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Preliminary remarks:

The responses to this questionnaire have been written from experience in the ASEAN tax environment and it should be stressed that the opinions expressed do not necessarily reflect official views of the IBFD as such.

Question 1: What are the important features of tax administration that may facilitate the co-operative compliance approach? Please build on positive and negative experiences in dealing with your tax administration.

Before mentioning more specifically features of tax administrations that may facilitate a co-operative compliance approach, it seems useful to mention the more general aspect of a sufficiently recognized and supported state legitimacy for levying the taxes concerned. This legitimacy is strongly related to more general issues like:

- a) transparency of the government budget and spending;
- b) the quality of the tax legislation (not only comprising aspects like readability, clarity as to objects and purpose and neutrality, but also the level of taxation on various types of income taking also into account the tax systems in the neighbouring countries and e.g. facilities to promote the smooth transfer of enterprises in the context of family succession, and avoiding disproportional compliance burdens and investigation powers); and
- c) attitude and efficiency of the tax administration.

It is also necessary to point out that compliance is a clear Anglo-Saxon theory which is based on supremacy of the law, reflection, feedback and evaluation and on democratic control. Hence in the Asian region, and specifically with regard to countries in transition and emerging markets, the suitability of a co-operative compliance structure is doubtful as the legislative and administrative framework of these countries are insufficiently developed and evolved.

As regards the latter, the following specific features of the tax administration that may facilitate a cooperative approach can be mentioned:

- **Taxpayers' rights.** When drafting and creating the relevant tax legislation, policy and administration, the safeguarding of the following taxpayer rights is paramount:-
 - The right to be informed, assisted and heard;
 - The right of appeal;
 - The right to pay no more than the correct amount of tax;
 - The right to certainty;
 - The right to privacy; and
 - The right to confidentiality and secrecy.

However, the safeguards put in place should at the same time not unduly hamper the unit in carrying out its duties. A fine balance has to be struck. Thus, the following basic taxpayer's obligations would be of similar importance :-

- The obligation to be honest
 - The obligation to be co-operative
 - The obligation to provide accurate information and documents on time
 - The obligation to keep records
 - The obligation to pay taxes on time
- Expertise and knowledge. Developing countries face the problem of a shortage of tax administration employees who have sufficient technical knowledge and expertise to deal with either the HNWI's tax intermediaries or foreign taxing authorities of a more developed nation
 - Commercial awareness. Tax administrations sometimes tend to have a rigid application of the law and are unable to recognize/understand the commercial or practical reasons behind a position taken
 - Impartiality. A HNWI may be granted "preferential" treatment because he is a public figure or a figure of authority, and such preferential treatment may also extend to his relatives. This should of course be avoided. For example, reports have emerged that one of the reasons the United States' Securities Exchange Commission (SEC) failed to formally investigate Bernard Maddoff, was because they saw him as a voice of authority, or one of their own.
 - Transparency of the aims of the tax administration. The perception of a witch-hunt should be avoided. The tax administration's objectives must be made clear and must be adhered to. However the specific treatment of taxpayers and related strategic choices by the tax authorities should be undisclosed, because otherwise this may result in deliberate behavior by the taxpayer.
 - Responsiveness. A co-operative compliance structure is inherently a two-way street and if tax administrations want complete and salient information to be presented timely in order to ease their work, in return tax administrations must respond quickly to queries or rulings in a clear and concise manner bearing in mind that commercial undertakings may be dependent on their response and that delays might be costly.

Question 2: Do you think that having a dedicated unit (or units) as part of your tax administration (either at national or at regional level) with particular responsibilities for HNWIs is a good idea? 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?

Yes a dedicated unit would be advantageous, as it would allow a concentration of resources. HNWIs will have at their disposal some of the finest tax minds available and therefore may have created complex structures and transactions. Thus an effective tax administration would need to match this level of expertise and knowledge, as well as understanding of commercial practices. A dedicated unit would be easier to assemble, train, develop and monitor. It allows a focused and consistent approach to be adopted, and generally should be more efficient and responsive not only with regard to dealing with taxpayers but also in terms of reporting and data-gathering.

