

AUSTRALIA

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Country of Respondent	AUSTRALIA

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.

Pre-filling of returns¹

These have been of extraordinary help to ordinary taxpayers and could/should be extended to all entities.

Transparency

Transparency was considered to be very important. Specifically, the Australian Tax Office (ATO) should share all it knows about a highly wealthy individual (HWI) with the HWI and vice-versa. Sharing of information could reduce any discrepancies in the information provided by the HWI as there would be a clearer understanding of what is being considered. Failure to share information can lead to both parties failing to engage in the process.

By being open and transparent, reviews and audits could proceed more quickly and efficiently.

Differentiation

There is a need to stratify the HWI population and differentiate treatment depending on risk. Existing HWIs are already well aware of the focus of the ATO on their activities. The emerging wealthy however, may not seek the level or professional advice appropriate to their levels of risk. Greater emphasis should be placed on the emerging wealthy. Early intervention could help prevent this. Hence, an organisation should be structured to look at those who are to one day become highly wealthy and not just on those already highly wealthy.

Levels and forms of advice

The levels and nature of advice may vary considerably from one HWI to another.

¹ Labels on the tax return are pre-filled by the ATO with data they already hold or have obtained from other sources

Sometimes HWIs put in place an internal adviser for day to day purposes and only bring in external advisers to consider the tax risk to major transactions. Similarly they may use one perhaps smaller firm for the more frequent compliance activities but engage other larger or more specialised firms for larger transaction work.

Often there are informal networks amongst HWIs themselves through which informal advice is shared.

It is important that any tax administration is structured in such a way that is appropriate to deal with the differing natures of advice that HWIs receive.

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 HNWI 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?*

- a. *How should a tax administration best gain insights into the behavioural 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.*
- 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)?*
- 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.?*
- 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)?*
- e. *Should HNWI and their advisors be assigned a designated contact point within the unit?*
- 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?*
- g. *Should additional safeguards and security procedures apply to the information held by the unit?*

Dedicated unit

There was general consensus among advisers that the High Wealth Individuals Taskforce (HWI taskforce) has been very successful as part of the Australian tax administration system.

In particular, the value of being able to articulate to a taxpayer that if they did something wrong or were particularly aggressive in their planning then there was a real chance that the ATO would identify and pursue it. This helps to reduce aggressive behaviour and improves voluntary compliance.

Private sector expertise

Private sector experts could be engaged by the ATO for their knowledge and skills and to improve commercial awareness (just as the private sector would employ ex-ATO people for their skills).

An experienced panel of advisers (not unlike the Part IVA panel)² could cut through the complications of a HWI group structure, see the economic drivers and understand the economic outcomes. This information could then be fed back to the ATOs review/audit teams to facilitate the reviews/audits. Such a panel may help to streamline the exercise for both the ATO and the HWI.

Skilled and experienced auditors

The complexity of the work requires skilled officers with both technical and commercial knowledge. Given the current level of expansion within the HWI taskforce, there are many more new officers. Hence, in such instances new staff need to be closely mentored and managed by more senior officers.

Full service/one point of contact (key client manager)

There is a preference among HWIs that something like the HWI taskforce should cover all aspects of tax administration beyond just the compliance aspects. It should provide an end to end service (compliance, education, support etc.) and one which covers all entities associated with the HWI as well as the individual taxpayer.

To the extent not all services are provided (including differing areas dealing with different tax types i.e. GST vs. income tax) then client relationship managers (or key client managers) may be useful to enable tax advisers to deal with all affairs pertaining to their HWI client through just the one point of contact.

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?*

General view of the HWI Taskforce

Advisers recognised that the existence of a HWI taskforce meant HWIs were subject to an intense level of review which is incomparable to other sections of the community. HWIs are unable to escape the process of reviews and audits whereas the average taxpayer may. Perhaps as a result, the issues being dealt with are often more in the nature of interpretation of areas of the law and not more blatant tax avoidance issues.

The general consensus was that the HWI taskforce is a positive initiative and is working extremely well. It is creating a better compliance culture. It may just require a little fine tuning moving forward.

² The general Australian income tax anti-avoidance provisions appear in Part IVA of the *Income Tax Assessment Act 1936*. Part IVA is a provision of last resort, so it does not apply unless the taxpayers claim is otherwise allowable. Where Part IVA may apply, the case is referred to the General Anti-Avoidance Rules panel (GAAR panel). The GAAR panel consists of experts from within the ATO and external advisers

HWI Booklet

The HWI booklet³ was considered to be a useful tool to soften the aggressiveness of emerging HWIs.

