

# **The OECD's Project on High Net Worth Individuals**

## **Response to Discussion Paper for Public Comment**

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<b>Country of respondent</b>	<b>Drawing on the global experience of Ernst &amp; Young specifically; the UK, Ireland, the USA, The Netherlands and Australia</b>

**Question 1:** *What are the important features of a tax administration that may facilitate the co-operative compliance approach?*

The following features are key to a co-operative compliance model:

- Professionalism and competency - commitment from the tax administration to building a positive and professional relationship which is administered by competent individuals.
- Understanding and co-operation - recognition that such a relationship is built on understanding and co-operation (but that this does not preclude different views on particular matters).
- Confidentiality and discretion - the formation of and adherence to strict rules in relation to the confidentiality of taxpayer information and the exercise of discretion in dealing with the affairs of taxpayers. This is important for a variety of reasons, not all of which may be readily apparent. For example, the making available of sensitive information (albeit unintentionally) concerning the use of non-Sharia structured products by a HNWI may have significant repercussions for a particular taxpayer.

An inherent threat to the building of understanding and co-operation is the audit process, whether undertaken at random or to investigate a particular aspect of a taxpayer's affairs. Audits can cause great disruption and stress to the taxpayer and, as such, need to be managed having regard to all of the above features.

**Question 2:**

*Do you think that having a dedicated unit (or units) as part of a tax administration (either at national or at regional level) with particular responsibilities for HNWIs is a good idea?*

Having a dedicated unit within a tax administration with particular responsibility for HNWIs is an important component of an effective co-operative compliance approach for HNWIs. Such a unit should be structured so that an HNWI and his / her advisors have a single point of contact with a dedicated "relationship manager". This is beneficial because it assists in:

- Ensuring that the features of a co-operative compliance approach as set out in response to Question 1 are met;
- Enhancing the relationship between advisors to HNWIs and tax administrations;
- Providing certainty for HNWIs (at the very least by providing a known and consistent contact within the tax administration); and
- Improving responsiveness on the part of the tax administration.

*If you are generally supportive of such an idea, what roles and responsibilities do you think such a unit should assume? In particular do you have any views on the following points:*

**a) How should a tax administration best gain insights into the behavioural drivers and the general context within which HNWI and their advisors operate?**

The relationship managers within a dedicated HNWI unit need to be able to form a robust and impartial relationship with the advisers to the HNWI assigned to them. In order to do this, relationship managers need to exhibit professionalism and competency and have sound commercial awareness. Employing staff with relevant private sector experience (eg on a secondment basis) should be beneficial in assisting a tax administration achieve these objectives.

However, care needs to be taken in relation to establishing an "advisory board" or the like involving advisors / industry participants as there is the potential for conflicts of interest to arise.

**b) What roles and responsibility should the unit assume with respect to the affairs of the taxpayer?**

A dedicated HNWI unit should assume all responsibilities with respect to the tax affairs of HNWI so that the benefits of having such a unit can be realised. This should include (but should not be limited to):

- Acting as the contact point for all enquiries by HNWI and their advisors;
- Providing guidance to HNWI and their advisors; and
- Responsibility for audits.

Given that a dedicated HNWI unit is likely to be staffed by a relatively limited number of relationship managers, protocols will need to be put in place to avoid conflicts of interest arising. These should ensure that:

- Where a complaint is escalated within a tax authority, individuals unconnected to the complaint review the case; and
- Those undertaking audits have not been involved previously in providing guidance.

**c) What taxes relating to the HNWI and their affairs should such a unit deal with and why?**

The dedicated HNWI unit should deal with all taxes that impact HNWI (subject to comments in response to Question 2d below) so that the benefits of having such a unit are most likely to be fully realised.

While the complexities of the various taxes that impact HNWI may make it necessary for relationship managers to seek input from (i) other individuals within the dedicated unit and / or (ii) other specialists within the tax administration, individual relationship managers should assume full responsibility for the

relationship with the advisers to HNWI's assigned to them.

**d) Should the unit be responsible also for the affairs of all / certain entities controlled by HNWI's?**

While a dedicated HNWI unit needs to have a broad and deep understanding of the affairs of a HNWI, including entities controlled by the HNWI, a distinction needs to be made between:

- An entity that is actively controlled by the HNWI; and
- An entity that operates independently of the HNWI, in the sense that it has its own management, reporting structure and financial systems, even where the HNWI may have majority ownership of the entity.

Only entities in the first category should be the responsibility of the dedicated HNWI unit.

**e) Should HNWI's and their advisers be assigned a designated contact point within the unit?**

Yes, refer comments in response to Question 2.

**f) Should the unit be tasked with preparing an annual or periodic report about the overall environment and key developments, including the most pressing issues identified by HNWI and their advisers for use by the head of tax administration and finance ministers?**

This is an internal issue for consideration by individual tax administrations. Nonetheless, we note that the introduction of a dedicated HNWI unit within a tax administration should provide the administration with additional opportunities for identifying issues relevant to HNWI's and their advisers.

