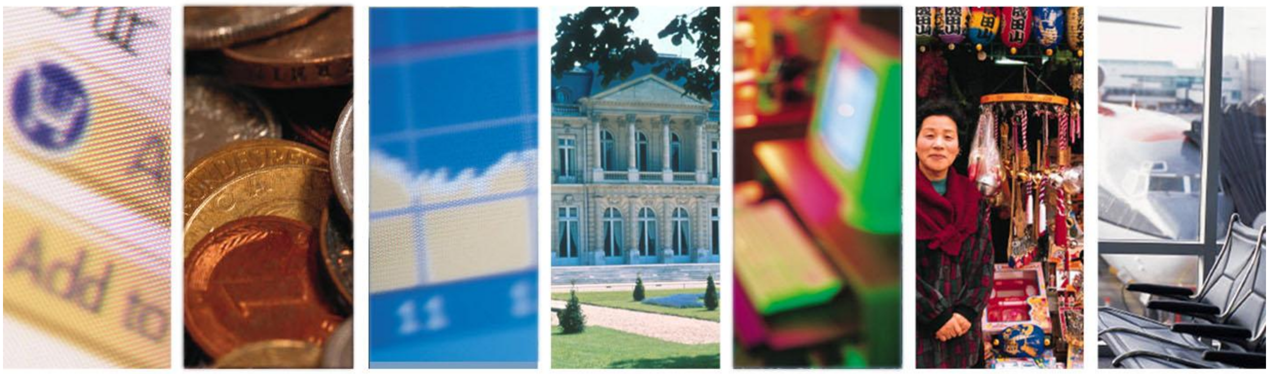
ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



ENGAGING WITH HIGH NET WORTH INDIVIDUALS ON TAX COMPLIANCE

May 2009

Joint Study of the Forum on Tax Administration and Working Party No. 8 on Tax Avoidance and Evasion

CENTRE FOR TAX POLICY AND ADMINISTRATION

TABLE OF CONTENTS

EXECUTIVE SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

High Net Worth Individuals ("HNWIs") present tax administrations with particular challenges: the complexity of their affairs; the amounts of tax revenue potentially at stake; the opportunity to undertake aggressive tax planning ("ATP") and the effect of their compliance behaviour on the overall integrity of the tax system. It is against this background that the OECD's Forum on Tax Administration ("FTA"), building on ongoing work carried out by the Working Party No. 8 on Tax Avoidance and Evasion, commissioned work on this taxpayer segment. The work follows on from the "Study into the Role of Tax Intermediaries" (the "Intermediaries Study") published by the OECD in January 2008 which noted that "High-net-worth individuals are the second principal market for aggressive tax planning".[1]

The purpose of this report is to improve the understanding by tax administrations of the HNWI taxpayer segment, the use of aggressive tax planning schemes[2] by HNWIs and the prevention, detection and response strategies that can be used by tax administrations to respond to these challenges.

The report does not focus on tax evasion[3] because of other ongoing work of the OECD.[4] However, the report discusses aspects of voluntary disclosure initiatives for past non-compliance that may be particularly pertinent in the current environment.

The work was carried out by a Focus Group consisting of 14 countries: Australia, Canada, Ireland, Italy, France, Germany, Japan, Mexico, the Netherlands, New Zealand, Norway, South Africa, the United Kingdom and the United States of America with Switzerland acting as observer. The work involved consultation on a paper released on the OECD website on 30 October 2008 as well as a public consultation held at the OECD headquarters on 9 February 2009. National consultations were also undertaken by the tax administrations of Australia, Ireland, Mexico, New Zealand and the United Kingdom and the outcome from these consultations informed the work of the group. The Focus Group is grateful for this input and for the numerous written responses to the consultation documents.[5]

The Focus Group examined the size and environment of the HNWI segment including the tax risks such taxpayers pose and considered the different approaches, both legislative and administrative, taken by members of the Focus Group to address those risks. Through the public consultation exercise the Focus Group explored the possibility of a co-operative compliance approach whereby taxpayers are encouraged to volunteer relevant information. While no country in the Focus Group currently uses a comprehensive co-operative programme for HNWIs, Australia will pilot a new programme which may eventually be used for some of their top 50 HNWIs.

The Focus Group recognises the importance of the legal and tax landscape (e.g. tax rates, types of taxes, treaty networks, bank secrecy, etc.) to the compliance behaviour of HNWIs, however the focus of this report is not on tax policy but on improving compliance within the existing legal framework.

---

1 . In addition to large corporate taxpayers, see Intermediaries Study, pp. 6, 11.

2 . Refer to the Glossary for an explanation of this term.

3 . Refer to the Glossary for an explanation of this term.

4 . For more information, see www.oecd.org/taxation/htp.

5 . These can be accessed at www.oecd.org/ctp/ta.

This report uses the term "High Net Worth Individuals" to refer to individuals at the top of the wealth or income scale. The term is used broadly and thus includes both high wealth individuals and high income individuals. However, the report recognises that there are segments within this broad definition that display different characteristics and that may, in turn, require different responses from tax administrations.

The report is primarily addressed at tax administrations but should equally be of interest to HNWIs and their advisers. As the report may have a readership that is wider than the OECD area it also discusses fundamental principles which may already be well established in OECD member countries.

The conclusions and recommendations of the Focus Group are set out in Box 1:

Box 1. Conclusions and Recommendations

The key **conclusions** from this study are:

1. HNWIs pose significant challenges to tax administrations. Four considerations justify a particular focus on this taxpayer segment: complexity, revenue contribution, opportunity, and integrity. (See the Introduction.)

2. Challenges exist with respect to both marketed and bespoke aggressive tax planning. Marketed schemes tend to be used more by the lower end of the HNWI spectrum and bespoke schemes by those at the upper end. (See Part I Section 4.2.)

3. The risk to a country's tax base posed by the use of marketed aggressive tax planning schemes can be reduced significantly using strategies and combinations of strategies already applied successfully by some countries in the Focus Group. These same tools may be somewhat less effective in connection with bespoke aggressive tax planning. (See Part II Section 6.)

4. The challenges posed by bespoke aggressive tax planning can be met by a combination of improved compliance activity and service strategies on the part of the tax administration. (See Part IV.)