It may be more useful to the smaller accountants than to the bigger firms. Bigger firms tend to have their own intelligence information sources about the HWI taskforce and its processes. For the smaller accountants it provides an increased understanding of the processes used and risks identified by the taskforce.

Settlements

Inability to 'do a deal'

Sometimes the processes that are followed by the ATO when undertaking settlements (i.e. the level of due diligence etc.) was at odds with the approach of HWIs. Given the commercial backgrounds of most HWIs, they are accustomed to doing deals and approached settlements with the ATO accordingly.

The differing approaches can make the settlement process more difficult and hence the HWI may not want to enter into such discussions. However, it was also recognised that there is a need for such settlements to be accountable and able to withstand scrutiny, internally and externally. This meant that the ATO were to some extent restricted in what they could do.

Stance of some HWIs

For many HWIs to have achieved the success they have requires determination and strength. Hence in many instances their first reaction to audit issues is to sometimes go on the offensive contrary to the advice of their advisers. The adviser may be in a better position to manage this and change the approach of the HWI if they could say to their client at the outset 'there is a good chance there will be a commercial settlement at the end of the process'.

Identification of HWIs using industry benchmarking

One identified problem was the selection of HWIs for review using industry benchmarking. Problems can occur if the wrong industry is selected for comparison or if the HWI is operating a mixed business. This can lead to an incorrect assessment of poor tax performance leading to an unnecessary review.

A first step to resolving such differences could be to seek clarification of the industry before embarking on a broader review.

Stratification/improved understanding of the population

It was recognised that a significant number of HWIs may have businesses which are relatively simple in structure and in the nature of transactions they undertake. These lower risk HWIs need

³ [Wealthy and Wise: A tax guide for Australia's wealthiest people](#)

to be identified and dealt with accordingly. This would then free up resources for the more intensive/high-risk cases.

Supplying more information in the tax return

HWIs and their advisers would be comfortable having more questions added to tax returns to increase information gathering to reduce unnecessary enquiries from the ATO. In the end this increased information can assist to identify the real risks and eliminate items which are not issues. However, the level of detail should not be as substantial as that currently asked as part of the expanded returns program⁴ as this level of enquiry should be reserved for those identified as high risk.

The ATO should endeavour to better understand the economic status of the HWI. There could be a question in the tax return such as: "What are the material things that have happened in the economic status in the last 3 years?" Such information could perhaps form the basis of a discussion between the advisers and the case officers prior to the review process.

Identification of a HWI via tax return information

By including a question in the tax return which asks for a taxpayer's worth, it might help identify those members of the population that satisfy the HWI \$30 million criteria.⁵

One identified area of concern with such a suggestion was that taxpayers might think that asset revaluations would be necessary to answer the question and therefore be concerned about the level of work required to report with a reasonable level of accuracy.

Rotation of staff

Having the same officers operating on the same cases/HWIs could cause the officer to develop a bias or prejudiced view. Rotation of staff within the HWI taskforce would prevent such an outcome. Most organisations have policies for rotating staff, such as auditors, so this would be consistent with broader practice and for the same reasons.

Advisers recognised that currently a taxpayer was able to seek an independent review of the conduct of a team or officer. There are also constant peer reviews of the work being undertaken by more senior officers.

Perceived risk that there is an increased need to find tax mischief as cases age

Some advisers suggested that some auditors might feel more pressure to find adjustments in cases where the review has taken a considerable period of time to justify the time already invested. There is also a risk that the tax officer may become increasingly entrenched in a position.

⁴ A program in Australia where high risk taxpayers are required to complete extra questions around areas of key risks

⁵ The ATO defines a highly wealthy individual as an Australian resident who, together with associates, effectively controls \$30 million or more in net wealth

Advisers recognised that currently the ATO seeks to overcome such an outcome by independently reviewing older cases to try to resolve the issues and to ensure the reason the case is still being pursued remains valid.

Question 4: *If the tax administration offered this or a similar approach, what would encourage HNWIs 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 HNWIs and their advisors (e.g. privacy concerns), and how these may be addressed.*

General comments

There was some concern that some of the ideas being suggested were perhaps difficult to implement from a resource perspective. There is always a danger in embarking on an approach which may not be sustainable.

Some of the suggestions however, are already being implemented successfully e.g. reduced penalties.

