

The OECD's project on High Net Worth Individuals

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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.

Your response Among the features of the tax administrators that have been identified in the Study, we believe that the most important ones that may facilitate the co-operative compliance approach are impartiality and proportionality that the tax administrators must have in relation to the taxpayers.

The impartiality can be seen as the attitude that the tax administrators must have in relation to the taxpayers, giving them the same treatment, with no preferences or dislikes in virtue of the envisaged person.

Additionally, the proportionality is important to establish an equal treatment to each of the groups of taxpayers that are identified by a determined tax administration.

For instance, we believe that the best way to guarantee a tax burden equal to all the taxpayers is the use of progressive rates which shall be in a number as high as the number of different groups of taxpayers existing in a country, equivalent to the differences identified. In this regard, we believe, for instance that the mid-term net worth individuals shall be subject to a tax burden smaller than the one to which the HNWI are subject to. Moreover, the HNWI shall be subject to a tax burden smaller than the one to which the ultra-high net worth individuals are subject to.

In Brazil we have had a negative experience in this matter as the Brazilian tax legislation establishes only 04 different income tax rates for individuals which do not work as an effective mean of progressive taxation. In virtue of that, with exception of the individuals that earn a very low annual income, all the other individuals, mid-term, high and ultra-high net worth individuals are subject to the same tax burden. In this regard, we understand that such system shall be amended in order to guarantee justice in the tax treatment applicable to individuals.

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 HNWIs 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?*

Your response We believe that having a dedicated unit (or units) as part of a tax administration with particular responsibilities for HNWIs is a good idea as it would help the tax administration to have a more specific action in relation to such individuals. In this regard, we understand that the choice of whether the unit would act at a national or regional level would depend on the characteristics of the country. For our country, Brazil, it would be more efficient to have regional units as, in view of the great diversity of our country, there are many regional differences that must be taken into account by the government as well as by the tax administration.

For the units to be implemented, it would be very helpful to have professionals from the private sector helping the tax administration, either in a temporary or permanent basis. In our opinion, such measure would be helpful as it would bring to the tax administration a view much closer to the instruments used by the taxpayers. In this regard, especially in relation to the HNWI, taking into consideration that they usually have complex affairs, a view from the private sector would certainly improve the relationship existing between the taxpayers and the tax administration.

Moreover, we are of the opinion that the Units should assume full responsibility in relation to the HNWI's matters, including research and risk assessment, proposal for the amendments to the legislation as well as all the work related to tax audits. The benefit of such way to organize the tax administration matters would be that the professionals that are part of the Units would be much more prepared to deal with all the matters of HNWIs in virtue of their specialization and would be able to act more efficiently.

The Unit should be responsible only for matters related exclusively to the individuals, as individuals income tax and inheritance tax. Other taxes, such as VAT, as it is related to the relationship that the individual has with activities developed by legal entities, should be in the role of the other parts of the tax administration.

As a consequence to our opinion in the sense that the Units shall only be responsible for taxes strictly related to the individuals, we understand that they also should only be responsible for the affairs of the individuals and not the ones related to the entities controlled by the HNWIs which should be in the role of the other parts of the tax administration.

Although the legislation of certain jurisdictions grant a special responsibility to lawyers, advisors and accountants in relation to the matters that they deal with, we understand that such professionals must be independent and not required to provide information they are aware of in virtue of their professional activities. Such information must be protected by a legal secrecy which shall only be disregarded in case of criminal actions. In this sense, we understand that any contact point that the HNWIs and their legal advisors are obliged to have within the Unit might be risky for such secrecy. Notwithstanding, the contact points that the tax administration has with HNWIs and their advisors, as long as it is not mandatory but, instead, an option for HNWIs and their advisors might be very helpful as it would help each of the sides to better understand the view of the other side.

In relation to the task of the unit regarding the preparation of annual or periodic reports for use by the heads of tax administrations and finance ministries, we understand that this is an internal matter of the administration that may or may not opt for it. Notwithstanding, any kind of report prepared by the tax administration must be protected by secrecy.

Legal secrecy must be applicable to all the information held by the Units which shall only be disregarded in case of criminal actions and upon a judicial decision.

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?

Your response-Not applicable as we are not from a country that has a dedicated unit dealing with HNWIs

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.

Your response: In our opinion, for an approach of the tax administration to be efficient its must involve a co-operative attitude from the taxpayer and, in compensation for such co-operative attitude, the tax administration must also provide a more co-operative attitude, being willing to discuss the legal terms applicable to the individuals. As an example of a good approach that has been used by the tax administrations all over the world are the systems in which the taxpayer can negotiate with the tax administration the tax burden to which he/she will be subject to, taking into consideration the activity developed by the taxpayer as well as the total of its equity. In some situation, by means of such negotiation, the individual may not be obliged to declare any income or assets derived from abroad being subject to a higher tax burden, in case this is of his preference.

In Brazil we have had the opportunity to discuss with the National Congress the draft of a law establishing the possibility of the taxpayer to enter into transaction agreements with the tax administration. The draft of the law that is about to be approved by the National Congress establishes the possibility of the taxpayer to enter into transaction agreements having as object tax debts which are already been charged by the tax administration. Although it does not establish the possibility of the taxpayer to negotiate with the tax administration the burden of taxation to which he/she shall be subject to, we understand that this is the first step that must be taken in order to create a tax administration in which the taxpayer has an active participation and co-operation.

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.

Your response Besides the co-operation attitude of the taxpayers that must be encouraged by the tax administration as per mentioned above, we believe that from time to time, the governments must take different measures aiming to have voluntary disclosures from HNWIs and their affairs. In this regard, we can mention some examples of amnesty law that have been proposed to ease the disclosures of information as well as to encourage the repatriation of resources maintained abroad by HNWIs. In this regard, we have a recent project of amnesty law in Brazil with these purposes. Such project of law, although determines a favorable tax treatment for all those HNWIs that have maintained resources abroad, even that such resources have not been declared in the past years, has been object of several criticisms as it does not establish the extinction of the criminal consequences of the crimes that are related to the tax evasion crime.

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).

Your response. In our opinion, a product ruling regime might be very beneficial as long as the ruling is reliable for the person that applies for the ruling as well as for any other person that might be interested in it.

We have seen that in some countries, as Austria, the tax ruling has been an important instrument used to help the taxpayers to know the tax burden they are subject to even before than implementing a specific structure.

In Brazil, the tax legislation establishes the possibility of the taxpayer to present a tax ruling before the tax authorities. Although it is a very important instrument, we understand that its use has been quite underestimated as the result for the ruling usually takes longer than the taxpayer can wait and in virtue of the fact that it is applicable only for the taxpayer that has applied to it.

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

Your response: As a result of the study that OECD has been doing, we understand that its conclusion have been very efficient and will certainly bring great results upon their application by the countries that are members of OECD. In this regard, we would like to express our view in the sense that the tax administration of the future must face its administrators as co-workers and not as enemies. In this sense, the more the administration encourages the co-operation of the taxpayers, the more the governments will have to gain. The taxes shall not be seen as a necessary evil but instead they must be seen as an efficient instrument to implement a life of welfare and social justice for the members of a given society.