



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



THE OECD'S PROJECT ON HIGH NET WORTH INDIVIDUALS

DISCUSSION PAPER FOR PUBLIC COMMENT

30 October-31 December 2008



CENTRE FOR TAX POLICY AND ADMINISTRATION

THE OECD'S PROJECT ON HIGH NET WORTH INDIVIDUALS

1. This paper is being made available for public comment. Interested parties are invited to submit comments, views and suggestions related to the topic of the study and in particular to the questions and issues raised in this paper. Comments can be submitted anonymously or on a named basis. Unless otherwise requested, the OECD reserves the right to publish comments submitted in response to this invitation on the OECD website. 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**. Please use the **Response Form** included in **Annex 1** of the document.

2. On Monday, February 9, 2009 the OECD will hold a public consultation at its headquarters in Paris for interested parties to discuss their comments and more generally give their views on the issues and questions raised in the paper. For more information and registration details please contact Aziza Nasirova (Aziza.nasirova@oecd.org).

BACKGROUND

3. In January of 2008 the OECD published a report entitled "Study into the Role of Tax Intermediaries"¹ (the "Study"). The Study was commissioned by the OECD's Forum on Tax Administration ("FTA")² at its meeting in Seoul in September 2006³ and was presented and discussed at the FTA's Cape Town meeting on 10-11 January 2008.⁴

4. The Study focused on the large corporate taxpayer segment. The Study noted that its findings and in particular the concept of an "enhanced relationship" may also have application to High-Net-Worth Individuals ("HNWI") and to banks (in particular investment banks) but due to time and resource constraints the authors of the report were not able to explore this further.

5. In March 2008 the OECD set up a focus group (the "Focus Group") to carry out the follow-up study on HNWIs. The Focus Group consists of the following 14 countries: Australia, Canada, Ireland, Italy, France, Germany, Japan, Mexico, the Netherlands, New Zealand, Norway, South Africa, United Kingdom and the United States of America. Separate work is being carried out in relation to banks.⁵

6. This paper is intended to solicit comments from advisors, interested HNWIs and other stakeholders (e.g. private banks).

7. The Focus Group will take into account the written comments and the outcomes from the workshops in preparing a report that is expected to be presented and made public at the 5th meeting of the Forum on Tax Administration to be held in Mexico in May 2009.

¹ www.oecd.org/taxation

² The FTA brings together heads and deputy heads of revenue bodies from both OECD and non-OECD countries. For instance, the meeting in Cape Town was attended by more than 100 representatives representing 45 economies.

³ www.oecd.org/taxation

⁴ www.oecd.org/taxation

⁵ www.oecd.org/taxation

TABLE OF CONTENTS

I. HIGH NET WORTH INDIVIDUALS (HNWI)	4
II. SCOPE OF PROJECT.....	5
III. IMPROVING CO-OPERATIVE COMPLIANCE IN CONNECTION WITH HNWI'S	5
Section A - Organisational Aspects: How could tax administration resources be organised in a way that is both effective and conducive to forms of co-operative compliance?	7
Section B - Possible elements of a co-operative compliance approach: What type of framework could a tax administration develop to encourage HNWI's and their advisors to be transparent and volunteer current, relevant and reliable information?.....	8
1. HNWI's	8
1.1. Framework for a co-operative compliance approach	8
1.2. Framework for voluntary disclosure regarding past domestic and offshore non-compliance ..	10
2. Developers of tax, financial or similar products or structures.....	11
Section C - Ways to implement a co-operative compliance approach	11
ANNEX 1: RESPONSE FORM	12

OECD'S PROJECT ON HNWI

I. HIGH NET WORTH INDIVIDUALS (HNWI)

8. Taxpayers at the top of the wealth or income scale make a significant economic contribution to society and account for a large part of total income tax. In Germany, for example, the top 0.1 % of taxpayers pay about 8% of total income tax and the top 5% of taxpayer pay about 40%.⁶ In the United States the same top 5% pay 60% of total income tax.⁷ The relative percentages in other OECD countries are likely to be of a similar magnitude.