5. Meeting such challenges may require legislative action, as well as changes in the way that tax administrations structure and staff their operations. (See Parts II and III.)

6. The experience of countries in the Focus Group is that by focussing resources on the HNWI segment, significant improvements in compliance can be achieved. (See Part III, Section 3.)

7. Some HNWIs are involved in offshore tax evasion. Given the changing international environment, there is likely to be an increasing number of HNWIs considering voluntary disclosure of income or assets hidden abroad. Governments will deal firmly with those who commit tax evasion and fail to come forward before intervention by the authorities. At the same time there may be room to improve clarity and certainty of existing voluntary disclosure initiatives and processes to encourage taxpayers to come forward. (See the Introduction and Part V.)

The tax system in each country will have been shaped by its specific policy, legislation, administration and culture. It is therefore for each country to decide how to approach the issues addressed in this report and their choices for the future. In this context, the study makes a number of **recommendations** to tax administrations as best practices to deal with HNWIs:

1. Understand the risks posed by the HNWI segment and subsets thereof, including the motivations of HNWIs and the wider marketplace for ATP:

- develop a good understanding of the demand for ATP, the suppliers including the supply chain and the types of ATP schemes in the marketplace. (See Part I Sections 3 and 4.)

- understand how the market functions: what are the drivers; and what are the linkages between the individual taxpayers, their advisers and other service providers. (See Part I Section 4.)

- look beyond the tax drivers and develop a good commercial awareness of the broader concerns of HNWIs, including privacy, wealth preservation and their ability to pass on their wealth to future generations. (See Part III Section 2.3.)
- gather and effectively use information obtained from various sources to identify high risk HNWIs and their advisers so that resources can be appropriately targeted. (See Part II Section 2.1.)

2. Establish an appropriate structure in tax administrations to deal with HNWIs by:

- focussing resources to deal with HNWIs, for instance by creating dedicated units, and ensuring that any such initiatives are adequately resourced and staffed by experienced officials who demonstrate impartiality, proportionality, responsiveness, and competence including commercial awareness. (See Part III.)
- establishing a framework for dialogue between senior revenue officials, HNWIs and their advisers. (See Part III Section 2.4.)
- balancing compliance activities with taxpayer service functions such as designated contact points. (See Part III.)

3. Improve international co-operation at both a strategic and operational level, including the use of regular meetings between heads of HNWI units or other specialists within tax administrations. (See Part II Section 2.3.)

4. Create an appropriate legislative framework targeted at specific aggressive tax planning risks by:

- considering "demand"-focussed strategies such as reviewing the effectiveness of penalty rules for ATP to see whether they provide the right incentive for compliance. (See Part II Section 3.)
- exploring "product"-focussed strategies such as avoidance proofing legislation and early disclosure regimes for avoidance transactions or tax shelters. (See Part II Section 4.)
- examining "supply"-focussed strategies such as promoter penalties to alter the risk reward profile for promoters of ATP schemes. (See Part II Section 5.)
- taking a holistic approach rather than looking at such strategies in isolation. (See Part II Section 6.)

5. Explore how the concept of co-operative compliance could be applied to the HNWI segment by:

- considering and where appropriate consulting on the use of co-operative strategies. The provision of early certainty to HNWIs encourages transparency and disclosure, which in turn can improve overall voluntary compliance levels. (See Part IV Section 3.)
- considering the use of dedicated contact points. (See Part IV Section 3.2.)
- exploring the desirability and feasibility of developing a pre-filing programme or advance ruling programme to provide a higher level of certainty. (See Part IV Section 3.2.)
- where appropriate, involve the advisers of HNWIs in the development of legislation that specifically affects their clients. (See Part IV Section 3.2.)
- communicating an expectation to advisers of HNWIs that for there to be a co-operative and effective relationship between advisers and tax administrations, there needs to be transparency and disclosure on the part of advisers that go beyond what is statutorily required. (See Part IV Section 2.)
- providing clarity on key issues of concern to taxpayers wishing to make a full disclosure regarding past non-compliance. (See Part V.)

The experience of countries that have already implemented some or all of those best practices suggests that firm action when combined with good compliance activity and good service can significantly improve compliance by HNWIs. The exact "mix" will, of course, depend on each country's position.

INTRODUCTION – WHY FOCUS ON THE HNWI TAXPAYER SEGMENT

1. Fair and equal treatment of taxpayers is a fundamental principle of tax administration. Nevertheless the limited resources available often have to be focussed on particular risk areas or higher risk taxpayer segments. There are typically four considerations that justify a particular focus on the HNWI[6] segment: complexity, revenue, opportunity and integrity.

Complexity

2. The affairs of HNWIs are likely to be substantially more complex than the affairs of other taxpayers. The affairs of internationally mobile HNWIs may raise questions of tax residence, the application of treaties and the classification of foreign entities and arrangements to name just a few of the issues. HNWIs often have income from a variety of sources. The very wealthy may have complex business arrangements with their wealth spread across a number of closely-held companies, partnerships, trusts or foundations and may be exposed to a number of taxes. Understanding the sources of income as well as links and relationships is an important part of understanding the risk and being able to assist in improving compliance.

Revenue contribution

3. HNWIs pay a large proportion of total income tax collected. In the United Kingdom, for example, the top 0.5% of taxpayers pay 17% of total income tax.[7] In Germany the top 0.1% of taxpayers pay 8% of total income tax[8] and in the United States, the top 1% pay about 40% of total federal income tax.[9] The relative contribution of HNWIs to gift and inheritance tax is even higher given that the typical exemption thresholds will often eliminate or significantly reduce the contribution by the less wealthy. Therefore even if there was no higher propensity for aggressive tax planning[10] schemes amongst HNWIs as opposed to the rest of the taxpaying population, the large amount of tax potentially at stake would warrant particular attention to this group of taxpayers.

4. The risk to tax revenue not only relates to aggressive tax planning (or tax evasion[11]) but there is also the risk that HNWIs, especially those that are internationally mobile, leave the jurisdiction. Only a very small number of countries assess tax on the basis of citizenship, so for the majority of countries there is a clear interest in retaining them as resident taxpayers. Where decisions about departure are related to matters of taxation, they will largely be driven by the legal environment including the applicable tax

6 . Refer to the Glossary for an explanation of this term.

