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Dear Aziza

**THE OECD'S PROJECT ON HIGH NET WORTH INDIVIDUALS (HNWIs)**

PricewaterhouseCoopers LLP (PwC) is pleased to provide this response to the Discussion Paper issued in October 2008. PwC is the UK member firm of the PricewaterhouseCoopers global network. We expect that other member firms from the PricewaterhouseCoopers global network may also provide responses and comments on this project. We set out below our comments on the specific questions set out in Annex 1 of that paper with regard to the UK tax system.

***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.***

- 1) These features would encourage a co-operative approach from all taxpayers, not just HNWIs.
  - a) There needs to be trust and confidence in a regime – in the UK at present we would say this has diminished in recent years, especially for HNW 'remittance basis' users. Bridges need to be built before co-operative compliance could move from being a conceptual to a practical state.
  - b) The law needs to be clear and there needs to be a responsible tax authority (which we have in the UK) which is willing and able to respond to questions as raised.
  - c) Taxpayers need certainty, with no retrospection and with no arbitrary changes of view or practice.
  - d) There needs to be both consistency of treatment across taxpayers, and a perception that there is openness and fairness on both sides.
  - e) Anti-avoidance should be appropriate and narrowly targeted.
  - f) There should be appropriate and timely consultation on proposed changes to the system and transitional measures and periods for those likely to be adversely affected by changes in law or practice.
  
- 2) One system may not fit all jurisdictions. While a system such as that currently in force in, for example, Ireland or Australia, may have attractive features, it is unlikely that such a system could be transplanted wholesale to, say, the UK. This is because of, inter alia, differences in taxes and tax systems, the approach of tax authorities, the current state of relationships with taxpayers and advisers and broader issues such as the size and shape of the relevant parts of the economy.

- 3) Tax authorities need to decide on their strategy for dealing with HNWI's and then act accordingly. There is little merit in having a stated policy to attract and retain HNWI's when the direction of the tax system is to attract them and then tax them as highly as possible. Such a strategy would be defeated by the reality as taxpayers will not stay.
- 4) There should be clear advantages for taxpayers who engage in co-operative compliance – they should be able to see 'what's in it for them'.
- 5) HNWI's should be involved in good sensible consultation which will be listened to, unlike recent cases in the UK such as discussions on expatriate issues, where consultations and reports were undertaken over many years but seemingly subsequently ignored in the legislative process during which sudden and wide reaching changes were announced. Given the private nature of many HNWI's and their use of advisers to handle their tax affairs it is likely to be the case that consultation should be with professional and commercial bodies on their behalf. However, there should also be a period of open public consultation. A more open and thorough consultative process for changes which affect individuals would have advantages for tax authorities in that taxpayers would feel that they were being treated fairly and would have time to adjust to the proposed changes.

***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's 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?***

- 6) Spreading technical contact across Revenue teams will sometimes lead to inconsistencies of treatment and to inefficiencies between those teams on some issues. These inconsistencies may sometimes be of benefit to individual taxpayers. However, any individual advantage is likely to be outweighed by the disadvantages to those taxpayers who may suffer as a result of inconsistencies, plus the overall downside to the taxpaying public and to the integrity of the system as a whole in having a disconnected tax system. Done properly, a central tax authority point offering appropriate expertise, certainty, dialogue, and trust would be our aim for our clients.
- 7) Having said that, tax advisers are not guardians of the tax system. That role rests clearly with the tax authority and our clients would not expect us to position ourselves as allied with the tax authority although, as now, they would respect our professional role as advisers with wider responsibilities for the integrity of the system.
- 8) Generally it should be easier to talk to tax authority staff who understand the law and the issues raised – HNWI specialists in other words. It is almost more important that these people understand something of how HNWI's operate and what they do as much as the tax technical issues involved. They also need to appreciate that there is a crucial difference between HNWI and corporate taxpayers: for HNWI's, tax affects people directly in their own affairs and can touch some extremely sensitive issues – divorce for example. Thus there is often a personal and emotional aspect to the situation to which tax authority staff need to be sensitive.
- 9) It will be to the advantage of tax authorities to get a better understanding of HNWI's – our impression is that many staff are not at all clear on how/why wealthy individuals structure their affairs in particular ways and can react to things that they do not understand immediately with a mindset of suspicion. With greater understanding would come the ability to better apply their efforts – although any enquiries which arise should be undertaken appropriately and without prejudicing individual taxpayers.

*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.***

- 10) How would the tax authorities define HNWIs? The recent UK Pre Budget Report proposal for a 45% tax rate for those with income over £150k might be one possibility but covers only 1% of the population. In reality, HNWIs are not a homogenous group – there are different types of HNWIs with completely different circumstances/needs. HNWIs could be city bonus recipients, non-domiciled investors, or wealthy families – while it would be helpful for them to deal with tax authority staff who understand those clients, it will be hard for those staff to cover that range of knowledge.
- 11) Since HNWIs are such a diverse group and tax is often not the driver for their behaviours, recruiting any one type of person is unlikely likely to make tax authorities more au fait with their behaviour.
- 12) There needs to be a greater understanding that not everything is done for tax purposes and certainly not just for one country's tax purposes, e.g. the UK. The home territory factor is often only a small element of that individual's affairs and often a by-product of wider actions.
- 13) There could be a UK equivalent to the MNCs regime, with focused client relationship managers (CRMs). Feedback suggests that this works well, particularly the role of CRM as coordinator. HNWIs and their advisors want to work with people who understand technical & commercial and have sensitivity to personal issues and who have power to achieve something.
- 14) While short-term secondments may well be helpful to foster greater understanding of some issues and to increase liaison between advisers and the Revenue authorities, reliance cannot be placed on such temporary placements. All staff will need to be given appropriate ongoing training covering tax and non-tax issues affecting HNWIs.