**g) Should safeguards and security procedures apply to the information held by the unit?**

While safeguards and security procedures are an important issue for all taxpayers, they are of particular importance to HNWI's because of the external interest in their tax affairs. The consequences of information being made public can be particularly detrimental to this category of taxpayer.

**Question 3: If you are from a country that currently has a dedicated unit dealing with HNWI's what advantages or disadvantages have you seen in having such a unit and do you have any comments on the way it was set-up and is operated? What are the features that you find the most useful?**

We have set out below details in relation to the advantages / disadvantages of dedicated HNWI units for a number of OECD countries based on our experience in these countries.

United Kingdom

The United Kingdom introduced the concept of Complex Personal Return Teams ("CPRTs") in 2004 when HNWI's were assigned a designated relationship manager

for coordinating their tax affairs. Initially, this worked well as HNWIs and their advisors could liaise with one person.

However, Her Majesty's Revenue & Customs has tended not to keep advisers informed of staff changes and it is now more common for the designated relationship manager to be unfamiliar with a taxpayer's tax position. Also, our experience is that the relationship managers are not of a technical standard necessary to fully respond to queries in the first instance.

#### Ireland

The establishment of a cooperative framework requires investment in the necessary resources from the outset as lack of upfront investment caused conflict in Ireland. However, after the resolution of some initial issues the Large Cases Division appears to be working well in Ireland. Following a cautious start a lot of clients have adopted the "framework", many on an informal basis. Clients have been reluctant to sign a formal agreement under the framework but have in most cases adopted a "wait and see approach".

The benefits arising from the framework are found predominately in:

- ▶ ease of access to Revenue
- ▶ dedicated named Revenue official (case manager) as point of contact
- ▶ Revenue case managers access to relevant experts to address specific queries

#### Australia

The Australian Taxation Office has taken a staged approach to the introduction of a co-operative compliance model for taxpayers in general and this model was only extended to HNWIs to any substantial degree in 2008. As such, it is too early at this stage to comment on the effectiveness of this programme as it applies to HNWIs.

**Question 4:** *If tax administrations offered a co-operative compliance or similar approach, what would encourage HNWIs to opt into it?*

Whether Ernst & Young would encourage a HNWI to opt into a co-operative compliance or similar approach would depend on the nature of the approach itself and whether it was considered suitable to the client's particular circumstances.

By way of example, in 2005, the Dutch Tax Administration ("DTA") started a "Horizontal Monitoring" pilot involving 20 of the largest corporate taxpayers in the Netherlands. Following positive feedback in relation to the pilot, the approach has been extended to a broader range of taxpayers.

The Horizontal Monitoring approach involves the DTA and taxpayers formalizing their mutual responsibilities and obligations by entering into a "Compliance Agreement" which may cover a range of taxes. The agreement is forward looking and, as such, focus on historic issues is limited.

The main advantage of the approach is that by concluding a Compliance Agreement, the DTA and taxpayers commit themselves to a mutually beneficial and transparent working relationship in which the DTA can offer rapid advance

certainty, and the use of aggressive tax planning schemes is discouraged.

However, the approach imposes a significant administrative burden at the start of the process and (to a lesser extent) on an ongoing basis which is not suitable for all clients.

**Question 5:** *The Focus Group seeks input from HNWIs and their advisors about the framework for voluntary disclosures and what particular elements would encourage taxpayers to come forward.*

Ernst & Young deals with clients who express a desire to comply with their tax obligations. In this context, the existence / introduction of a reduced penalty regime may be an appropriate mechanism for recognising this behaviour. Such reduced penalties encourage rapid resolution of non-compliant situations once identified.

**Question 6:** *Please express your views on the merits of a product ruling regime in connection with HNWIs. In addressing this question please take a broad view of the term 'product ruling' to include any form of advance certainty (whether formal ruling or not) and also consider which segment of HNWIs you think would be the users of the types of products for which product rulings could be made available.*

Ernst & Young deals with clients who express a desire to comply with their tax obligations. In this context, the existence / introduction of a reduced penalty regime may be an appropriate mechanism for recognising this behaviour. Such reduced penalties encourage rapid resolution of non-compliant situations once identified.

A product ruling mechanism would appear suited to tax incentives and methods of commoditising such incentives. These will be attractive to HNWIs. However many HNWIs will have circumstances with particular aspects that require more precise clearances.

**Question 7:** *Do you have any other comments you wish to make?*

Given the nature of the HNWI as a taxpayer, we believe that the tax authority should first seek to build confidence in the relationship with advisers as representatives of the HNWIs. Through building a history of impartiality, the tax authority can build confidence and start to enhance the relationship.