7 . www.hmrc.gov.uk/stats

8 . Data relating to tax year 2004. Statistiches Bundesamt, Jährliche Einkommensteuerstatistik - Fachserie 14 Reihe 7.1.1 – 2004 (income tax statistics), www.destatis.de.

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

10 . Refer to the Glossary for an explanation of this term.

11 . Refer to the Glossary for an explanation of this term.

burden, but a good understanding of the HNWI segment will help early identification of issues, trends and international developments and may allow for a speedier and more considered response.

Opportunity

5. Individuals within a higher income or wealth bracket are often more adept at tax planning. Their wider range of income sources, structures under their control and international features provide greater opportunities for aggressive tax planning. A further key contributing factor is that these individuals are more likely to receive advice from a financial expert. In the United Kingdom, for example, Independent Financial Advisers (IFAs) are reported to serve approximately 70% of the total HNWI population.[12] HNWIs have access to sophisticated tax advice, including exposure to aggressive tax planning, by professionals who also operate within a network where tax products are circulated.

6. The economics of tax planning are also important: tax mitigation will only be attractive where the tax benefit exceeds the cost. For instance, users of widely marketed schemes will typically have to fund advisory fees and a personal cash investment before the tax planning is carried out, which requires a certain level of cash liquidity. As planning becomes more bespoke the costs often rise and in addition to higher advisory fees, users may incur additional costs such as formation fees for offshore entities, loan arrangement fees, interest charges and annual remuneration of trustees.

Integrity

7. In many countries, there is often a perception amongst the wider population that those with the greatest wealth and/or highest income pay the least tax. As the above figures show, this is not necessarily the case but it does demonstrate the enhanced scrutiny which the public expect for the HNWI segment. HNWIs attract media and public attention more than other individuals often because of their high standing in industry and business or their ‘celebrity’ status. Any tax offences are also likely to attract far more attention. A government that pledges to protect its tax revenue must therefore demonstrate that its tax system is fair and that its compliance strategy equally applies to the HNWI segment.[13]

8. These four considerations have led a number of countries to develop particular compliance programmes around the HNWI taxpayer segment. This report builds on these developments and explores different strategies to improve compliance within this segment.

9. While the focus of this report is on aggressive tax planning by HNWIs, the Focus Group recognises the risk that tax evasion and, in particular, offshore tax evasion poses to the revenue base. Recent events in Liechtenstein are only the latest in a series of revelations showing the gravity of the problem. A number of recent offshore initiatives point in the same direction.[14] Globally, trillions of dollars are held offshore and governments around the world are losing billions of tax dollars every year because taxpayers fail to report vast sums hidden abroad.

---

12 . *UK High Net Worth Independent Financial Advisors*, Datamonitor 2005, reports that there are 393,000 HNWIs served by IFAs and the Citi Bank Knight Frank (2008) report finds there to be a total of 557,000 HNWIs in the UK.

13 . The Australian Taxation Office (ATO), for instance, reminds its wealthiest taxpayers that “non-compliance … undermines community confidence in Australia’s tax system and short-changes other citizens”, see Australian Taxation Office (ATO) (2008), *Wealthy and Wise: a tax guide for Australia’s wealthiest people*, Australian Taxation Office, Canberra, p.12.

14 . For instance, the United Kingdom has already recovered more than GBP 400 million in unpaid taxes through its voluntary disclosure facility. Ireland has collected more than EUR 900 million of taxes through a series of targeted approaches relating to offshore tax evasion.

10. Offshore tax evasion can be found across all taxpayer segments not just HNWIs. However, more sophisticated and expensive structures are likely to be the prerogative of wealthier taxpayers. Regular advisers to HNWIs will often be unaware of such tax evasion activities and may only learn about the client's involvement when government authorities start investigations or upon occurrence of other triggering events.[15]

11. Recognising the importance of the issue, the OECD has had a long standing agenda of improving transparency and international information exchange for tax purposes and this work is carried forward mainly through the Forum on Harmful Tax Practices, the Global Forum on Transparency and Exchange of Information,[16] and Working Party No. 8 on Tax Avoidance and Evasion. Supplementing this work, Working Party No. 8 on Tax Avoidance and Evasion also set up a separate Focus Group to look into initiatives or tools that have been used successfully by some countries and more generally to explore measures that tax administrations concerned about offshore tax evasion could consider. The proposals of this Focus Group are summarised in Annex B.

12. Much of this report is focussed on income tax including capital gains tax. However, this should not be taken to suggest that other taxes such as inheritance taxes do not pose challenges to both tax administrations and HNWIs. Tax administrations have concerns about aggressive tax planning and tax evasion in the inheritance tax area, while HNWIs and their advisers are often concerned about the very real risks of double taxation in the international context.[17]

13. The remainder of this report consists of five parts: Part I describes the HNWI taxpayer segment, the various risks within this segment including planning techniques used and the marketing and distribution of schemes. Part II looks at the range of strategies targeted at eliminating or reducing aggressive tax planning. Part III considers how tax administrations can organise their resources to most appropriately address the HNWI risk. Part IV discusses co-operative strategies and Part V addresses voluntary disclosure regarding past non-compliance.

---

15 . For example, the sale of a business or succession planning.

16 . For more information, see www.oecd.org/taxation/htp.

17 . During the consultation process advisers repeatedly stressed that the OECD and its member countries should expend more efforts on reducing the incidences of double taxation in the area of inheritance tax. In particular they stressed the underdeveloped network of gift and inheritance tax conventions.

PART I - THE ENVIRONMENT AND THE RISKS

1. Description of High Net Worth Individual taxpayer segment

14. This report uses the term "High Net Worth Individuals" to refer to individuals at the top of the wealth or income scale. The term "High Net Worth Individuals" (HNWI) is used broadly and thus includes both high wealth individuals[18] and high income individuals.[19] It does not otherwise attempt to define the term as any conclusions from this report will have to be implemented in the context of what is most appropriate in the circumstances of each country.

