

closed their assets and are free to change jurisdiction without consequences. For example, they could establish a Panama foundation or a B.V.I. trust if they are looking for a cheaper instrument of succession planning or asset protection, or transfer their assets to Switzerland for asset management.

However, it will be difficult for Liechtenstein financial service providers to retain clients, since fees are high compared to other jurisdiction. The fact that future taxation is dependent on the development of the UK-tax system will be treated as negative aspect for clients under both agreements. Any future increase in UK tax rate will be transferred to the clients.<sup>484</sup> It must be concluded that neither agreement is especially sustainable.

#### **4.8 Exemption from punishment of financial employees**

From the perspective of financial intermediaries, employees, external asset managers, trustees and lawyers, it is important that agreements to regularise their clients' tax liabilities also include a guaranteed exemption from punishment.<sup>485</sup> For the LDF, the First and Second Joint Declarations cover this issue. HMRC confirms that it is not in the UK public interest to punish Liechtenstein financial intermediaries, their employees or management. Such a procedure is unlikely, and HMRC will not hold the trustees liable for any trust liabilities, even though this is possible under UK tax law. However, the declarations are only a non-binding declaration of intent and thus not legally binding. Additionally, the relevant section uses the phrases "unlikely" and "normally".<sup>486</sup>

The Swiss-UK agreement also guarantees Swiss paying agents exemption from punishment.<sup>487</sup> This issue is handled in a side letter from HMRC and is formulated similarly to the wording in the LDF, including the use of the phrases "unlikely" and "normally".<sup>488</sup>

Both agreements guarantee employees, advisors, lawyers and management a certain exemption from punishment. However, in specific cases HMRC is still able to prosecute.

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<sup>484</sup> Schaad, 2012, p. 71.

<sup>485</sup> Patkòs & Gräfe, 2012, p. 36.

<sup>486</sup> Hosp & Langer, 2011 (2), p. 911.

<sup>487</sup> Patkòs & Gräfe, 2012, p. 36.

<sup>488</sup> HMRC, Side letter of the competent authority of the United Kingdom on criminal investigation, 2012 (8).