Mixed enthusiasm opting into a more co-operative compliance approach

Some HWIs would be interested in Annual Compliance Arrangements (ACA)⁶ and similar products whilst others might not.

At first many taxpayers may not be comfortable in volunteering information so the ATO might not get a high take-up rate initially. This may change with time but it would require a fundamental rethink by those involved for such products to work.

Possible change in demand for co-operative models

The current change in HWIs may see an increased demand for products such as ACAs, pre-filing meetings etc. In this respect with the significant generational shifts in wealth many new HWIs are more focused on wealth preservation than growth. A number of HWI organisations are putting in place more governance arrangements of which such products can form a part.

Such arrangements can be resource intensive, need both parties to be willing and, due to the change in approach to other compliance products, would need to be progressed carefully.

Enhanced responsiveness

It was expected that if a taxpayer was to enter into an ACA or have pre-filing meetings then there would be more access to senior level decision makers and a more rapid response to queries as an outcome. Enhanced responsiveness would be expected to naturally flow from such products.

Early certainty for planned transactions

During the transaction

There is some concern about the practicality of whether such early certainty can be achieved. There is a risk that given the limited time within which such transactions sometimes occur such clearance may either not be possible, or even worse could hold up the transaction. However, there is always availability of certainty through Private Rulings.⁷

Pre-filing meeting

Instead the general view is that it may be more advantageous to involve the ATO after a transaction has been carried out, but before the lodgment of the tax return – a pre-filing meeting.

There was agreement that more real time enquiries about the proposed tax treatment pre-filing may be advantageous. This would not only enhance voluntary compliance but also provide an element of certainty to the taxpayer. Furthermore, it overcame the difficulty of dealing with

⁶ ACAs look at tax risks in real time or at the time the tax return is lodged. Under an ACA, the ATO would issue the taxpayer with a sign-off letter confirming the outcomes of a joint risk assessment (including the development of a risk management plan). To the extent of disclosure, the ATO would sign-off (agree not to audit) low risk matters and taxpayers would be made aware of higher risk issues and be encouraged to use the rulings process

⁷ A private ruling states in writing how a tax law applies, or will apply, to a taxpayers circumstances

transactions that occurred say 3 years earlier if done after lodgment when the knowledge may have been lost/misplaced (change of advisers) or forgotten.

One area of concern is where the tax impact of a transaction may be changed by subsequent activities in later years. For example, an isolated disposal of a property may be considered a capital transaction in one year but if in subsequent years there are a number of such transactions then instead the first one may be treated as being on revenue account. For such transactions it may not be possible to provide complete certainty at a point in time.

Certainty in respect of outcome of reviews – timing and nature

Some HWIs spend a significant amount of time worrying about ATO activity and would benefit from knowing there is true closure to a year from review or audit. In particular, there should be some certainty that transactions reviewed by the ATO will not be revisited, however noting that clearly cases involving fraud and evasion can always be revisited.

It was also the preference for such closure to be within a shorter period of time with an enthusiasm for more assistance to the ATO to enable a more speedy resolution of the case. One suggestion was that advisers could prepare all the mechanical information and consider the tax treatment and present it as a starting pack for the review/audit.

Reduced penalties

Such an incentive could encourage some taxpayers to adopt a more co-operative stance. However, the potential application of Part IVA may cause some concern for taxpayers who are still concerned about divulging information where the risk such openness may still result in a Part IVA penalty.

Question 5: The Focus Group seeks input from HNWI's 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.

Domestic voluntary disclosures

Most voluntary disclosures result from a change of advisers. In practice there is always likely to be a conflict of interest if an adviser had made a mistake so unless there is a change in adviser there is unlikely to be such an action.

Concern was also voiced about the situation where a taxpayer was encouraged to make a voluntary disclosure and receive a reduced penalty yet subsequent law change meant such a penalty would not have been suffered. This can adversely impact on the adviser and their relationship with the taxpayer. It should be possible that where things change once the voluntary disclosure has been made, taxpayers should then be able to avail themselves of the new arrangements.

It was also suggested that where there is no overall loss to the revenue then a voluntary disclosure should not be necessary.

Prosecution

Advisers suggested taxpayers may be more likely to come forward and make a voluntary disclosure if there was some assurance that the taxpayer would not be prosecuted. However, it was recognised the ATO does not decide whether or not a taxpayer will be prosecuted, this being a decision for another agency. Hence it is not currently possible to provide such an assurance.