9. Tax administrations allocate significant resources to this segment. This allocation is not because taxpayers in this segment are necessarily less compliant in their tax affairs but is driven by a range of factors, including the amount of tax at stake, the wealth⁸ and increasing number of HNWI and the potential impact of their non-compliance on the community. Whilst it is recognised that HNWI are not a homogenous group, they are likely to be linked by the scale and complexity of their business, personal and tax arrangements (domestic and/or international), access to more sophisticated tax products, offshore opportunities and by more varied sources of income giving more possibilities for planning.

10. Tax administrations recognise the important contribution made by this segment of the taxpaying population and have no inherent interest in allocating any more resource to this segment or engaging in any more compliance activity than they find necessary. It is against this backdrop that the Focus Group seeks to explore how tax administration resources could be used most effectively and what role co-operative compliance approaches might play in this regard.

11. The Focus Group also takes note of a change in the international environment towards more transparency and improved international tax co-operation. In this regard the group wishes to explore ways to encourage taxpayers with undisclosed assets or income to come forward and disclose their past non-compliance to the tax administration of their country of residence.

12. The Focus Group recognises that different terms are used to refer to the top taxpayer segment (e.g. "wealth owners"). This paper uses the term "High Net Worth Individuals" broadly to refer to taxpayers at the top of the wealth or income scale but does not attempt to otherwise define the term.⁹ Thresholds used for domestic taxation purposes differ from country to country.¹⁰ Such 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 recognises that questions relating to such factors and thresholds are necessarily decided at domestic level and that any conclusions from this project will have to be implemented in the context of what is most appropriate in the circumstances of each country.

⁶ Data relating to tax year 2004. Statistisches Bundesamt, Jährliche Einkommensteuerstatistik - Fachserie 14 Reihe 7.1.1 - 2004 (income tax statistics) <http://www.destatis.de>

⁷ IRS tax statistics for taxable year 2006. See: www.irs.gov/taxstats

⁸ The Boston Consulting Group estimates that globally High Net Worth Individuals (defined as those with more than US \$ 1 million in assets under management) represent 0.7 percent of all households but own 33.9 percent of global assets under management. See, Boston Consulting Group, Global Wealth Report 2007, page 14, Exhibit 3. Some countries have significantly higher concentrations of millionaire households as a percentage of total households, e.g. Switzerland (6.1%), United States (4.1%), United Kingdom (2.4%), the Netherlands (2%). Id. at page 17, Exhibit 17.

⁹ In private banking reports a high-net worth individual is often defined as an individual with investible assets exceeding US \$ 1 million. An ultra-high net worth individual is sometimes defined as somebody with assets in excess of US \$ 30 million. See, for instance, Oliver Wyman - The Future of Private Banking- A Wealth of Opportunity (2008).

¹⁰ For instance, the Australian tax administration applies a particular risk assessment process to all individuals that together with associates control AUS \$30 million or more. In Ireland individuals with a net worth in excess of € 50 million are dealt with by a specialised unit. The United States uses higher audit rates for higher income brackets.

II. SCOPE OF PROJECT

13. Many factors will influence the behaviour of HNWIs. Several of those factors relate to the overall legal and tax landscape (e.g. tax rates, types of taxes, treaty networks, bank secrecy, etc). The scope of this paper, however, is focussed on improving compliance relationships within the existing legal framework.

14. Furthermore this paper concentrates on co-operative compliance approaches which are already in evidence in several jurisdictions. This focus on co-operative aspects does not exclude pursuing other strategies where there is a risk of tax avoidance or evasion (e.g. mandatory disclosure rules, promoter penalties, additional reporting requirements). However, this consultation paper intends to explore the potential of co-operative compliance approaches.

