

recognised, characterised and treated as a partnership. “Trusts, Stiftungen and Anstalt ohne Gründerrechte” will be recognised, characterised and treated as a trust.²⁶¹

Treating foundations as trusts is understandable. Although a foundation is a company under civil law, under common law its function and behaviour is closer to that of a trust than a limited company. Treating establishments with founders’ rights as limited companies is also understandable, since the owner of the founders’ rights is the supreme body comparable with the general assembly. It is certain that the UK now fully accepts Liechtenstein foundations and these can be used as instruments to handle UK clients’ future tax affairs.²⁶²

2.3.5.4 Retention Procedure

The Second Joint Declaration makes concrete the retention procedure in appendix B of the declaration, which takes effect if the FI is not allowed or is unable to stop the relevant service for uncooperative relevant persons. The retention procedure applies if the relevant person has not fulfilled the certification procedure, the relevant service does not cease and the panel agrees. The retention rate is 1.5% p.a of the assets, if such retention interest existed on the 11th of August, 2009. In cases without a retention interest on that date, the retention rate is 27% to 30% for all tax years. Retention interest is defined as a beneficial interest of a relevant person in relevant property as defined in the MoU.²⁶³

The FI must obtain a unique reference number from the panel, count the number of relevant retention years, ascertain the applicable market value, calculate the applicable tax rate and retention amount, liquidate the required assets, contact HMRC (in order to receive a Certificate of Tax Deposit), inform the relevant person about the situation and, finally, wait until the person reacts or the panel provides information about further steps. The relevant person has the option of starting the disclosure to release the retained assets.²⁶⁴

The retention procedure seems fair, given that is triggered when the relevant person is unwilling to give an answer to the FI regarding his tax status. The retention rate seems low, but it is adequate when compared to the calculated tax rates of the upcoming case studies. Furthermore, the retention of assets is a legal manoeuvre to pressure the relevant person to act. However, the abdication of penalties and the full refund or credit of any tax liabilities under consideration towards UK or credit interest by

²⁶¹ Second Joint Declaration, 2010, Appendix A.

²⁶² Roth & Thiede, 2013, p. 626.

²⁶³ Second Joint Declaration, 2010, Appendix B.

²⁶⁴ Second Joint Declaration, 2010, Appendix B.