

OECD Tax Intermediaries Study

Working Paper 3: Overview – the emerging direction of the study

This is the third in a series of draft working papers written by the tax intermediaries study team. It has been written for the purposes of the study and has not been endorsed in advance by the Forum on Tax Administration (FTA) which established the study. It therefore does not necessarily reflect the views of the FTA.

Background

1. The terms of reference for the tax intermediaries study are published on the OECD's website¹ and identify the study's broad objectives as: (1) to increase understanding of the role tax intermediaries (law and accounting firms and other tax advisers, and financial institutions) play in tax administration; and (2) to identify strategies for strengthening the relationship between tax intermediaries and revenue bodies. The terms of reference also set out that the final report will cover:

- the arrangements revenue bodies have in place:
 - to manage their relationships with taxpayers and tax intermediaries;
 - to minimise the risks to tax collection; and
 - to develop a climate of mutual trust and respect;
- the role of tax intermediaries in promoting compliance and reducing non-compliance by their clients, and the risks they sometimes pose in developing tax minimisation arrangements;
- the responsibilities of tax intermediaries and taxpayers with regard to those risks; and
- the role of international co-operation between revenue bodies in managing those risks.

2. Based on these terms of reference, the study team has been consulting informally with stakeholders in FTA member and observer countries. These stakeholders are the revenue bodies of those countries, business and other taxpayers, and tax intermediaries. From these preliminary discussions, the study team has begun developing a series of working papers to explore some of the key issues. This is the third² working paper and its purpose is to provide an overview of the key themes that have emerged from these discussions. It should be read in conjunction with 'Working paper 2: A draft framework for the study team's report' which sets out the wider context for the issues covered. The study team is

¹ http://www.oecd.org/document/2/0,2340,en_2649_37427_37930882_1_1_1_37427,00.html

² 'Working Paper 1: How the study team is working' and 'Working Paper 2: A draft framework for the study team's report' were published on the OECD's website on 12th April 2007 and can be found at http://www.oecd.org/document/49/0,2340,en_2649_33749_38393585_1_1_1_1,00.html

undertaking further work on the subjects covered in this paper, supported by the countries participating in the FTA who are undertaking national consultations with their business communities, and will be producing further discussion documents on the key issues to allow further more detailed consultations to take place.

Introduction

The main drivers behind the study team's approach can be summarised as follows:

- Firstly, the evidence-based concerns of revenue bodies about certain tax minimisation arrangements in which the taxpayer takes a tax position that either (a) is tenable but has unintended and unexpected tax revenue consequences from the perspective of the revenue body or (b) is favourable to the taxpayer without openly disclosing that there is uncertainty whether significant matters in the tax return accord with the law; and
 - Secondly, a belief that such concerns can only be solved if there is improved understanding and collaboration between the three parties in the tax environment – revenue bodies, taxpayers and tax intermediaries. These concepts will be developed in subsequent papers.
3. The study team aims to ensure that these concerns – which led to the establishment of the study – are identified, acknowledged and dealt with, against a background that governments need to raise revenues in an efficient and fair manner but at the same time maintain the competitiveness of tax systems, and that this needs a constructive relationship between revenue bodies, taxpayers and tax intermediaries.
4. It is important to remember that revenue bodies, taxpayers and tax intermediaries are ultimately all bound by their country's framework of economic policy and law-making and that this framework is outside the scope of the study.

Risk management

5. The preliminary discussions have produced general agreement that central to a way forward is for all parties to recognise the mutual benefits of revenue bodies basing their approach on modern risk-management concepts.
6. For revenue bodies, this type of approach allows both investment in, and deployment of, scarce technical resources to high taxpayer-service and high revenue-risk areas. For taxpayers, it should facilitate the deployment of resources to speedily support their compliance efforts and resolve time-sensitive complex business transactions – whilst providing assurance that there are no competitive advantages for non-compliant taxpayers. It also has benefits for tax intermediaries as it provides a framework within which they can advise clients – whilst providing assurance that there is no competitive advantage for non-collaborative intermediaries. Revenue bodies currently use a range of risk-management

techniques. The study is working with all parties to see how these techniques can be improved and to identify best practice.

7. In order for risk management to work, the study team believes it must be underpinned by two further elements: these are an 'enhanced relationship' between revenue bodies, taxpayers and tax advisers and what might be termed 'operational tools and techniques'.

The enhanced relationship

8. Through informal consultation, the study team has started to explore how the three-way relationship between revenue bodies, taxpayers and tax advisers can be enhanced. Although each wants something different from the relationship, discussions have suggested there is a significant amount of common ground. All three want:

- to pay/collect the right amount of tax at the right time and in the right place, even though reaching a consensus on what is "right" can be problematic;
- to do so efficiently, minimising unnecessary enquiry or audit time, focusing on significant issues and resolving them quickly;
- risk-assessment processes to be as effective as possible, to enable this to happen;
- an open and honest dialogue based on mutually understood and appropriate levels of disclosure and transparency; and
- certainty of outcome in complex areas.

9. The study team believes there is scope to establish an enhanced relationship built on this common ground. Discussions so far suggest that such a relationship needs to be built on the principle of reciprocity in which all parties can seek to co-operate within a framework that both recognises the statutory obligations and protections available and can go beyond these to produce better participation and tangible benefits for each party. This is a complex area and in many countries such a relationship will require a significant change in behaviour by all three parties. The study has started to explore where this type of reciprocity can be built into tax systems. The areas that have emerged from discussions so far include:

- disclosure and transparency, with all parties being open to an enhanced level of dialogue and co-operation to allow collaboration in the identification and resolution of areas of risk and concern; and
- mutual co-operation in advancing enquiries and reaching proportionate resolutions quickly and with finality.

10. An enhanced relationship fundamentally depends on trust being established and maintained between all parties. Central to discussions going forward will be an exploration of how trust and a relationship based on reciprocity can be developed and how all three parties can realise benefits from such a relationship.

Operational tools and techniques

11. The use of risk-management techniques should allow revenue bodies to differentiate more effectively according to behaviour and risk. Once this differentiation has been made, revenue bodies then need to be capable of responding appropriately. A further strand of the study is therefore examining the tools and techniques available to revenue bodies. It is clear that all these tools should have the same overarching aim – to encourage low-risk behaviour. There should be clear advantages to taxpayers and tax intermediaries demonstrating low-risk behaviour. Accordingly, some of these tools and techniques will need to be service offerings, meeting the needs of taxpayers and tax intermediaries. Others need to be designed to respond directly to the challenges posed by high-risk behaviour, deterring challenges to the tax system and ensuring non-compliant behaviour is identified and subject to appropriate penalties. Such tools are necessary for the integrity of the tax system as a whole, providing reassurance to the majority of lower-risk taxpayers and tax intermediaries that revenue bodies are capable of responding appropriately and effectively to risk.

Conclusion

12. Based on discussions to date, a clear view has begun to emerge that a balanced and enhanced tripartite relationship between taxpayers, revenue bodies and tax intermediaries is a key feature of any open and supportive tax environment. The study team appreciates that such a relationship, along with many of the other issues and ideas set out in this paper, will raise questions and present challenges. This paper aims only to set out the themes that are starting to emerge. The team is committed to full consultation and, supported by interested parties in FTA countries, will be undertaking more detailed consideration of the various issues and their implications over the next few months. 'Working paper 1: How the study team is working' sets out in more detail how this will be achieved.

13. Should you have any views on this paper, or wish to contribute to the study more generally, please contact the study team:

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April 2007