15. The Focus Group recognises that a country's ability or willingness to offer any one of the ideas explored in this paper will vary and reflect different policy decisions as well as legal and practical constraints. The fact that the Focus Group puts these ideas out for consultation should therefore not be taken to suggest that they have been endorsed by individual countries that are members of the group.

III. IMPROVING CO-OPERATIVE COMPLIANCE IN CONNECTION WITH HNWIS

16. There are different ways to improve co-operative compliance both for individual and corporate taxpayers. With respect to corporate taxpayers, the Study into the Role of Tax Intermediaries describes a compliance relationship that is characterized by co-operation and trust. Parties go beyond statutory obligations to work together co-operatively.¹¹ The Study noted that a number of countries have embraced such approaches and developed business models to improve tax compliance in the large business segment through greater co-operation.¹²

17. The Study identified a number of elements or attributes that when demonstrated by the parties should result in an "enhanced relationship." On the part of tax administrations the Study listed: (1) commercial awareness, (2) impartiality, (3) proportionality, (4) openness and (5) responsiveness.¹³ On the part of taxpayers it identified: disclosure and transparency.¹⁴

18. A key element often mentioned by the business community was a combination of factors 4 and 5, often expressed as "early certainty," i.e., the ability to obtain certainty on the tax treatment of a particular transaction at an early stage.

19. Tax administrations have a strong interest in early, reliable, comprehensive and relevant information. This is as true in connection with HNWIs as it is in the context of large corporate taxpayers. Early, reliable, comprehensive and relevant information is essential to better risk-assessment and allows tax administrations to shift resources from low-risk taxpayers (or groups of taxpayers) to high-risk taxpayers (or groups of taxpayers). Therefore, the Focus Group is of the view that the benefits for tax administrations of disclosure and transparency equally apply in the context of HNWIs.

20. However, the Focus Group recognises that the situation of HNWIs is in many ways significantly different from the situation of large corporate taxpayers. HNWIs are much less homogenous as a group and show higher mobility. Moreover, large corporates are typically subject to a number of bookkeeping, accounting, filing and disclosure rules. They have extensive governance rules and a separation between

¹¹ For more details on the concept of the enhanced relationship in connection with large corporate taxpayers, see pages 39 ff, Study.

¹² For more details on the experiences of these countries see Study, Annex 8.1.

¹³ For a detailed description of these five "revenue body attributes" see Study, pages 33 ff.

¹⁴ For a detailed explanation of "disclosure and transparency" see Study, pages 41 and 42.

owners/shareholders and managers. Large corporate taxpayers also have frequent and ongoing interaction with tax administrations (including e.g. VAT, wage tax withholding) while HNWI may have far less interactions but face different or additional taxes (e.g. wealth taxes, estate and inheritance taxes).

21. Furthermore, in the vast majority of cases the interaction between tax administration and HNWI will not be direct but will take place via a lawyer, accountant or other representative (e.g. a member of a “family office”) of the HNWI. Thus, unlike the situation of large corporate taxpayers with “in-house” tax capability, any relationship between tax administration and HNWI is likely to be implemented via the intermediary.

22. The Focus Group is prepared to examine whether the five attributes identified in the Study¹⁵ are relevant attributes in connection with HNWI. In this context, the Focus Group notes that an important factor in approaching these questions is the existing relationship between taxpayers and the tax administration as it will determine what additional information needs a tax administration may have.

23. The remainder of this paper consists of three sections. Section A focuses on organisational aspects. Section B focuses on developing a framework for co-operative interaction with HNWI taxpayers and providers of tax and financial products. While these sections do not expressly refer to the five attributes, they incorporate many of the underlying principles such as proportionality and early certainty. Section A and Section B are the key sections on which comments are invited. The last section (Section C) contains initial considerations that may be relevant where a country decides to pursue a co-operative compliance approach.

¹⁵ Germany observes that it did not take part in the Study. To the extent the Study may be understood to imply that tax administrations currently do not demonstrate the five attributes identified there, Germany is of the opinion that this would not be a fair view of the situation in Germany.