15. Wealth reports published by various firms[20] typically define the HNWI population by applying a threshold test which is generally USD 1 million or more in financial or investable wealth or assets under control. The threshold takes into account assets held directly by the individual and those held indirectly through controlled entities such as private companies and those held by trustees for beneficiaries, but excludes the individual's private residence.

16. Indications are that there are between 8 and 10 million individuals worldwide who meet these criteria.[21] These reports, which predate the current financial and economic crisis, show that both the HNWI world-wide population and their total wealth are growing annually.

17. One report estimated that total wealth held by HNWIs was USD 40.7 trillion.[22] Other reports suggested total wealth in 2008 to be in the range of USD 50 - 118 trillion.[23] Future HNWI wealth was projected to reach between USD 59 - 200 trillion between 2010 and 2012[24] but due to the current crisis HNWI wealth appears to have been significantly reduced. [25]

---

18 . The term 'net wealth' or "net worth' is generally understood to refer to assets less liabilities. The term 'high net wealth' or "high net worth' is used interchangeably in this report with the term 'high wealth' to loosely refer to those at the top of the wealth scale.

19 . The term 'high income individuals' is used very broadly also, to refer to those at the top of the income scale.

20 . Barclays Wealth (2007) *Volume 1: The Future of Wealth* and (2008) *Volume 4: The True Value of Wealth*, Barclays Wealth, London*;* Boston Consulting Group (2008) *Global Wealth 2008*; Citi Private Bank and Knight Frank (2008) *Wealth Report 2008*, Redwood, London; McKinsey & Company (2005) *$118 Trillion and Counting: Taking Stock of the World's Capital Markets*; Merrill Lynch Cap Gemini (2008) *World Wealth Report 2008;* Oliver Wyman (2008) *The Future of Banking – a Wealth of Opportunity?*

21 . See Citi Private Bank and Knight Frank (2008) *Wealth Report 2008* (8 million); Merrill Lynch Cap Gemini (2008) (10.1 million); Boston Consulting Group (2008) *Global Wealth 2008* (10.7 million).

22 . Merrill Lynch Cap Gemini (2008).

23 . See Oliver Wyman (2008) *The Future of Banking – a Wealth of Opportunity?*(USD 50 trillion); Boston Consulting Group (2008) *Global Wealth 2008* (USD 109.5 trillion); McKinsey & Company (2005) *$118 Trillion and Counting: Taking Stock of the World's Capital Markets* (USD 118 trillion).

24 . Merrill Lynch Cap Gemini (2008) *World Wealth Report 2008* (USD 59.1 trillion by 2012); Boston Consulting Group (2007) *Global Wealth 2007* (USD 128.6 trillion by 2011); Oliver Wyman (2008) *The*

18. The reports indicate that the growth in HNWI numbers in 2007 was not uniform across the globe. The worldwide growth in the HNWI population between 2006 and 2007 was 6%, but emerging markets, particularly those in the Middle East and Latin America, had the greatest regional HNWI population gains with growth up to 15.6%.[26] For a more detailed depiction of the global growth rate in the HNWI population and the absolute population in 2007 see Annex C.

1.1 HNWI segmentation

19. A subset of the HNWI population is the "ultra high net worth individuals". Depending on the definition used, these are individuals who control the equivalent of USD 3 -30 million or more in financial assets.[27]

20. Segmentation of the HNWI population is also undertaken by banks for the purpose of determining the level of service provision they feel is appropriate. For example, a United Kingdom bank active in the private banking area uses the following segmentation for its commercial purposes:

- **Affluent**: net investable assets of GBP 0.5 million **-** 5 million
- **HNW**: investable assets of GBP 5 million **-** 20 million
- **HNW+**: investable assets in excess of GBP 20 million.

21. As the customers' wealth grows or diminishes they move between these segments and the style and level of service alters accordingly; those in the wealthiest segment receive a bespoke personal service while those considered affluent are offered more generic services.

1.2 Income and wealth

22. High income and high wealth individuals often have different approaches to wealth creation and preservation as well as different tax risk profiles. Their tax strategies may have a different focus, for example sheltering income versus preserving wealth, and high wealth individuals may also be concerned with a wider range of taxes, including inheritance taxes.

23. In a significant number of cases wealth is inherited. On a global basis this number is estimated at around 30% of the HNWI population,[28] but there are likely to be substantial differences between emerging and developed economies, and between economies with high growth rates and those with lower growth rates. In Ireland for instance, most of the wealth held by HNWIs is self-created and has accumulated over

---

Future of Banking – a Wealth of Opportunity? (USD 75 trillion by 2012); McKinsey & Company (2005) *$118 Trillion and Counting: Taking Stock of the World's Capital Markets* (USD 200 trillion by 2010).

25 . See for example, The Economist (4 April 2009, "A special Report on the Rich", page 3) where it is reported that "[a] survey by Oliver Wyman … estimates that the financial crisis has caused high-net-worth individuals … to lose $`10 trillion, or a quarter of their wealth.".

26 . Merrill Lynch Cap Gemini (2008) p 4.

27 . See Merrill Lynch Cap Gemini (2008) *World Wealth Report 2008* (USD 30 million); Boston Consulting Group (2007) *Global Wealth 2007* (USD 5 million); Oliver Wyman (2008) *The Future of Banking – a Wealth of Opportunity?* (USD 30 million) and Barclays Wealth (2007) *Volume 1: The Future of Wealth* and Barclays Wealth (2008) *Volume 4: The True Value of Wealth* (USD 3 million).