Limitations are in the field of possible isolation. Income will be mostly earned in the business sector and financial and tax planning are in the area of the financial market, real estate, investments in the business sector, etc. a special unit for HNWI's need a strong cooperation with other units (including registration department, intelligence division, etc) in the tax authorities

a. How should a tax administration best gain insights into the behavioral drivers and the general context within which HNWI and their advisors operate? For instance, by employing staff with

relevant private sector experience perhaps on secondment, on short term contracts, at the end of successful careers, or on permanent contracts. Should there be some form of “advisory board” involving advisors and other relevant market participants (e.g. private banks) or some other structured form of providing relevant background and context to the tax administration.

- Retired professionals such as lawyers, tax advisers, bankers, etc. , but also academics, could be employed as advisors to provide their opinions. They could also form an Advisory Board that may perhaps advise on appeals or even perform the role of a more publicly operating panel of experts. A short term contract period of employment may be more suitable for these individuals as it affords them some flexibility and to some extent freelance consultants. The downside would be the public perception of these individuals and perceived conflict of interest when for e.g. the unit deals with ex-clients of these individuals (or current clients if a freelance consultant) or where the advisor completes his term and is the appointed agent of an individual under investigation. Whilst there may be limitless safeguards in place, any perceived “conflict of interest” by the public would be damaging. This conflict of interest may potentially be avoided by maximising the level of transparency in the annual reports (how many of these contracts are in place, what are the results, what are the downsides, what are the lessons for the future etc, etc)
- The Tax Unit itself should consist of experienced and senior existing employees who have been exposed to complex structures and international tax dealings. They should also have a firm understanding of how to conduct international auditing and fact finding techniques.
- Constant training and updating should be provided so as to ensure the unit remains current. Cross-border exchanges with other tax administrations would also be beneficial in terms of product knowledge and even soft-skills development (i.e. how certain cases are handled)

b. What role and responsibility should the unit assume with respect to the affairs of the taxpayer (e.g. research and risk assessment or full responsibility for the file including potential audit)?

- Full responsibility should be assumed by the unit as well as audit and product ruling functions as this would be more efficient and effective. However, checks and balances must be implemented to counter the risk of abuse and corruption, such as different teams handling different areas such as assessment, audit and collection. Investigative work must be separately handled so as to prevent corruption. The integrity of the whole tax administration has to be guarded by a professional internal auditing system what is more than only financial verification and anti-corruption monitoring, but also to safeguard the handling of tax affairs according process and working activities decomposition (administrative organization), checking review and quality assurance procedures, the protection of taxpayer rights etc, etc

c. What taxes relating to the HNWI and their affairs should such a unit deal with and why? For instance, should it be limited to income taxes or also cover inheritance and estate taxes, VAT/GST etc.?

- With regard to the ASEAN region, where most tax administrations are still developing and may be short of resources, the initial focus should most probably be on income taxes as there is more flexibility in this area for elaborate tax positions and structures, as opposed to inheritance and estate taxes, VAT/GST where extensive paperwork and trails exist. Nonetheless, a more holistic approach should eventually be adopted and all other taxes

should be covered. This may be when the Tax Unit is more developed or when in the course of investigation, evidence points to wrongdoing in these other tax areas.

d. Should the unit be responsible also for the affairs of all/certain entities controlled by a HNWI (e.g. only the personal affairs of the taxpayer, all operating entities and non-trading entities or only non-trading entities)?

- For efficiency and effectiveness, the unit should be responsible for the personal affairs of the taxpayer and his non-trading activities. However, there should open lines of communication and easy access to the files of the operating entities between the two responsible units. This would ensure a comprehensive and consistent approach to the HNWI's tax matters.

e. Should HNWIs and their advisors be assigned a designated contact point within the unit?

