

porated or managed outside the UK; c) interest in a non-UK immovable property; d) interest in a non-UK estate or; e) interest in a non-UK insurance policy issued or administrated outside the UK.²⁵¹

The Declaration clarifies the use of the composite rate and states that this option is only available from 1 April 1999 until 4 April 2009. Afterwards, normal taxation rates will apply. However, HMRC implemented an additional composite rate in the Third Joint Declaration.²⁵²

A penalty of 10% applies for the years from 1 April 1999 until 4 April 2009.²⁵³ In most cases, the penalty will be 20% for the years 2009 and 2010.²⁵⁴ For subsequent years, the penalty is based on UK legislation. However, if the relevant person cooperates and makes a full and complete disclosure, the minimum level will be applied.²⁵⁵ The minimum level is 20% for “unprompted disclosure of deliberate behaviour” and 30% for “unprompted disclosure of deliberate and concealed behaviour”.²⁵⁶ Penalties can increase if the account was opened via a UK branch, the relevant person has already been contacted due to the New Disclosure Facility or the relevant person was already investigated and convicted for tax fraud and the Liechtenstein assets have been knowingly undisclosed.²⁵⁷ In the latter case, taxes will be 30% for the years up to 2010.²⁵⁸ In case of innocent error, no penalty will apply.²⁵⁹ If an individual with Liechtenstein assets fails to use the LDF or transfer the assets to another jurisdiction he will face penalties of over 100% of the tax due.²⁶⁰

The clarification of the relevant property is based on the TIEA and will be analysed further in section 2.3.7. This clarification of penalties for the years after 2009 is an important matter and ensures planning reliability for future LDF participants.

2.3.5.3 Guidance on Liechtenstein Entities

The agreed guidance on Liechtenstein entities is included in appendix A of the Declaration. An “Aktiengesellschaft, GmbH, Societas Europaea or an Anstalt mit Gründerrechten” will be recognised, characterised and treated as a company. A “Kommanditgesellschaft or Kollektivgesellschaft” will be

²⁵¹ Second Joint Declaration, 2010, p. 3 & 4.

²⁵² Second Joint Declaration, 2010, p. 4.

²⁵³ Second Joint Declaration, 2010, p. 4.

²⁵⁴ HMRC, LDF FAQ, March 2013, sec. 6.2.

²⁵⁵ HMRC, LDF FAQ, March 2013, sec. 6.8.

²⁵⁶ HMRC, LDF FAQ, March 2013, sec 6.9.

²⁵⁷ HMRC, LDF FAQ, March 2013, sec 6.1.

²⁵⁸ HMRC, LDF FAQ, March 2013, sec 6.7.

²⁵⁹ HMRC, LDF FAQ, March 2013, sec 6.1.

²⁶⁰ Register & Fernandopulle, 2009, p. 23.