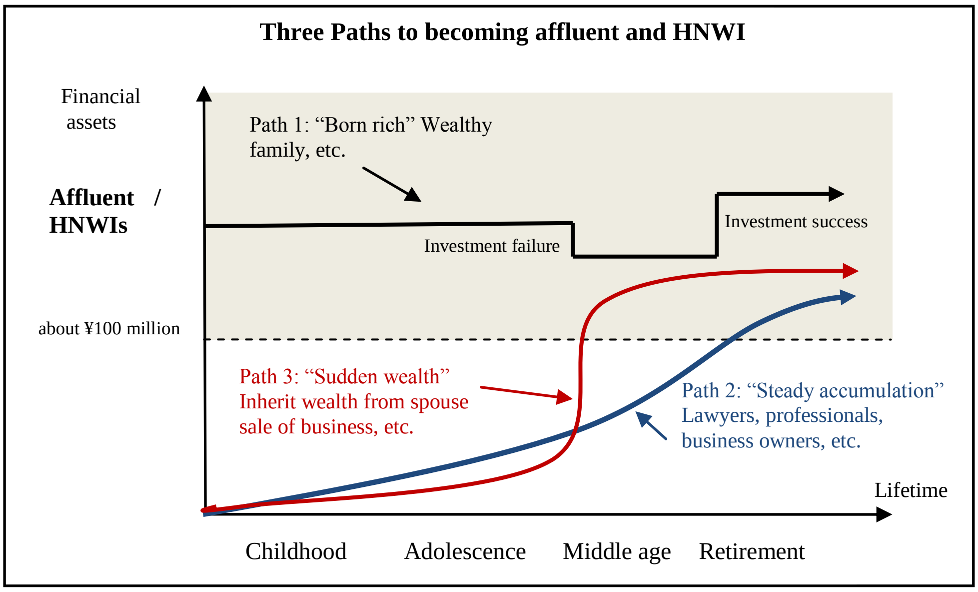
28 . Oliver Wyman (2008), *The Future of Private Banking: A Wealth of Opportunity?*, p.21.

the last 20 years. In contrast, the engine of wealth creation in Germany is often in businesses that have been in family ownership for generations.

24. High income over a period of years will in many cases[29] result in high wealth. Conversely, high wealth individuals may have very low income, for example those that build substantial capital in their businesses without taking any financial reward. In some instances, the distinction between the two categories may relate to the different life cycle stages of a particular taxpayer rather than a description of different taxpayers.

25. A HNWI's stage in the "wealth cycle" will often determine his or her strategy. These stages are described in Figure 1 -

Figure 1. Three paths to becoming HNWI



Source: Nomura Research Institute Limited[30]

26. The Australian Taxation Office describes the typical "business life cycle" as:

a) creating, building or obtaining wealth;

b) maintaining wealth; and

c) passing on wealth and control to future generations.[31]

---

29 . Whether the reference is to "some" or "many" cases depends on the definition of high wealth. The report by Oliver Wyman (2008), *The Future of Private Banking: A Wealth of Opportunity?* at page 21 suggests that 70% of wealth is self-created by entrepreneurs or highly paid executives.

30 . Nomura Research Institute (2006), *Marketing for Newly Wealthy Clients: Targeting the Mass Affluent*, page 3 (Figure 2).

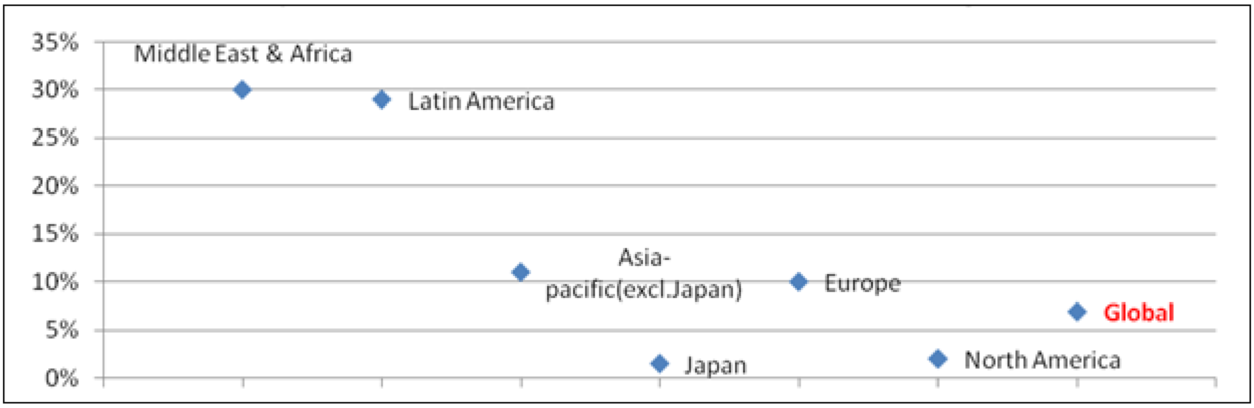
31 . ATO (2008) Wealthy and Wise: a tax guide for Australia's wealthiest people, page 12.

27. Several Focus Group members and external advisers noted that the wealth creation life cycle has a significant impact on tax risks. One would expect the highest income tax risks to arise in the early stages when wealth is created and maintained, whilst the focus is likely to shift to inheritance, estate and gift tax planning and perhaps become more conservative on income tax as the HNWI considers plans for the succession to his or her wealth. Furthermore, the "emerging wealthy" may not seek the level of professional advice appropriate to the complexity of their tax affairs and this further increases the tax risk.

1.3 Onshore and offshore

28. While most of the wealth of HNWIs is held onshore, a significant proportion is held offshore. According to one report, offshore assets[32] accounted for 16% of total global HNWI wealth in 2007.[33] However, the estimates for assets held offshore varied significantly from country to country. According to another report, in Japan only 1% of wealth was held offshore. For North America it is estimated at 2%. It rises to 10% for Europe and the highest proportion is found in Latin America (29%) and the Middle East and Africa (30%).[34] See Figure 2 below.

Figure 2. Proportion of wealth held offshore as a percentage of total wealth of HNWIs



Based on figures from Boston Consulting Group (2007) *Global Wealth 2007*, p.14

29. According to the Oliver Wyman report from 2008 "Europe led by Switzerland and the Channel Islands, remains the most significant destination for offshore assets, followed by the Caribbean, particularly the Cayman Islands and the Bahamas."[35] Asian financial centres are growing fast, but still rank only third in terms of holding offshore assets, marginally ahead of the United States. The figure below shows total inflows and outflows of offshore assets of HNWIs by region.