- Assigning a designated contact would create accountability and would increase responsiveness. Additionally, it would also provide consistency and continuity. Periodic rotation would reduce the risk of familiarity and loss of impartiality. It is difficult however to give general advice as to what an appropriate rotation period would be and this aspect would also depend on the other checks and balances as meant under letter b above.

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 advisors for use by the heads of tax administrations and finance ministries?

- Yes but careful consideration should be given to the content and format of the report so as to prevent it from being too onerous on the unit. Perhaps something as simple as a summary highlighting the key points and developments may be prepared upon completion of each case, which may later be compiled into a report. Nonetheless, the quality of the information (such as the level of transparency) should not be compromised.

g. Should additional safeguards and security procedures apply to the information held by the unit?

Yes. Generally speaking a person's tax file should be treated as confidential and the information available to the tax administration should only be used for the application or enforcement of a fiscal law, unless otherwise provided in the law. Thus the basic principles of privacy and confidentiality are pertinent here.

In this context it is desirable that necessary legislation is implemented to prevent the unit's ability to request (from both the taxpayer and third parties) for unnecessary information – i.e. information that is not relevant for determining the correct amount of tax due. Additionally, there should be limitations on the "search and recoverability" powers by the unit to prevent heavy-handedness and achieve proportionality. In this sense a provision in the law about the length of time to ask information and the timeframe to examine tax returns is also a protection against abuse of powers

The information available to a tax administration extends inevitably beyond mere fiscal information relating to the High Net Wealth position (such as income, investment and asset-holding details). Personal details such as age, number of dependents, marital status (e.g. divorces) amount of alimony/child maintenance paid, would be available to the unit and would be highly sensitive especially where the HNWI's are Public Figures or persons of interest such as members of government/royalty, celebrities, financial tycoons, etc.

Thus strict safeguards such as confidentiality agreements, heavy penalties (monetary and/or imprisonment) for staff violating the confidentiality required, password encryption and access to the information to be restricted to team members only, must be implemented and publicized in order to prevent abuse and to reassure the taxpayer that reasonable steps have been taken to prevent the infringement of his rights.

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?

- Not applicable

Question 4: If the tax administration offered this or a similar approach, what would encourage HNWI's and their advisors to opt into it? In your answer please consider the points discussed below and indicate which points may be more important and which may be less important. Please also describe any other elements or concerns that you think would be relevant for HNWI's and their advisors (e.g. privacy concerns), and how these may be addressed.

It must be remembered that there are may be quite different attitudes behind the actions of HNWI's – either a sense of responsibility towards society and acceptable tax planning, or one of unacceptable tax avoidance and tax evasion. One should bear in mind that unlike corporate taxpayers, HNWI's are not restricted by Corporate Governance or (maybe to a lesser degree in case of Public Figures) the need to steer away from bad publicity. Instead, HNWI's are driven by their own personalities (risk averse/risk taker) judgment of the fairness of the tax system and experiences with their tax administration including also likelihood of getting caught or receptiveness.

Therefore the intention and objective of the tax administration must be ascertained upfront. If the objective of the tax administration is for its existing residents to come clean and declare their assets or to improve on its existing tax regime, then the following is likely to be relevant:-

Low or no further compliance activity

HNWI would personally want to avoid the hassle of a time consuming audit. However, if there is an appointed tax intermediary the 'burden' would shift. Thus relevance would depend on presence of tax intermediary. Additionally, third party information, such as automatic information schemes provided by banks, assurance companies, municipalities, etc. may be available to the tax administration to assist in their audits and investigations.

Enhanced responsiveness

Would make the process more attractive and is of high relevance, as to many of these individuals,

time is money. It would also convey the message of an efficient and effective tax administration.

