gathered solely for financial market supervisory activities;
 - c) supply information on manufacturing costs or other cost information unless and until such date when there is a comprehensive tax convention on income and capital in force between the Contracting Parties providing for a mechanism for the resolution of transfer pricing disputes; or
 - d) carry out administrative measures at variance with the internal laws and administrative practices of the Contracting Party.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The International Tax Enforcement (Liechtenstein) Order 2010 No. 2678

3. The Requested Party shall not be required to obtain and provide information that the Requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request by the Requested Party under this Agreement. The statute of limitations of the Requesting Party pertaining to the taxes to which this Agreement applies shall govern a request for information. Accordingly, the expiration of a statute of limitations for determination, assessment or collection of taxes in the Requested Party shall not prevent the Requested Party from obtaining and providing the information requested by the Requesting Party with respect to such taxes.
4. This Agreement shall not impose on a Contracting Party the obligation to obtain or provide information or items subject to legal privilege. For purposes of this paragraph 4, "information or items subject to legal privilege" means information or items that would reveal confidential communications, or items enclosed with or referred to in such communications, between a client and an attorney, solicitor, barrister, or other admitted legal representative, or an employee or representative of such client or such legal representative, where such communications are:
 - a) made for the purpose of seeking or providing legal advice,
 - b) made for the purpose of use in existing or contemplated legal proceedings, or
 - c) made for the purpose of review by a person of the possibility of his taking advantage of a tax disclosure facility.
5. A request for information shall not be refused by the Requested Party on the ground that the tax claim giving rise to the request is disputed by or on behalf of the person identified in a request according to paragraph 6(a) of Article 5.

Article 7

Tax Examinations Abroad

1. Upon reasonable notice given and to the extent permitted under the generally applicable domestic laws in force at the time in the Requested Party, the Requested Party may allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party to interview or participate in interviews of individuals and to examine records or participate in such record examinations provided that the Requesting Party has obtained the prior written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the intended meeting with the individuals concerned. At the option of the Requested Party, an official of the Requested Party may attend such meeting.
2. At the request of the competent authority of the Requesting Party and to the extent permitted under the generally applicable domestic laws in force at the time in the Requested Party, the competent authority of the Requested Party may permit representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party. If such request is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination.

Article 8

Confidentiality

1. Any information received by a Contracting Party pursuant to this Agreement shall be treated as confidential. The Contracting Parties shall take appropriate measures to safeguard the

confidentiality of information received pursuant to this Agreement.

2. Any information received by a Contracting Party pursuant to this Agreement may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement, or to supervisory bodies in the jurisdiction of the Contracting Party concerned, and only to the extent necessary for those persons, authorities or supervisory bodies to perform their responsibilities. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions but subject always to: paragraph 9 of Article 5; paragraph 2 of Article 6; and, subject to such disclosure as may be required by a court of the relevant Contracting Party, the Contracting Parties protecting manufacturing costs or other cost information, identities and other identifying information from public disclosure by redacting such from public records or otherwise.
3. Information provided under this Agreement shall not be disclosed to any other person, entity, authority, or jurisdiction or used for any purpose other than according to this Agreement, except in cases where the competent authority of the Requested Party provides prior express written consent.
4. In no event shall information provided under this Agreement be disclosed to another country without the express written consent of the competent authority of the Requested Party.
5. Information received by the competent authority of the Requested Party in conjunction with a request shall be treated as confidential by the competent authority of the Requested Party.

Article 9

Mutual Technical Assistance

If the competent authorities of both Contracting Parties consider it appropriate to do so, each Contracting Party shall provide such technical or other assistance to the other Contracting Party as determined appropriate to enable the effective operation of this Agreement.

Article 10

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
3. The competent authorities of the Contracting Parties may mutually agree to adopt and implement procedures to facilitate the implementation and operation of this Agreement, including the procedures to be used under Article 5 and Article 7.

Article 11

Costs

1. Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance under this Agreement shall be borne by the Requested Party.
2. Unless the competent authorities of the Contracting Parties otherwise agree, extraordinary costs incurred in providing assistance or implementing procedures related to this Agreement shall be borne by the Requesting Party, as applicable. Such extraordinary costs shall include, for example, any costs incurred in providing assistance to the extent that such assistance

requires engaging external advisers in connection with litigation or otherwise.