Section A - Organisational Aspects: How could tax administration resources be organised in a way that is both effective and conducive to forms of co-operative compliance?

24. This section focuses on the organisation of the tax administration as distinct from the interaction (including the framework for such interaction) with HNWI and advisors or developers of tax, financial or similar products or structures, discussed in the subsequent section.

25. The Focus Group recognises that many different factors play a role in determining the organisation and operation of a tax administration. Given the differences in tax systems, the cultural and historic dimension and the legal (sometimes even constitutional) constraints it is clear that there can be no “one size fits all” solution.

26. The question the focus group wishes to explore is how a tax administration could be organised to effectively deal with the HNWI taxpayer segment and be able to engage in co-operative forms of compliance. For instance, several tax administrations in both OECD member and observer countries¹⁶ have created dedicated units (either at national or at regional level) with particular responsibilities (e.g. advising, assessing, auditing or combinations thereof) relating to the HNWI taxpayer segment (e.g. Australia, Ireland and France).

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.*

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?*

Question 3: *If you are from a country that currently has a dedicated unit dealing with HNWI 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?*

¹⁶ Currently there are six countries that have observer status with respect to the work of the OECD’s Committee on Fiscal Affairs and its subsidiary bodies: Argentina, Chile, China, India, Russia, South Africa.

Section B - Possible elements of a co-operative compliance approach: What type of framework could a tax administration develop to encourage HNWI and their advisors to be transparent and volunteer current, relevant and reliable information?

27. This section seeks to explore what type of framework a tax administration could develop to encourage HNWI and their advisors, as well as developers of tax related products, to be more transparent and volunteer current, relevant and reliable information.

28. It looks at two situations. The first situation looks at the relationship between the tax administration and the HNWI (including through advisors that may act on behalf of the HNWI). The second situation looks at the relationship between the tax administration and the developers of tax, financial or similar products or structures who do not act on behalf of a particular HNWI but develop products or structures that they may invest in.

1. HNWI

29. At a very general level there are two types of situation that need to be addressed. In the first situation the taxpayer enters into arrangements that either conform with the law or fall within a grey zone where it may be open to dispute as to whether they comply with the law. In the second situation the taxpayer clearly fails to comply with the tax law with the intention or hope of going undetected. The co-operative compliance approach can only apply to taxpayers in the first category and the relevant considerations are discussed in Section 1.1. Section 1.2 then deals with cases of voluntary disclosure in the area of clear non-compliance. Such situations do not fall within the parameters of a co-operative compliance approach but they nevertheless constitute a behaviour that tax administrations wish to encourage.

1.1. Framework for a co-operative compliance approach

30. In thinking about the relationship with the HNWI it may be useful to provide some context and provide a model for such a co-operative approach.¹⁷ For instance, assume a country would offer a program where any HNWI who volunteers for the program agrees to have at least one pre-filing meeting at which the HNWI and his or her advisor would be expected to put any tax position they know involves a material degree of uncertainty or unpredictability on the table (including transactions or positions where the tax administration has indicated publicly that the matter is of particular concern from a policy standpoint and will, therefore, be scrutinised).¹⁸ This could include, for instance, questions of legal interpretation as well as valuation issues and could cover not just income taxes, but also other taxes such as estate and inheritance tax. In addition to the pre-filing meeting a country may offer further certainty by way of pre-transaction rulings. Thus, rather than using the statutory tools of formal information gathering powers, including audits etc. the taxpayer would be expected to volunteer the information that his or her advisor knows the tax administration would want to know about.

31. From a tax administration's perspective such a relationship could have a number of benefits (whether offered as part of a program or otherwise). First it provides the tax administration with relevant and reliable information at an early point in time. This is essential for the risk assessment process and allows the administration to allocate resources to high risk areas and higher risk taxpayers. It should more generally reduce the appetite for more aggressive schemes or conduct amongst those in the program and allow resources to be reallocated to those that are not in the program. Finally, it would assist the tax administration in better understanding the overall arrangements and activities of the HNWI and thus simplify future discussions and avoid unnecessary questions.

