

Name of Respondent

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Country of Respondent

US Resident and UK Citizen

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.*

Although the principle of co-operative compliance is producing some positive developments, a renewed approach is necessary for effective results. **Please refer to my response to Question 7.**

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 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.*
- 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?*

A dedicated unit (or units) as part of a tax administration at national level with particular responsibilities for HNWIs is a good idea. **Please refer to my response to Question 7.**

- a. Yes, it is essential that a tax administration gain insights into the behavioral drivers and the general context within which HNWIs and their advisors operate by engaging personnel who have worked in the fields that supply tax minimization services. However, care must be taken to avoid the risks of close, intertwined relationships between industry practitioners and regulators, and “revolving doors”, that give rise to a conflict of interests.
- b. The unit should assume full responsibility for the file including potential audit. This would preclude HNWIs and their advisors being assigned a designated contact point within the unit, in order to avoid a “relationship” being established that may result in conflict of interest. (Please refer to my response to point (e) of this question.)
- c. All taxes: **Please refer to my response to Question 7.**
- d. Reporting should be organized such that all taxable interests connected with an individual can easily be consolidated: **Please refer to my response to Question 7.**
- e. No!
From the point of view of the tax administration, this is not needed if full data is maintained and well organized in the records of the taxpayer file. Moreover, a designated contact arrangement would heavily incur risks inherent in “relationship” management. For instance, the designated contact may succumb to inappropriate leniency, and to being reluctant to ask hard questions. Another risk is that if the designated contact leaves their job, or is out-of-office at a critical time, the process of dealing with that file may be impaired temporarily. From the point of view of individual taxpayers, it could be seen as inequitable that a segment of the population receives special privileges because of the higher level of their wealth holdings.
- f. Yes. However persons employed in the capacity of heads of tax administrations and finance ministries must be free from intertwined social and business relationships with the HNWIs and their advisors. The “revolving door” must not happen within these parameters.
- g. No. It should be seen and understood by all that security and privacy applies to all taxpayers equally. Nonetheless, while tax data should be transparent, the legitimacy of other rationale for secrecy can remain respected. It is understood that HNWIs may face threats specifically connected with common knowledge of their wealth, from which they may legitimately desire to be safeguarded. For example, ensuring privacy in the face of potential kidnap or coercion. **Please refer to my response to Question 7.**

An additional point: Instead of a unit dedicated to HNWIs specifically, perhaps consider a unit at national level dedicated to holdings within foreign jurisdictions. This would minimize the risk of omission of an individual (or whole family) from being included within the designation of HNWI due to their not meeting the asset amount threshold because of hidden assets in secrecy jurisdictions. **Please refer to my response to Question 7.**

Question 3: *If you are from a country that currently has a dedicated unit dealing with HNWIs 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?*

Please refer to my response to Question 7

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.*

The schemes outlined are excellent proposals in theory. However, they will only prove effective if the HNWI's prone to evading and avoiding taxes have incentives to open up to tax authorities. **Please refer to my response to Question 7 for how to achieve compliance.**

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.*

The reality is that advisors may tend not to counsel their clients to come forward, because the advisors themselves may face investigation, censure, penalties, loss of business, ruin of reputation, and, incarceration. The advisors may be more inclined to devise financial products, structures and "hiding" mechanisms to further disguise the origin, quantity and flow of assets. The remedy would be an amnesty within a pre-determined period of time, followed by strict sanctions in the event of non-compliance. **Please refer to my response to Question 7.**

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).*

A product ruling regime is a viable solution. However, it is essential to avoid any risk of intertwined relationships between the tax officials responsible for the rulings and the HNWI's and their advisors. It is true that certain HNWI's might be more likely to enter into tailor made arrangements that do not lend themselves to product ruling. **Please refer to my response to Question 7.**

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

I respond as a banker with experience in offshore tax havens, who left that profession 4 years ago to pursue work in social and global justice. If the OECD is sincere in its intention to prevent and eradicate tax evasion and avoidance by HNWI's it is essential to confront the realities of the incentives for all parties. It is acknowledged that the international environment is moving towards more transparency and exchange of information. However, significant shifts in perspective and action are needed to build on the achievements of the OECD so far and increase their momentum.

Unfortunately, full disclosure within the spirit of “Co-operative Compliance” will always be restricted where it relies on the existing form of bilateral and multilateral Tax Information Exchange Agreements. Although these agreements are portals, they do not provide a route of automatic exchange of information due to the obligation of the requesting authority to supply detailed evidence that there is a case to answer. Cases brought to justice are thus dependent on circumstances providing cause for inquiry, and the reality is that many HNWI are highly competent in avoiding suspicion. Clearly, this system allows for many cases of tax evasion and avoidance to remain undetected.