Early certainty for planned transactions

Essential for a co-operative compliance approach as time is money. However, it would not affect the decision to opt for the approach as that would be determined by the HNWI's intention in the first place, i.e. to pay as little taxes as possible

No or reduced underpayment penalties or other civil or administrative penalties

Highly relevant as this would reassure HNWIs that they would not be penalized for coming forth and instead are rewarded for their actions.

Therefore, in order to promote co-operative compliance, a two-pronged strategy of "scare and entice" is likely to be most effective. The HNWI has to believe that there is a likelihood that he will be audited and the adopted position questioned. But, if he were to come forth now and opt for the co-operative compliance approach, he will instead be "rewarded" for his honesty.

These types of aspects can be distinguished from measures related to a Government's intention to attract non-resident HNWIs to its shores, or even to prevent its residents from going overseas. In those circumstances then other significant factors come into play such as a relatively attractive level of taxation or the development of a strong treaty network to facilitate cross border investment.

It may, however, even lead to the undesirable and distorting introduction of low tax regimes, bank secrecy laws, etc.

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, e.g. solutions to issues such as lack of back-year records, inability to calculate final tax liability, concerns regarding privacy.

As the position has been adopted, the HNWI would be concerned about penalties, interest and how far back the tax administration will go. As such an "incentive" has to be offered, such as the waiver of potentially high penalties (and where applicable imprisonment) and interests, limitation of period of investigation, staggered payment scheme for back taxes, etc. The penalties and interests waiver should extend even to litigation cases which are decided in favour of the tax administration. Solutions to issues such as lack of records should be formulated. HNWIs must be assured that their information will remain highly confidential and that steps have been taken to ensure their privacy will not be affected.

Consideration may be given to the impact of the disclosure arrangements concluded by the United States in this area. The Inland Revenue Service (IRS) has a voluntary disclosure practice and while it does not provide immunity it does state :-

(1) It is currently the practice of the IRS that a voluntary disclosure will be considered along with all other factors in the investigation in determining whether criminal prosecution will be recommended. This voluntary disclosure practice creates no substantive or procedural rights for taxpayers, but rather is a matter of internal IRS practice, provided solely for guidance to IRS

personnel. Taxpayers cannot rely on the fact that other similarly situated taxpayers may not have been recommended for criminal prosecution.

This infers that if an individual were to voluntarily disclose their wrongdoing, there is a lower risk of criminal prosecution taken against him. It would be interesting therefore to see the final number of individuals who opted for this as a means to minimise their exposure.

Other factors of relevance in considering such approach would be:

- Transparency and impartial treatment, so again the safeguarding of the taxpayer's basic rights must be given its due attention and this should of course be balanced with the requisite basic obligations of the taxpayer
- Ability to appeal against ruling and availability of litigation options
- Suspicion that it's a method to discover other types of non-compliance, which should be addressed.
- Across- the-board-amnesties should perhaps be avoided as there could be adverse results such as "black" money cheaply turning "white", encouraging non-compliance instead by taxpayers who so far have complied with their tax obligations, especially if given repetitively as done by some jurisdictions.

Question 6: Please express your views on the merits of a product ruling regime in connection with HNWI's. 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 HNWI's you think would be the users of the types of products for which product rulings could be made available (i.e., certain HNWI's might be more likely to enter into tailor made arrangements that do not lend themselves to product rulings).

Merits :-

- Provides certainty to the HNWI
- Awareness of the tax administration of such products/structures. Also allows for potential loopholes in the law to be closed (however this should be done discriminately as it may reduce participation).
- possible to categorise the HNWI as low risk and thus minimize the unit's workload to periodical checks on the HNWI

Factors to be considered :-

- Introductory incentives such as to allow tax intermediaries present to on a no-name basis for a temporary period (with an option to reveal name of client once ruling made).
- Ability to appeal against ruling and ability to seek litigation by the individual
- Other incentives, such as waiver of penalties for underpayment or other civil or administrative penalties should be available
- Options for underpayment of tax/withholding tax to be made at point of filing or via an installment scheme where amounts are substantial.