¹⁷ While this model should by no means be seen as the only way of implementing such a relationship it may nevertheless be useful in illustrating the thinking of the Focus Group.

¹⁸ Cf., Study, page 41.

Question 4: *If the tax administration offered this or a similar approach, what would encourage HNWI 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 and their advisors (e.g. privacy concerns), and how these may be addressed.*

32. Elements of a framework for such a co-operative compliance approach could include:

1. Low or no further compliance activity. For example, taxpayers participating in such a relationship or program could be assessed as low risk and following resolution of issues raised at the pre-filing meeting (and absent any reasons to believe that the taxpayer has not been fully transparent) except for occasional checks, there would be no further action on the part of the tax administration. This would allow 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. As the meeting would take place before the return is filed the atmosphere and general interaction could be less confrontational than it might be at a later stage as the question of penalties does not yet arise.
2. Enhanced responsiveness. Where taxpayers are more open and co-operative a tax administration is better able to enhance its responsiveness regarding queries and other interactions. This could involve more rapid access to senior level decision makers, quicker response time to taxpayer queries, more openness to informal discussions etc. for those HNWI that participate in such a relationship as compared to those that do not.
3. Early certainty for planned transactions. For example, a tax administration could consider how and in what circumstances “early certainty” could be provided to HNWI prior to a planned transaction on which certainty is sought. Thus, early certainty could 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. There are different ways to provide certainty (including different levels of certainty) ranging from the expression of views to more formal arrangements such as binding rulings. There may also be differences with respect to the tax matters on which rulings could be sought or the type of taxpayer that can request them. For instance, in countries where rulings or other forms of advance certainty are available generally, it may be conceivable to have a fast track rulings mechanism for participating HNWI or to have variations with respect to the issues on which rulings can be sought. Other countries that currently do not have rulings programs available to individual taxpayers may view this as an opportunity to trial such an approach using HNWI as a pilot.
4. No or reduced underpayment penalties or other civil or administrative penalties. For example, where a taxpayer has fully disclosed a tax position to the tax administration either during the pre-filing meeting (or at least at the time of filing the return) no underpayment or other “civil penalties” would be imposed if the position was later found to be incorrect (e.g. if the issue was litigated and the court found in favour of the tax administration).¹⁹ Thus, even 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.²⁰

¹⁹ This of course assumes that a country has penalties that would otherwise apply to “avoidance” transactions.

²⁰ The Focus Group recognises that such a regime could not be limited to HNWI in the program and that the ability to disclose with penalty protection would have to be offered to taxpayers more widely. However, such a regime may nevertheless act as an additional incentive for those considering participating in the programme and participation in the program may establish full disclosure under the rules.

1.2. Framework for voluntary disclosure regarding past domestic and offshore non-compliance

33. The Focus Group further considered the situation of taxpayers using offshore bank accounts or other tax evasion schemes involving offshore entities and / or domestic arrangements. The Focus Group recognises that tax evasion and in particular offshore tax evasion is a significant issue, despite the fact that countries have a range of measures to discourage such conduct (e.g. extension of the statute of limitation, administrative penalties (e.g. up to 80% in France), criminal prosecution involving both monetary fines and imprisonment).

34. It is for this reason that tax administrations increasingly scrutinise transactions involving offshore accounts and/or arrangements and such initiatives are proving increasingly successful. Moreover, the international environment is moving towards more transparency and exchange of information. A number of tax information exchange agreements have been signed and more are under negotiation. Some financial centres, such as Malta and Cyprus,²¹ have recently changed their legislation. Others are seriously considering moving towards the OECD standards on transparency and exchange of information. Tax administrations are also active in promoting new tools which will provide them with more information, such as the US qualified intermediary programme. The Focus Group also notes that the EU is discussing the extension of the EU Savings Directive to investments not currently covered. In response to the current financial crisis and given the assistance provided to the banking industry, countries may further review the regulatory environment for banks and other financial institutions and this may also have implications in the tax area.

