

The OECD's project on High Net Worth Individuals

Name of Respondent	JOHN DOIDGE (Sentinel Corporate Fiduciary Services)
Contact details	P.O. BOX 44774 Claremont 7735 South Africa
Country of Respondent	SOUTH AFRICA

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.

A dedicated unit that is responsive and decisive. In South Africa we have a unit in Johannesburg that is fairly responsive. The unit needs to be helpful in dealing with ambiguous interpretations.

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. Our revenue authorities do employ staff from the private sector and this helps a lot. What would help further is if there was two way dialogue between Revenue and the private sector and if the facility was regional.
- b. Full responsibility for the file. This means that there is constant level of interaction between the unit and the taxpayer instead of having one level of interaction at research and risk assessment level and another form of contact at personal interaction and assessment level. Taxpayer queries must be dealt with by competent personnel.
- c. The unit must deal primarily with the personal tax affairs of the HNWI. It is best to have a dedicated unit dealing with specialist matters like inheritance tax. The unit must be involved in the issue of a final tax assessment for HNWI's as there are presently inordinate delays in obtaining a final assessment in the estates of HNWI's. This delays the probate process considerably.
- d. The problems with going beyond the personal affairs of the taxpayer are where to draw the line and how to allocate scarce human resources.
- e. Yes. The positive is that trust and rapport are built up. Taxpayers are more likely to tow the line if they feel that they are being treated with respect and fairness. The risk of course is that they could place pressure on the staff member to acquiesce to assertive taxpayers.
- f. Most certainly. Taxpayers feel justified in avoiding taxes they feel are unfair. Often tax laws and practices are implemented in a manner which appears to be punitive. This leads to tax avoidance or even evasion. By having a sensitive tax collection unit, fiscus can get feedback on what is deemed to be punitive. Taxpayers are often able to assist in ensuring that legislation is properly directed.
- g. All taxpayers should be fully protected by the secrecy provisions of tax legislation. There should be no need for additional measures.

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?

South Africa has a dedicated HNWI unit which is great but it is suboptimal. The major benefit is that one has the opportunity of discussing complicated tax affairs with professional staff. The staff members in the unit have been recruited or seconded from business in general. These individuals are not imbued with the adversarial attitude often present in career tax collectors. It would help if the unit was regional.

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.

A system like this would most certainly work. Here we are often dealing with educated people of some stature. Generally, this group pays penalties for late filing rather than for failure to disclose. By resorting to a system of self assessment, it would put pressure on the taxpayer to make sure that all income is properly reported. The cost of collection could be substantially reduced.

In South Africa our tax system is bedevilled by exchange control. Where taxpayers are prohibited from holding a meaningful portion of their wealth abroad, there is a tendency to find ways of circumventing the system. As soon as that happens, the taxpayer will fail to disclose his “illegal” offshore income. This is exacerbated by the introduction of legislation which allows the sharing of information between the tax collectors and those responsible for policing exchange control. The exchange control and tax amnesty of 2003 was a great success. It is a great pity the system was not run by the tax authorities. It became obvious that the process was a great success and that if it had been extended by a few months it would have been a resounding success. The hard nosed approach by exchange control authorities to extending the amnesty meant that many taxpayers missed the boat. The matter was aggravated by the attitude of exchange control authorities to those who did not use the opportunity to disclose their offshore assets. A penalty of 40% of the assets is levied against those who wish to come clean and leave their funds abroad. This is a major disincentive to full disclosure.

Question 5: The Focus Group seeks input from HNWI 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.

There is still a lot of ambiguity surrounding the treatment of offshore income in the hands of South African taxpayers. This requires urgent attention. Certain products like open ended investment companies need special attention. Paragraph (c) of the definition of dividend covers the tax on shares bought back by the company. For some reason, revenue authorities ignore this provision and are uncertain how to tax the growth in these companies. The consequence of this is that product manufacturers are selling these products as subject to CGT alone and exempt from income tax. Were the law to be properly applied it would result in severe penalties for these investors. There is still an enormous amount of misinformation on what foreign income is taxable and what is not. This applies especially to income from foreign trusts. What is required is interaction between a specialised unit and tax advisors on the range of offshore products available to South African residents and the tax treatment of these products. A common understanding on the tax treatment of these products is essential. This is especially true for those tasked with selling these products locally. People will pay tax that is certain and fair. Those that abuse the system must be dealt with accordingly. This will encourage a greater level of tax compliance and will free up costly resources of collection authorities. Penalties must also extend to those advisors and product providers that are complicit in evading taxes.

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

A regime of product rulings is certainly the preferred route. Product rulings need be available for products which are in the general public domain. In addition, a

product ruling facility needs to be in place for those bespoke products that are not freely available. Legislation can then place the onus on the taxpayer to establish the tax treatment of a particular product before completing his tax return. This creates certainty for those who genuinely want to pay the correct taxes. It also shifts the onus and increases the penalties for those who wish to creatively avoid or evade tax.

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

Tax authorities must decide whether they intend to pursue the letter of the law or the spirit of the law. They cannot have it both ways. An example of this is the taxation of bequests of monies owed to a borrower in South African tax law. A bequest which extinguishes a debt is regarded as a forgiveness of debt and is fully taxable under capital gains tax legislation. This was never the intention of the legislature but is being applied by the tax collectors with the support of our courts as it is the letter of the law. This approach creates a living for tax lawyers who respond by using the same principles to avoid paying tax.

In most jurisdictions the *contra fiscum* rule applies. Yet we find that the approach of the tax authorities is often adversarial towards the taxpayer which borders on the belligerent. This is especially true about career tax collectors.

Make the system fair and certain and make the administration simple. The substantial majority of HNWIs will respond positively to such a system. Create heavy penalties for those who seek to actively evade taxes in this environment and that will provide added incentive.

Finally, initiatives like this will go a long way to establish trust between the taxpayer and the tax collector to the benefit of both. SARS is to be congratulated for creating a specialist unit and for participating in this survey.