

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.*

In our view, a co-operative compliance approach can be achieved if a tax administration adheres strictly to the following principles:

1. Confidentiality

This is of the highest importance in light of security, competition and family concerns that are typical in a HNWI context.

Tax administrators in different jurisdictions have to play by the same rules particularly with the use of sensitive information. There is no certainty on this at present.

2. Certainty

It is well known that HNWI have access to sophisticated tax planning advice and it would certainly be beneficial to provide certainty as to exactly what legitimate tax planning is accepted. The recognition of trusts and the role they play in tax planning is one important example.

3. Knowledge

As the tax situation for a HNWI can get really complex in light of their personal and business situation, there is an absolute need for high calibre individuals within the tax administration that can easily understand and analyse the tax position and that are familiar with typical structures that are set up for legitimate tax mitigation purposes. This will avoid a lot of unnecessary questioning.

4. Trust

Tax administrations have a lot of ground to make up to earn the trust of HNWI's which is what is needed first and foremost. This is especially relevant in the context of dealing with HMRC in the UK. In our view, HMRC have done a great deal of damage by the way they handled the changes to the resident non-domicile rules. These changes were extremely controversial and largely opposed by major trade associations. Despite this large opposition HMRC went ahead with most of the proposals. A large part of the resident non-domiciled individuals in the UK may fall within the HNWI section and therefore trust with these individuals will have to be rebuilt.

5. Simplicity

A tax system that is simple and easy to understand will automatically lead to a high degree of compliance.

6. Fair tax rate

People will be more willing to co-operate and comply if they are of the opinion the tax rate they are being

charged is fair.

7. No waste

In cases where people feel confident their taxes are well spent by government people will comply more easily.

8. Customer friendly approach

A more personal and customer friendly approach with dedicated relation managers for each HNWI would work well.

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 HNWIs 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.*

In our view, the private sector should be involved at the earliest opportunity. There is no doubt that commercial awareness will be one of the biggest challenges for any tax administration. We would strongly recommend employing staff with relevant sector experience and most importantly a commercial and customer friendly attitude. In cases where staff does not have relevant private sector experience they should receive appropriate training in relation to HNWI. Tax payers should at all times be treated as customers; in our view, this is currently not always the case and therefore a culture change within the tax administration is absolutely necessary for any co-operative compliance approach to be taken seriously by HNWI and their advisers.

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)?*

In the context of a co-operative compliance approach a unit should only assume the responsibility of research and risk assessment. Realistically, a dedicated HNWI unit can not take up the responsibility for audit as this would mean huge time and resource constraints. Furthermore the principle of auditing a file seems to be contradictive to encouraging a co-operative compliance approach.

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.?*

In our opinion it should cover the full tax liability of HNWI to ensure only one unit deals with a specific HNWI. This is extremely important, especially in light of the need for confidentiality. In addition, it will increase simplicity and efficiency and will avoid repetitive and unnecessary questioning.

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)?*

Yes, it would be extremely helpful if HNWI or their advisers could deal with one single person and one single unit within the tax administration for their full tax liability. Again we would stress the need for confidentiality, simplicity and efficiency.

The private bank approach could be used with a generalist who heads up the relationship and who knows

who to talk to about different taxes. The relationship person needs to be able to make major decisions. HNWI are used to dealing with senior people. The relationship person needs to have thorough understanding of the tax payer's needs/wants even sometimes personal needs. The wealthy are as concerned about personal security and security of family members as they are about the amount of tax they pay.

It would also be helpful if HNWI could be segmented. Those with, say, more than £50m behave quite differently and "buy" different products to those with £5m to £50m.

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

Yes, we would strongly recommend a designated relationship manager approach.

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?

Yes, on the basis that the unit will look to address issues raised by HNWI and their advisers.

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

Yes, this is extremely important and the highest possible standards of confidentiality should apply with strict confidentiality clauses in staff contracts.

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?*

N/A

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.*

The most important ingredient to success for this initiative will be the ability to demonstrate that opting into this scheme will offer advantages to HNWI and their advisers.

One very important advantage would be that the tax administration could provide "early tax certainty" for planned transactions and structures set up by HNWI and their advisers to mitigate their tax liability.

Disappointingly, the consultation paper seems to directly link offshore structures to tax evasion. We believe this is wrong and we would urge that tax administrations recognise the difference between legitimate tax mitigation structures and tax evasion.

We believe it is also important to point out that tax reasons play an increasingly smaller role when HNWI decide to set up offshore.

The examples of tax evasion mentioned in the consultation paper relate to offshore accounts and people not declaring the savings income from these accounts to their tax administration. We agree that this is tax evasion and countries worldwide should co-operate to stamp this practice out. The EUSTD and tax information exchange agreements have proven to be useful tools in this respect. In cases of non-compliance tax amnesty initiatives may help encourage tax evaders to come forward with relevant information.

However, it should be recognised that most tax mitigation structures are fully legitimate. Allowing HNWI to structure their tax affairs in a way that will reduce their total tax liability - often involving complex offshore structures – and providing early tax certainty in relation to these structures is in our view an absolute necessity to making the co-operative compliance approach work. Not doing so will simply encourage HNWI to move permanently to low tax jurisdictions resulting in a lower tax take for the tax administration based in the country the HNWI is moving from.

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 are great concerns within the community of HNWI regarding confidentiality. The framework for voluntary disclosures should therefore focus on what guarantees can be given to HNWI in relation to confidentiality.

In cases of presumed non-compliance it would be helpful to look at possibilities of no or reduced penalties in cases where a taxpayer has fully disclosed his/her tax position to the tax administration during a pre-filing meeting. This would also mean that in cases where a taxpayer does not achieve resolution of the tax issues at the pre-filing meeting, the guarantees for no or a reduced penalty would still apply.

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).*

Establishing an efficient product ruling regime within each tax administration would be of great relevance to HNWI and their advisers. As indicated in Question 4 providing early certainty on the tax position of an investment product would be hugely beneficial and would contribute to HNWI and their advisers sharing information with their tax administration. Product rulings should be long term.

However, we recognise this regime could cause practical difficulties as products that have a specific tax ruling attached to them will have a competitive advantage over others and undoubtedly any such regime will have large resource implications for a tax administration.

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

Need for simplicity

We would like to stress the need for simplicity of a tax system. From experience in our own jurisdiction we know a simple tax system that is easy to understand will automatically lead to a high degree of compliance.

No fishing expeditions

In cases where HNWI have agreed to fully disclose their tax position to the tax administration there should be a guarantee from the tax administration that this disclosure will not lead to additional ‘fishing trips’.

Long term rulings

As indicated it would be very helpful for HNWI and their advisers to be able to rely on product rulings. This would be particularly helpful for structures involving offshore products. These rulings should be given long term.

HNWI Unit

This unit should be able to make all major decisions in relation to the tax liability of the HNWI.