35. In light of these developments it is not unreasonable to assume that there are an increasing number of taxpayers that might be willing to come forward and disclose their past non-compliance to the tax administration of their country of residence. Over the last several years, a number of countries have implemented initiatives to encourage taxpayers to come forward including measures of an administrative nature such as the recent voluntary compliance initiatives in Ireland and the United Kingdom. These initiatives are of course not limited to HNWI, but this project nevertheless provides a good opportunity to explore this aspect.

36. Such initiatives (or general rules) need to walk a fine line between providing sufficient incentives for those engaged in offshore tax evasion to come forward and not rewarding or encouraging such conduct in the first instance. The Focus Group recognises that such rules and their implementation must be capable of addressing different circumstances of different taxpayers. Some taxpayers (or whole families) may have been ill-advised not to disclose their assets and income. The Focus Group also understands the desire of taxpayers willing to come forward in having a high level of certainty about the likely consequences of such a disclosure.

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.*

²¹ - Note by Turkey:

The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

- Note by all the European Union Member States of the OECD and the European Commission:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

2. Developers of tax, financial or similar products or structures

37. The Focus Group noted that several OECD members (e.g. Australia, the Netherlands) have a “product ruling” regime whereby the ruling may or may not be made public. A “product ruling” in this context is understood as a ruling which is intended to be relied upon not just by the person requesting the ruling but by any person or any persons in a specified class that may invest in a particular product (i.e. the ruling “attaches” to the product not to a particular taxpayer). This ruling may apply to the specific product of a specific promoter or more generically to a particular type of product or arrangement. Thus, a product ruling type regime is addressed at the developer of the “product” but can then be relied upon by the customers or clients of the developer. In Australia, for instance, product rulings are currently available for tax effective investment schemes in four industries (agribusiness, afforestation (forestry), finance, and films).

38. The Focus Group recognises that a product rulings regime could constitute a useful source of information and may further have an impact on taxpayer compliance behaviour. In Australia, for instance, there are indications to suggest that the general public will generally not invest in mass-marketed tax products unless they have a favourable product ruling from the tax administration.

39. The Focus Group also notes that any product ruling regime raises a number of issues, including the role of the tax administration and questions of resources. Also important might be the overall context, including, for instance, the existence of mandatory disclosure rules for certain tax shelter or avoidance transactions and the existence of penalties that may apply to transactions subsequently found to constitute “abuse of law” or “avoidance.”

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).

Section C - Ways to implement a co-operative compliance approach

40. It is for each country to decide whether to pursue such a co-operative compliance approach and, if so, how they would implement it. For instance, a tax administration (following consultations) could issue a unilateral declaration, guidance note or other official pronouncement setting out how the approach would work. Alternatively, the tax administration, together with advisors, their representative bodies and other stakeholders could develop a charter or memorandum of understanding that would then be adopted jointly.²²

41. Tax administrations would further have to determine whether there was a need for a formal agreement with HNWLs wishing to participate in the programme. Options may range from a simple election to join the programme to a more detailed formal or informal agreement that could provide details on how the tax administration and the HNWI would work together.

42. The Focus Group does not seek comments on these points but wishes to flag them as important issues to be discussed at national level in those cases where countries decide to proceed with the approaches discussed in this paper.

²² See for instance the “Code of Conduct for Tax Authorities, Taxpayers and Tax Advisors” in Switzerland available in English <http://www.estv.admin.ch/e/dokumentation/grundlagen/kodex.htm>.

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.

Name of Respondent (optional) _____

Contact details for follow-up as necessary _____

Country of Respondent _____

Permission to publish Y / N

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

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?*

Your response

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?*

Your response

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.*

Your response

Question 5: *The Focus Group seeks input from HNWI's 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

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

Your response

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

Your response