Possible deterrent of other activities

Operation Wickenby⁸ and the subsequent media exposure have heightened the concerns around risk of prosecution when making a voluntary disclosure.

Such activity may act as a disincentive to making a voluntary disclosure because of the risk of prosecution, however remote.

Amnesty

Advisers noted it had been some time since an amnesty from prosecution was held.⁹ Some suggested there should be an amnesty for HWIs/taxpayers with offshore assets to come forward.

The ATO noted that the European and South American experience has been that a tax amnesty can encourage non-compliance as taxpayers tend to think they can wait until the next amnesty to disclose non-compliance. Furthermore, most countries do not allow an amnesty from prosecution.

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

Product ruling regime

The general view is that most HWIs are rarely driven to invest in products with product rulings. Commercial return is more of an important factor in deciding whether to invest in a product.

If a HWI was to get involved in these types of investments then generally the HWI would be asking for the product ruling. Though in practice, most HWIs would be expected to have more boutique arrangements.

⁸ Operation Wickenby is a joint taskforce of Australian Government agencies investigating revenue fraud with a focus on offshore arrangements used to avoid or evade tax

⁹ The last income tax amnesty was announced by the Government on 27 May 1988 as an integral part of a package of new measures to bring the maximum number of income earners back into the tax system. People who filed outstanding returns would not face prosecution or any penalty for non-lodgement or late lodgement. The amnesty was designed to give people who have failed to lodge returns the chance to clear up their tax affairs. There are people who did not come forward to correct their past mistakes for fear of prosecution and penalty.

Alerts

Any type of alert system is of benefit to the HWI population to ensure areas of concern to the ATO are highlighted and if need be acted on. The media tend to like the alerts and accompanying comments released by the ATO. Alerts are also widely used by the professions so issues are picked up and acted on with their clients. Hence, they are considered to be an effective tool to provide advance notice of the potential ATO position around an arrangement.

This is despite the fact that HWIs often enter into boutique arrangements. Boutique arrangements often include features that the ATO has expressed a view on via an alert so they are still useful in considering these other arrangements.

Public binding ruling system

The value of Public Binding Rulings to advisers was also noted when considering certainty around the tax treatment of their arrangements.

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

HWIs are not vastly different to the corporate sector

There was a belief that aspects of the HWI business are not as different to the corporate sector as the paper perhaps suggests.

This was subject to a couple of perceived differences:

- There can often be a different focus. Corporate entities often look at the profit line while HWIs look at the cash in the pocket and asset growth; and
- As a general rule HWIs international dealings are either small globally or focus on simpler investments such as property etc. when compared to large corporate entities.

The reasoning being many HWI businesses are driven by personal input which is difficult to replicate worldwide.

Retention of corporate knowledge

Retention of corporate knowledge can be challenging when there is a significant amount of change in the area. For example, in certain instances multiple officers may deal with the same taxpayer. Such a situation can be contrary to the co-operative compliance approach given the time and effort on the part of the taxpayer to ensure the ATO is in a position to understand the business before the issues can be considered.

There is a need to put in place an appropriate structure to facilitate the retention of corporate knowledge. There was also recognition that this was an issue shared by all areas of business and not just the ATO.

Positive Differentiation

Publishing a list of top taxpayers

There was a general consensus that most HWIs may want to be quietly recognised for their contribution to the tax system but would not welcome publicity.

One difficulty with publishing a list is determining what is the actual tax they have paid. There is a belief among some HWIs that all the tax paid by the entities they own/control is effectively their cost. Hence they would believe the figure to include all amounts of tax paid including GST, PAYG withholdings on behalf of their employees etc, and then add income tax on top of that.

There was recognition around the practical difficulties inherent in compiling such a list with much tax being paid in entities controlled by the HWI and not by the HWI themselves – however determining which entities and the proportion of tax attributable would be extremely difficult.

There was also some personal security concerns and a view that many HWIs do not seek to be in the public eye.

Generally, advisers considered that private recognition would be better.

Detailing non-compliers

Likewise, there was also perceived to be little benefit in naming non-compliers. HWIs already find the review and audit process a disincentive to do the wrong thing. Furthermore, if the case goes to court then it will often result in significant media attention where the HWI is identified publicly anyway.

One adviser commented that taxpayers who are under consideration for high accolades (e.g. Order of Australia) should have to obtain a tax clearance to say their tax affairs were in order before receiving such recognition.

