

**ANNEX 1: RESPONSE FORM** *Comments should be sent to Aziza Nasirova (aziza.nasirova@oecd.org or fax ++33 (0)1 44 30 63 21 or mail to, OECD, 2, rue Andre-Pascal, 75775, Cedex 16, France) no later than 31 December 2008.*

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Country of Respondent : Belgium

Permission to publish : YES

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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 Belgium no specific unit exists which is dedicated to HNWI's.

Although not exclusively created for HNWI's, the Commission for Advanced Tax Rulings (hereafter "Ruling Commission") is the unit within the Belgian tax administration that is effectively dealing today with certain requests made on behalf of HNWI's.

Since 2003, Belgium has a new broad system of advance tax rulings. Tax payers can obtain a binding ruling regarding all federal tax matters as well as some regional tax matters.

Until now the Ruling Commission already treated numerous specific issues related to HNWI's:

- The application of article 90 of the Belgian Income Tax Code concerning capital gain taxes (on family owned shares);
- The structuring of private wealth through foundations and transparent entities (the Belgian 'Société civile') ;
- Transparent investment structures related to (foreign) investment funds ;
- etc.

The Belgian ruling practice is efficient, business-orientated and proactive. The advantage of dealing with the ruling commission is the ability to obtain certainty on the tax treatment of a particular case. The applicant tax payer or his adviser can meet the officials in charge of the request at several stages during the procedure. Pre-filing meetings on a no names basis are possible as well. A ruling is usually delivered within three months. Most rulings are also published anonymously.

However not all the issues which are of interest to a HNWI, may result in a positive tax ruling, for example an "efficient" wealth transfer between a HNWI's company and a HNWI's private estate, and/or the reorganization of a HNWI's group of companies which is initiated solely from a family estate point of view. The ruling commission does take account the importance of the smooth "family succession" in the interest in the continuation of the going concern business, yet it could be argued that in despite of the separation between corporate and private assets, a

HNWI's consolidated situation (companies and personal estate) should be taken into account when assessing any restructuring of a family owned business.

**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? In particular do you have any views on the following points?**

We are supportive of a special unit specialized in HNWI's.

In the questionnaire (point 12) the OECD does not attempt to define the term High Net Worth Individuals (hereafter "HNWI's"), *since thresholds used for domestic taxation purposes differ from country to country. Thresholds may refer to wealth, income, combinations of income or wealth and HNWI definitions may also include other factors such as complexity of the taxpayer's affairs. The focus group recognizes that questions relating to such factors are necessarily decided at domestic level.* It is to be emphasized that from a Belgian perspective it is especially difficult to define the term HNWI's due to the particularity of the Belgian tax system:

Belgium is indeed quite an interesting location for HNWI's to reside since certain parts of income - which are not related to direct employment income - are low taxed or remain tax exempt

- Absence of wealth tax.
- No CFC rules for privately owned companies.
- Flat tax rates on dividend and interest income.
- Liberatory withholding tax on interest of 15% and dividends of 15% or 25% if received via the intermediary of a Belgian bank and/or on a Belgian bank account. With respect to individual beneficiaries, this withholding tax is a final flat rate tax, there is no further obligation to declare this income in the annual income tax return.
- Capital gains on passively held participations are in principle not taxable.
- There are in general no threshold restrictions nor special qualified participations tax rates.
- Capital gains on immovable property:
  - o capital gains realized on the sale of the main residence are not taxable.
  - o Capital gains over any other privately owned building remains totally exempt after eight years.
- Flemish and Walloon Inheritance tax codes both provide for exemptions for inheritance taxes concerning (EU) family business on family owned companies, if certain conditions are met. The Brussels inheritance tax code provides for a 3% death duty rate at comparable although less favorable conditions.
- In general, inheritance tax over movable assets can be avoided by making life time gifts at least three years prior to the decease of the donor. In the direct line, a gift tax of 3% allows for an immediate exemption of death duties.

Therefore, a HNWI in Belgium has the possibility to organize his private wealth in such a way that (almost) no taxes are due. Since January 2006, there is a slight modification in the Belgian tax landscape, i.e. UCITS became taxable in consequence of the European Savings Directive, yet these modifications did not have any real impact on HNWI.

**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 order to gain insight information, we do not support the idea of employing staff with relevant private sector experience on secondment.

We are of the opinion that the most efficient way to gain insights, is to involve advocates, advisors and other relevant market participants (e.g. private banks) into the drafting stage of new legislation. Draft legislation should be sent to several advisors and other relevant market participants for comments. Or even, advocates, advisors and private bankers should be invited to give ideas and input on certain topics presented by the Ministry of Finance. This involvement should take place on a voluntary basis on both sides.