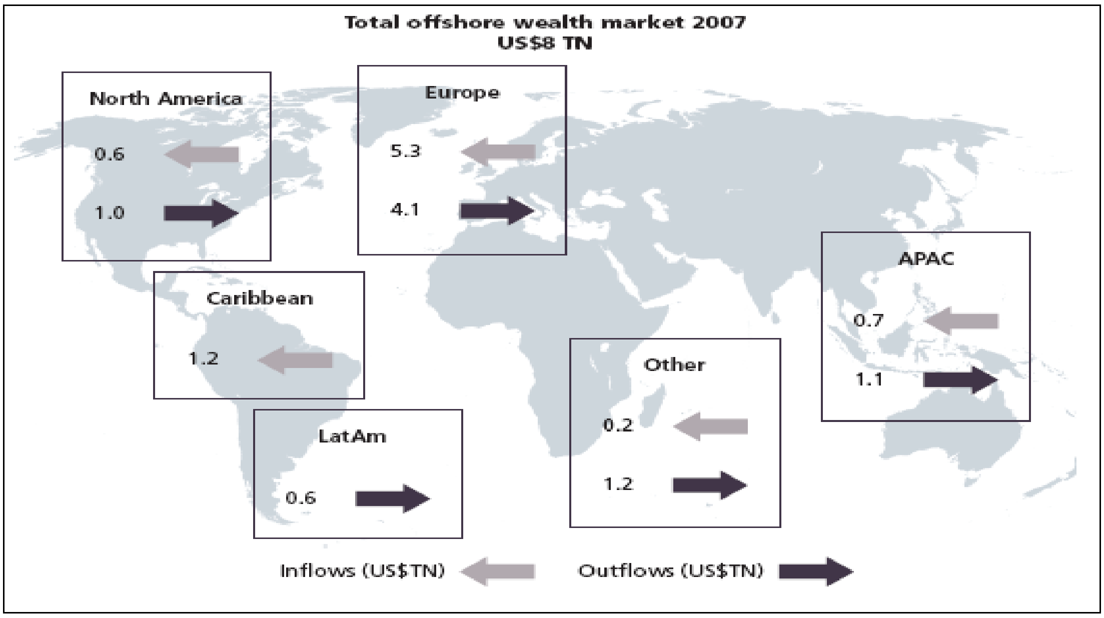
32 . The term "offshore assets" refers to assets held abroad.

33 . Oliver Wyman (2008) *The Future of Banking – a Wealth of Opportunity?*, p.10.

34 . Boston Consulting Group (2007) *Global Wealth 2007.*

35 . Oliver Wyman (2008) *The Future of Banking – a Wealth of Opportunity?*, p.10.

Figure 3. Global offshore assets by source (2007, USD (trillion) using fixed 2007 exchange rates)



Source: Oliver Wyman (2008), *The Future of Private Banking: A Wealth of Opportunity?*, Oliver Wyman, New York, p.10

30. Several reports stress that offshore business is increasingly under pressure and note a growing trend towards keeping and managing assets onshore. For instance, Oliver Wyman in its 2008 report notes that "the traditional competitive advantages of offshore centres are steadily eroding, particularly in more developed parts of the world."[36] This is driven by a range of factors including the increasing sophistication of local service offerings and local investment opportunities. Tax and other regulatory pressures are also often cited. Wealth reports note an increasing repatriation of offshore funds, particularly in Europe, due to increased international tax co-operation.[37]

1.4 International mobility

31. HNWIs typically show higher international mobility than other taxpayer segments. This is true for both high income individuals, such as the senior management of multinational companies, as well as for high wealth individuals. In a survey conducted by Citi Private Bank and Knight Frank,[38] taxation was the most important individual factor influencing the location of the HNWI's primary residence in 29% of cases but overall six other factors including availability of quality services and education facilities were deemed factors of greater relevance.[39] Where tax is a factor, the international movement of HNWIs and

36 . Oliver Wyman (2008) *The Future of Banking – a Wealth of Opportunity?*, p.11.

37 . For updates on the OECD's work on improving international tax co-operation, see www.oecd.org/taxation/htp.

38 . Citi Private Bank and Knight Frank (2008), *Wealth Report 2008.*

39 . Other important individual factors were: access to work (59%); personal security / crime (53%); access to airport (41%); clustering (social networks) (38%); availability of quality services (32%); education facilities (32%); physical property attributes and quality (29%); business opportunities in location (29%); leisure time hobbies and activities (15%), and physical attributes for the location (6%).

their interests is likely to be heavily influenced by country specific legislation, including “exit” charges and the basis for applying base costs to assets when taking up residency in a new country.

32. Residing in no or nominal tax jurisdictions[40] is not necessarily appropriate for all HNWIs and their interests. Business and local taxes, financial service restrictions and lifestyle choices often mean that HNWIs will choose to reside in jurisdictions that provide an appropriate balance between these factors.

2. Tax environment for the HNWI

33. An understanding of different countries’ overall tax system and the applicable tax rates are important factors not just when considering the types of tax planning that taxpayers use, but more generally to understand the potential tax savings that provide the economic incentive for HNWIs to engage in aggressive tax planning or evasion. Annex D identifies the key taxes and tax rates (including exemption amounts) relevant to HNWIs.[41]

34. The top rates of income tax have fallen considerably across the OECD area over the last two decades, sometimes by more than half. Within the Focus Group they are generally above 40%. These rates still provide an economic incentive in all countries in the Focus Group for HNWIs to mitigate, avoid or evade their income tax liability. At the same time it is worth noting that several countries provide preferential regimes for specifically defined groups of taxpayers where those qualifying benefit from a significantly lower effective income tax rate, for example, the approach in the United Kingdom to the taxation of individuals who are resident but not domiciled.[42]

35. Another feature likely to have an impact on a HNWI’s compliance behaviour is the use of differential rates on different types of income. In a number of countries passive[43] income will be taxed at a lower rate. For instance, Italy taxes passive income at a flat 12.5% rate compared to the top income tax rate of 44.9%.

36. Almost all countries in the Focus Group give some tax preference to capital gains as opposed to ordinary income. This ranges from not taxing capital gains at all, through to applying a lower capital gains tax rate, exempting or applying a preferential rate for sales of particular assets or following a particular holding period, to taxing them at the same rate as ordinary income but reducing the taxable base to which the rate is applied. Thus, there is an economic incentive for the use of schemes that seek to convert ordinary income into a capital gain.