3. Where the Requested Party considers that extraordinary costs will be incurred, the competent authority of the Requested Party shall consult with the competent authority of the Requesting Party before taking further steps to provide the assistance sought.

Article 12

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, this Agreement within one year of the date of signing of this Agreement.

Article 13

Entry into Force

1. Each Contracting Party shall notify the other in writing of the completion of the internal procedures required by its laws for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of such notifications.
2. Upon entry into force, subject to paragraphs 3, 4 and 5 of this Article, this Agreement shall have effect:
 - a) for requests relating to criminal tax matters in respect of which the Requesting Party has formally commenced a criminal investigation – on the date of entry into force but only with respect to taxable periods that begin on or after 1 January 2010 or, where there is no taxable period, for charges to tax arising on or after that date; and
 - b) for all other requests – on the date of entry into force but only for taxable periods that begin on or after 1 April 2010 or, where there is no taxable period, for charges to tax arising on or after that date.
3. Notwithstanding paragraph 2 of this Article, the provisions of this Article are specifically subject to sub-paragraphs (e) and (f) of paragraph 1 of Article 6, which limit the obligations of the Requested Party regarding certain requests relating to taxable periods beginning on or before 31 March 2015.
4. Notwithstanding paragraph 2 of this Article, information shall be provided in respect of all relevant taxable periods covered by a tax disclosure facility but only with respect to a person who has made an application to participate under such tax disclosure facility.
5. Documents or information created on or derived from a date preceding the taxable periods mentioned in paragraphs 2, 3 and 4 of this Article (hereinafter referred to as “the covered periods”) shall be provided (i) only to the extent that such document or information is foreseeably relevant and of critical importance to an ongoing tax investigation relating to the covered periods and (ii) only if accompanying documents or information not of such foreseeable relevance and critical importance may be redacted prior to being exchanged. For the avoidance of doubt:
 - a) such documents or information may be used only for the purposes of an ongoing investigation or examination of the covered periods;
 - b) where a request relating to a criminal tax matter in respect of which the Requesting Party has formally commenced a criminal investigation involves bank transactions occurring on or after 1 January 2010 and documents (such as a signature card) for the bank account in question were executed prior to 1 January 2010, the Contracting Parties may exchange such documents; and
 - c) where a request involves a trust or a foundation, the Requested Party may provide to the competent authority of the Requesting Party a copy of the deed of settlement or the foundation statutes and/or bylaws as the case may be.

Article 14

Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by serving a notice of termination on the other Contracting Party through diplomatic channels.
3. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination shall be dealt with in accordance with this Agreement. The Contracting Parties will also honour any agreement reached by the competent authorities of the Contracting Parties further to Article 11 in relation to such requests.
4. If this Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Vaduz, Liechtenstein, this 11th day of August 2009, in the English and German languages, both texts being equally authoritative.

For the Government of the
United Kingdom of Great
Britain and Northern Ireland:

For the Government of the
Principality of
Liechtenstein:

Stephen Timms

Klaus Tschütscher

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an agreement (“the Agreement”) dealing with the exchange of information for tax purposes between the Government of the United Kingdom and the Government of the Principality of Liechtenstein. This Order brings the Agreement into effect.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Agreement.

The Agreement provides for the exchange of information foreseeably relevant to the administration or enforcement of the taxes covered by the Agreement by the revenue authorities of the two countries. Information will be exchanged in accordance with the provisions of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. Subject to paragraphs 3 and 4 of Article 13 of the Agreement, it will take effect as follows:

- (a) in respect of requests relating to criminal tax matters where a criminal investigation has been formally commenced, on the date of entry into force, but only with respect to taxable periods that begin on or after 1st January 2010 or, where there is no taxable period, for charges to tax arising on or after that date; and
- (b) for all other requests, on the date of entry into force, but only for taxable periods that begin on or after 1st April 2010 or, where there is no taxable period, for charges to tax arising on or after that date.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.