**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)?**

The unit should be an advisory unit only, with the following duties:

- Contact point between tax payers, their advisors and the tax authorities.
- Coordination of tax issues that are of particular interest to HNWI
- Preparation and improvement of tax legislation.
- Assistance to the ruling commission (comparable to the Belgian contact point for fiscal regularization “CPR – PCR” which is part of the ruling commission and which is competent for the voluntary disclosure procedures on structured off-shore accounts and non-compliance procedures as foreseen in the law of December 27, 2005)

**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.?**

The unit should be able to deal with all kind of taxes. However, Belgium is a federal state and political powers have been divided on four different levels: the federal government (income taxes), the Flemish, Brussels & Walloon Regions (gift tax, death duties, transfer taxes and other stamp duties). One single dedicated unit would therefore not correspond

to the division of the power for interpretation of tax law between the Federal State and the Regions (Flanders, Wallonia and the Brussels Region). Nevertheless, the Belgian ruling commission has succeeded in overcoming these divisions which pleads for installing the unit at the ruling commissions level.

**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)?**

The unit should only deal with tax issues that relate to the HNWI's private estate, yet also with transactions that have an (indirect) impact on his private estate (valuation, step up in basis, capital gains, etc ...), but not to those of the operating companies themselves that are directly or indirectly controlled by the HNWI. This may in practice however prove to be a difficult distinction in some cases. To the extent that these companies – be it foreign or domestic - are genuine look through entities for tax purposes (tax transparency), the unit may consider these companies as part of the private estate as to their tax effect.

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

We suggested above that the unit should be an advisory unit only. In that respect we believe a contact point indeed should be assigned within the unit both towards the HNWI's and their advisors as towards the tax administration itself.

**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?**

This is indeed a very good suggestion.

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

Concerning the safeguards and security procedures, reference can be made to the Belgian contact point for fiscal regularization "CPR – PCR" which is part of the ruling commission and which is competent for the voluntary disclosure procedures on structured off-shore accounts and non-compliance procedures as foreseen in the law of December 27, 2005. This unit is the proof of efficient safeguard and security procedures.

**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?**

This is not applicable in Belgium.

To the extent the Belgian contact point for fiscal regularization "CPR – PCR" which is part of the ruling commission and which is competent for the voluntary disclosure procedures on structured off-shore accounts and non-compliance procedures as foreseen in the law of December 27, 2005 would qualify as such a unit, we refer to our comments under Q.5.

**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.**

As mentioned above, the Ruling Commission is the unit in Belgium which currently deals with specific issues of HNWI. Most of the following elements are applicable to the Belgian Ruling Commission:

1. Low or no further compliance activity. It is indeed important to create an opportunity for the HNWI to settle any tax issues at the earliest opportunity, reduce compliance costs, provide certainty and leave him or her free to focus on other matters. Although not specifically focused on HNWI, the Belgian ruling commission fulfills these criteria.

2. Enhanced responsiveness. *The most important elements are indeed: rapid access to senior level decision makers, quicker response time to taxpayer queries, more openness to informal discussions etc.* The Belgian ruling commission fulfills these criteria.

3. Early certainty for planned transactions. *"Early certainty" could be provided to HNWI's prior to a planned transaction on which certainty is sought. Early certainty must come not just in the form of a pre-filing meeting where issues could be settled prior to filing the return, but tax administrations may further be in a position to provide certainty even before a transaction is executed. Hereby a fast track rulings mechanism for participating HNWI's is important.* The Belgian ruling commission fulfills these criteria.

4. No or reduced underpayment penalties or other civil or administrative penalties. *Where a taxpayer does not achieve resolution of the issue at the pre-filing meeting, there are still benefits from openness in the form of no or reduced penalties. Penalties affected could include underpayment penalties and penalties resulting from the application of anti-abuse or anti-avoidance rules.* This would not be in line with the Belgian law. If a pre-filing would turn out without a positive resolution for the HNWI, this may even have a negative impact if the transaction is carried through anyway if the pre-filing is revealed. In Belgium pre-filings are anonymous. Moreover, the underpayment penalties are foreseen by law and cannot be

reduced, unless in case of posterior tax regularization for non compliance, in which case no underpayment penalties are due.

**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.**

The Belgian contact point for fiscal regularization “CPR – PCR” which is part of the ruling commission and which is competent for the voluntary disclosure procedures on structured off-shore accounts and non-compliance procedures as foreseen in the law of December 27, 2005 functions well and has proven to provide :

- (a) clear solutions as to the taxable base within the tax legal frame work,
- (b) clear guidance in calculating the final tax liability over the past including the fines due and
- (c) guardian of the privacy of the taxpayers privacy who wishes to step-forward and becoming compliant.

We can say that this procedure is a success. It is clear however that within the Belgian legal environment, severe criminal legislation on money laundering (art. 505 CL), which renders prescription of tax evasion (normally after 7 years as from tax year 2009) nearly impossible, leads to the necessity of a fiscal regularization before funds on a (undisclosed) foreign bank accounts and/or (undisclosed) structured off-shore accounts can be re-injected in the economy, adds to that success.

**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).**

Although we are in general supportive of the idea of product rulings for HNWI, in a Belgian context, HNWI will indeed more likely enter into tailor made arrangements that are suitable for their own needs as related to Investment funds, tax transparency rulings of certain vehicles such as foreign partnerships, trusts, the société civile and foreign foundations.

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