37. The overall system of taxation in each country should also be taken into account. Wealth taxes have largely been abolished and exist in only two countries in the Focus Group (France and Norway).

40 . No and nominal tax jurisdictions are those that either do not impose income tax or have very low rates of income tax.

41 . To avoid overloading, the table focuses on personal taxes and does not contain corporate income tax rates. The Focus Group recognises that corporate tax rates are also relevant tax drivers, especially for entrepreneurs amongst HNWIs.

42 . Regimes relevant for HNWI also exist in a number of other countries (e.g. Ireland, France, the Netherlands and the United Kingdom), see footnotes to the table in Annex D.

43 . The term ‘passive income’ generally refers to income that results from neither business nor employment such as interest and dividends.

Three countries (Australia, Canada and Mexico) do not have an inheritance tax or gift tax[44] while Italy has an inheritance tax but applies a comparatively low rate of 4% to 8%.

38. In many cases wealthier HNWIs directly or indirectly own high value personal use assets such as aircrafts, yachts, art and antique collections, and luxury cars. These assets will often transit between different countries which results in cross border tax costs. Often special purpose vehicles and associated structures will be established to mitigate indirect[45] and direct tax costs.

39. HNWIs frequently look at the total tax burden rather than just their individual tax liability and where the HNWI owns a business corporate tax plus perhaps consumption taxes such as VAT and payroll taxes may be included in the perception and assessment of the overall taxation framework of a particular country. For HNWIs with business operations, Annex D may therefore not provide a complete picture of the relevant taxation framework.

3. Tax risks within the HNWI segment

40. For individuals, tax risks are a function of personality as well as a range of other factors, including the overall compliance culture in a particular country and the tax and legal framework. Tax risks may differ by source of income or wealth and there are risks both on the tax evasion and the aggressive tax planning side. Some risks and tax schemes may be generic while others may be more prevalent within certain sub-groups of HNWIs or related to particular events such as the sale of a business (or a significant stake therein).

41. This section is written from a tax administration's perspective and naturally focuses on tax risks. It should not be read to suggest that HNWIs as a group are any less compliant than other taxpayers or that all HNWIs engage in aggressive tax planning. The Focus Group recognises that there is nothing objectionable in tax planning per se provided that it is done within the spirit of the law. Also, as the consultation process has shown, tax planning is used not just to reduce taxes, but also to navigate the often complex world of international taxation and to avoid cases of double taxation.[46]

3.1 Risks by source of income or wealth

- *High income individuals*

42. For high income individuals a particular risk to the tax base relates to artificial loss or deduction "generator" schemes.[47] Such schemes present significant revenue risks because they are flexible enough to meet a wide range of individual circumstances and can be used to shelter large sums from tax. If not countered at an early stage, marketing and uptake by taxpayers can increase very quickly. As the taxpayer will generally claim a significant deduction on his or her tax return, such schemes are relatively easy to detect but sometimes difficult to challenge successfully.

---

44 . It should be noted that individuals resident in these countries may still be affected and need to consider capital gains tax issues as well as international inheritance tax.

45 . This may include taxes levied on the purchase of a property, Goods and Service Tax (GST) and Value Added Taxes (VAT).

46 . For example, in the area of inheritance taxes.

47 . The finer detail of a scheme will depend on particular features within the tax system, for example availability of enhanced reliefs or tax concessions (e.g. capital allowances, research and development allowances and film reliefs) and forms of income that are exempt from tax in the HNWI's country of residence.

43. Deduction generator schemes often seek to further enhance the tax advantage by leveraging the tax deduction through the use of finance provided to the scheme user, preferably on a non-recourse basis.[48] A number of countries have introduced legislation that seeks to limit or deny loss relief where non-recourse or limited recourse finance is used in this way. However, there have been attempts to circumvent these rules through various means to disguise such loans as full recourse (e.g. through the use of offshore arrangements).

44. Partnerships feature heavily in these high income schemes largely because they are generally transparent for tax purposes.[49] A single large transaction carried out by a partnership can create a loss that can be shared between a number of taxpayers, reducing transactional costs such as loan arrangement fees, and maximising the tax advantage to the individual investor. Limited Liability Partnerships offer protection to individuals where high value transactions are carried out. Not insignificantly, the partnership format assists the scheme promoter by grouping together a large number of individuals thus minimising the resources required to implement the transaction.

45. Following extensive litigation as well as legislative action in many Focus Group countries, a number of such schemes have been addressed over recent years. Several countries affected by this type of tax planning have responded by targeting those investors who do not play an active part in the trade of the partnership. However, the idea of restricting losses from passive activities is not new. As early as 1986, the United States enacted the 'passive activity loss' rules which, very broadly, prevent an individual from reducing his or her tax liability using losses from trade or business activities in which he or she does not materially participate or rental activities for non real estate professionals.[50] In general such losses can only be offset against other passive income. Other countries have followed the United States' example more recently and in France, Germany, Ireland, Japan and the United Kingdom, governments have enacted restrictions that generally result in the loss only being offset against profits generated in later years from the same source (i.e. the same trade). There are, however, differences in approach and focus between these national responses. For instance, in 2007 the United Kingdom introduced legislation that placed a restriction (GBP 25,000) on the amount of loss that a non-active partner could claim against other income and gains. Aggressive tax planning then moved towards schemes whereby an individual would seek to realise a loss arising from a sole trade. In 2008, further legislation was enacted in the United Kingdom to replicate the GBP 25,000 loss restriction for losses arising to a non-active sole trader.[51]

- *Highly paid employees and professionals*

46. Schemes designed for particular sub-segments of high income individuals create further risks. Particular schemes are often created for the employment income of highly paid employees who typically receive significant performance related pay, particularly in the financial sector. Whilst the rewards may be high in the short term, job security may be low and there may therefore be a stronger incentive to preserve pre-tax levels of income. Remuneration may also be received in non-cash form such as, for example share options, bonuses and other incentive compensation. These raise particular issues as the relevant taxation

48 . "Recourse" describes the extent to which the lender can require the borrower to use its funds, assets or revenues to pay a debt. A 'full recourse' loan is a loan for which the borrower is personally liable and requires the borrower to use any money to pay the debt when due (i.e. the lenders recovery is not limited to specific collateral).