***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)?***

- 15) Generally, a single unit dealing with all aspects would seem to offer a more coordinated approach, which is better than a regular inspector agreeing something that is disputed by an auditor some time after.

***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.?***

- 16) One could make a case for separating out both indirect taxes and estate taxes – indirect taxes usually relate to a HNWI's business activities so could be handled separately. Generally, it is not the taxpayer himself who ends up sorting out his estate for obvious reasons; but our preference would be to see all direct taxes dealt with in the same place.

**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)?**

17) The dividing line for an individual with lots of close companies etc can be a very fine one, but we do not see sole responsibility for all entities as essential. Indeed, it is unlikely to be practical to have all of an HNWI's interests dealt within the same place, particularly where, for example, companies were not 100% owned by that individual.

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

18) This would be helpful where possible

**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?**

19) There are a number of such reports produced by a variety of different bodies. While such a report could usefully contribute to dialogue with taxpayers and advisers, it would be important to ensure that this was not a misuse of confidential information.

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

20) Better security and safeguards than those currently in place should be available to all taxpayers, regardless of their level of income.

21) HNWIs will need explicit reassurance on these issues, given the sensitivity of information for their families, businesses and to the wider public. This will be of particular concern in any transactions ruling process when any leaking of information could jeopardise business activities. It should also be noted that many HNWIs have significant concerns regarding personal security and other family and business reasons, entirely unrelated to tax, for wanting to keep confidential information strictly on a need to know basis. In the case of certain high profile individuals there will be a high risk that information that is not most carefully secured will find its way into the public domain.

**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?**

22) The UK currently has the HMRC 'Complex personal tax returns' unit, but we do not consider that this equates to the sort of new specialist unit under discussion.

**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.**

23) The following factors would encourage participation:

- a) Ability to keep taxpayer affairs safe and confidential.
- b) Acceptance of an appropriate level of disclosure – e.g. offshore investments, remittance basis and Hartnett letter by HMRC.

- c) Consistency between taxpayers and over time.
- d) Fairness and mutual trust.
- e) Faster response times to queries, clearance requests, enquiries etc.
- f) Willingness to listen to taxpayers' concerns.

**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.**


- 24) Our experience is that, generally, taxpayers are happy to go the full disclosure route, but can be frustrated by the inadequacy of the HMRC response. Taxpayers need to have confidence that the tax authority will come to a sensible agreement – not just quote manuals or extreme cases. Whilst recognising that tax authorities are unlikely to 'do deals' there should be ability for the CRM (or equivalent contact) to make pragmatic, sensible, defensible decisions around complex situations. This will be particularly important when seeking to quantify previous years' liabilities.
- 25) Tax authorities also have to recognise the limits to what they are entitled to ask, and abide by them. Some form of Charter of respective rights and responsibilities of both the authorities and the taxpayer would be helpful, as is under development in the UK.
- 26) It would probably help to have a framework for voluntary disclosures – In the UK, HMRC is getting more aggressive on penalties etc, and a lot of the practical, pragmatic common sense approach that once prevailed is being lost.
- 27) This point appears to cover a large spectrum of situations, sweeping up innocent voluntary disclosures as well as people who wish to disclose deliberate wrong-doing. The width of the spectrum would need to be matched by a width of response, ranging from minimal penalty/investigation to more serious implications.
- 28) In the most serious cases, taxpayers can be deterred from making a voluntary disclosure because they fear criminal proceedings will follow. In the UK in the past there existed an informal method of outlining the nature of the disclosure and the taxpayer's circumstances and the granting of guarantees that no criminal action would follow. This was abandoned with the introduction of new Civil Investigation of Fraud procedures a couple of years ago. We would like to see the procedure reinstated and believe it would facilitate more disclosures.
- 29) An advantage of an experienced team and individuals such as the Client Relationship Manager (CRM) would be that they would be more likely to be able to distinguish between the types of transgression, recognising patterns of behaviour, and respond accordingly.
- 30) We view the concept of an occasional partial amnesty as a practical way forward and thought the UK's recent Offshore Disclosure Facility represented a sensible way to tackle potential non compliance by taxpayers where HMRC held large amounts of data but was struggling to analyse and process it all. The offer of reduced penalties, the concept of investigating disclosures by exception, the on line facilitation and the cost efficiency for all suggest this is a model for tax authorities to consider carefully.

**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).**

- 31) Clients need certainty so advance rulings would be useful – this same need has been emphasised by multi-national corporations (MNCs) and HNWI's are in the same position – their affairs can be as complex, they may be as internationally mobile (if not more so) and they have extra legislation (from more than one country) to deal with. Such taxpayers need people who understand commercial restraints and drivers, not just people who assume they are tax avoiders.
- 32) Consideration needs to be given into the way in which such a system would link with the existing UK Tax Avoidance Disclosure (TAD) system. While it could be argued that there is a difference between the TAD system which is aimed at the disclosure of more aggressive planning and the OECD proposal of some form of clearance mechanism for less aggressive planning, difficulties in defining types of planning and the possibility of overlap would need to be considered.
- 33) Assuming that this point relates to possible advance rulings, it would be helpful to have a system to cover particular devices/elements, such as transfer of asset abroad anti-avoidance legislation in order to offer some certainty.
- 34) This sort of system works well in other jurisdictions, as do private letter rulings. Recognising the exceptional nature of some individuals and their circumstances by having, say, headline tax rates at one point with background tax treatment via individual rulings would require a sea-change in attitudes from tax authorities and has been rejected by them in the past.

We trust that these responses are of use to the Focus Group and we look forward to the next stage of this process.

Yours sincerely



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