Causes of the perpetuation of tax evasion and avoidance by HNWI are:

- 1) For HNWI engaging in tax non-compliance: Belief in an illusion of the safety of a web of trust and confidentiality within an intertwined network of elite social and business associations, combined with a delusion that tax avoidance and evasion is their right and entitlement, and a norm.
- 2) For the clients’ advisors and other associate parties to the hiding of assets - bankers, tax advisors, lawyers, accountants, bank auditors: Confidence in that intertwined network of network of elite social and business associations, combined with assurance by the secrecy jurisdictions that they will continue to sustain and provide for a tax haven system. A fear factor is also at play here, in that disclosure of their clients’ non-compliance would cause them to be censured by the regulatory authorities, their reputation as financial practitioners to be damaged, their business and livelihood to be lost, and they may suffer legal penalties.
- 3) Offshore tax havens/secrecy jurisdictions: Concern to sustain the tax haven business because it brings a significant proportion of revenue to their economy. Whereas offshore tax havens may pay “lip-service” to the principles of co-operative compliance, in reality they will continue to provide for the perpetuation of that business within their domain when there is an absence of incentives to diversify their economies (carrots) and disincentives in the form of sanctions (sticks).

The potential solutions outlined below will operate best in combination with each other:

- (a) Shatter the ties of collusion in tax evasion and avoidance.

It is absolutely feasible, from a systemic point of view, to undermine the levels of confidence which are already being plagued by economic slowdown and financial woes. Specifically, you can build on the momentum of recent events such as the information leaks from Liechtenstein, the conviction of Birkenfeld of UBS within the U.S.A., and the Madoff fiasco.

- Encourage and protect whistleblowers. Provide and publicize safe avenues for disclosure of information. Bear in mind that employees may be afraid to talk with anyone in the legal or regulatory system within their own jurisdiction. Populations of most secrecy jurisdictions are small and tightly interconnected, thus a whistleblower may feel that appropriate treatment of the disclosure and confidentiality cannot be assured. One solution may be national tax administration “hotlines” with telephone numbers that register as private within telephone systems, and email contacts via national tax administration websites.
- Provide a system of amnesty for both HNWI and their advisors (within a finite time frame). Although this may appear inequitable in some ways, it would speed up the tipping point where the collective intertwining of loyalties in non-compliance breaks apart.

- (b) Provide direct support to offshore tax havens to diversify their economies.

Since many secrecy jurisdictions derive a large proportion of their national revenue from the offshore tax haven industry, supply development grants and technical assistance for viable alternatives. An example would be to develop the capacity to export solar and ocean power from the Bahamas. Such development schemes can be implemented over a finite number of years, funded all or in part from the recouped tax revenue.

There is likely to be a heightened interest now by secrecy jurisdictions in diversifying their economies. Many of these offshore centres have economies driven by tourism and banking, and since both of these sectors are adversely impacted by the global economic crisis, those offshore centres are ripe for an alternative.

- (c) Implement a global system of up-front delivery and exchange of tax data, - automatic (or routine) exchange of information - fully coordinated internationally. Impose sanctions on non-participating jurisdictions and financial institutions.

An International Tax Data Clearing System is a feasible solution. Since international financial institutions already interface with SWIFT, this demonstrates that back-office systems can easily be interfaced also with an automated, standardized system of international tax information delivery.

For any jurisdiction or financial institution that does not comply, implement mechanisms to prevent them from participating in the correspondent banking relationships and international transaction systems that provide for trading and settlement of foreign currencies and securities.

Participating financial institutions in the International Tax Data Clearing House should be subject to a procedure of surprise audit by appointed auditors to be appointed by an appropriately designated international regulatory body. Clearly, auditors should not be of the audit firm hired by the financial institution.

- (d) Support a massive publicity drive to increase public awareness of the impact of tax evasion and avoidance on the poor and on developing nations.

Many employees of offshore banks and trust companies, while being persons of integrity, have no awareness of this. If the regular employees of the tax haven service providers are duly informed, they will face the dilemma of horror and disgust at the ultimate impact of the work they are involved in. Provide them with this opportunity, and you will accelerate the breakdown of the offshore tax haven system.

Many offshore tax havens claim to uphold the highest global regulatory standards, thereby avoiding a blacklist designation as being “uncooperative”. The reality is that anti-money laundering laws are in many cases applied with a “check the box” mentality. Financial structures are created to pass funds and documentation in and around multiple jurisdictions, accounts, and financial vehicles, specifically to obstruct inquiry, and this is openly boasted of as an offshore tax haven seeks to persuade bankers and clients that they continue to be a viable jurisdiction for business.

I am, absolutely, an advocate for tax compliance, and at the same time I feel deeply for the local people of an offshore tax haven location who would be impoverished by the sudden withdrawal of that revenue source without a viable alternative. I believe that the ideas presented here are a practical solution in the face of reality, and, while applying caution in order to avoid the pitfalls of the law of unintended consequences, can provide for zero tax evasion and avoidance within a few years.

Just as the illusion of “Wall Street” as we knew it has been shattered, so we can achieve the elimination of the illusion that tax avoidance and evasion is an invincible entitlement of the wealthy and their service providers. I am optimistic for a world where the excessive secrecy that provides an easy route for criminal channelling of money no longer exists, while a fair system of legitimate privacy is respected and protected.