49 . This is not necessarily the case in Australia. Many limited partnerships (i.e. partnerships in which the liability of at least one partner is limited) are treated as companies for Australian tax purposes and are not transparent for tax purposes.

50 . See Section 469 of the Tax Reform Act 1986.

51 . "Non-Active" is defined as someone devoting less than 10 hours per week to the trade.

rules are often complex, but also create opportunities for aggressive tax planning. Finally, the incentive and opportunity for aggressive tax planning (or even outright tax evasion) is typically greater for large one-off payments rather than continuous and recurring compensation. Schemes in this area include the attempted conversion of employment income into a lower taxed capital gain,[52] the provision of benefits to key employees via third parties[53] and the conversion of remuneration into a non-taxable or lower taxed receipt in the hands of the employee.

47. The latter type of planning is often based on the interposition of a special purpose vehicle, most frequently a trust.[54] The employer will claim a deduction for a payment to a trust on the basis that it is for the purposes of benefiting its employees. The payment made by the trust to the employee will be designed to take a non-taxable form, for example, by way of loan or distribution of a life insurance policy.[55] The trust will remain tax neutral on the transaction or will be situated in a no or nominal tax jurisdiction.

48. Internationally mobile executives may also use international structures involving the use of tax conventions. For example, where an employee performs duties for his or her employer in a number of countries, the employer may channel all non-domestic remuneration through a subsidiary in one country and then rely on treaty rules that exempt income in the home jurisdiction where that income consists of remuneration earned in the other treaty country for activities carried out there. The employee may only perform a portion of his or her overseas duties in the other treaty country but will claim the full benefits of the treaty in respect of all his or her overseas activities. Relying on domestic law provisions the employee may further seek to exclude a portion of the remuneration from taxation in the other treaty country.

49. An alternative technique and one that has the potential to cross the border to tax evasion is a scheme to divert remuneration offshore whereby an intermediate offshore company will invoice a resident company for services provided by the HNWI. The funds accumulated by this company will then be made available to the HNWI by way of an offshore bank account, often accessed by a credit or debit card. Alternatively the funds may remain in this low-tax jurisdiction and the shares in the offshore company are later sold, with the individual claiming to realise a capital gain taxed at a lower rate rather than employment income.

50. While 'professionals' such as lawyers, accountants and doctors may also fall in the high income category, their income and the rate at which it increases is generally steadier than that of other highly paid employees. Given that they typically hold a meaningful equity interest in the business, professionals also show similarities to other entrepreneurs. For these reasons professionals may not always use the same schemes used by other highly paid employees. Nevertheless, several countries in the Focus Group (e.g. the United Kingdom and Australia) noted that highly paid employees and "professionals" are typically "time poor" and as a result often enter into so called "off-the-shelf"[56] schemes that require little involvement of

52 . Such schemes have been reported by Focus Group members in, for instance, the private equity context or as remuneration in financial firms.

53 . Schemes seen by Focus Group members include indirect remuneration taking the form of a profitable off-market contract with a third party where the employer compensates the third party for its loss. Another method reported is to allow the employee to purchase high-value goods or services from a third party supplier at a discount. This discount is compensated by the employer.

54 . Other structures may also be used for example a "Dutch Stichting" or a private foundation established in a no or nominal tax jurisdiction.

55 . Alternatively payments may be labelled as "capital distributions" taxable at lower capital gains tax rates.

56 . This term is used to refer to schemes that are designed to require little involvement of the taxpayer in the implementation of the transactions. They are often characterised by the large number of individuals investing in the structure. The term "plug and play" is also used to refer to this type of scheme.

the taxpayer. However, this was not the experience of all Focus Group members (e.g. France). Similarly some countries noted that partners or other senior members of large law and accounting firms were increasingly less likely to engage in aggressive tax planning because of high governance standards and the recognition that reputation was paramount to business success (e.g. the United Kingdom and the United States). Others in the Focus Group had not observed any differences in their use of aggressive tax planning relative to other high income individuals (e.g. France).

- *Entrepreneurs*

51. There are several types of HNWI entrepreneurs each presenting particular tax risks. They include the self-made and serial entrepreneurs that are by their nature risk takers and may therefore have an increased appetite for tax risk. In contrast, shareholders or partners in long-standing private enterprises are often more risk averse and focus on long term success and wealth preservation. Reputation may also be of greater importance especially where the family name is known as a consumer brand.

52. Aggressive tax planning schemes for entrepreneurs often relate to income or asset diversion[57] or planning around events such as an acquisition or sale of a business or a large stake therein. Minimising tax on capital gains resulting from the sale of a business commonly takes one of two methods: either by creating a matching (non-economic) loss to off-set the gain, or by ensuring that no taxable gain arises in the HNWI's country of residence.

53. Whilst the creation of a tax-deductible loss can take a variety of forms depending on the specifics of the applicable tax law, what is common to the various schemes is the absence of an economic loss. In a number of countries this key factor has provided the basis for a legislative remedy through the introduction of targeted anti-avoidance rules or in others by the application of a general anti-avoidance rule.

54. The second method often involves the realisation of the gain in a no or nominal tax jurisdiction, for instance, by using a trust established for the benefit of the taxpayer and/or his family. To be effective, the transfer of the asset abroad must not give rise to a tax charge, which can often be achieved by using rollover relief or provisions exempting gains arising from a share exchange, and the scheme must ensure that the proceeds of sale can be repatriated tax-free. The scheme designers will also seek to avoid the invocation of transfer pricing or Controlled Foreign Company (CFC) rules, or the migration of the taxpayer.

55. Although the examples above concentrate on the disposal of shares, the techniques described have been applied to many assets that give rise to taxable gains on disposal.

56. As the taxation of capital gains is often more favourable than that imposed on 'trading' or 'ordinary' income,[58] schemes have also been devised that seek to translate a disposal that would give rise to an income receipt into one that gives rise to a capital receipt. Where the disposal of an asset results in a loss, the translation may occur the other way as income tax treatment may be preferable in terms of a greater flexibility in offset and a higher value in tax terms.

- *Financial Entrepreneurs*

57. Financial entrepreneurs, such as private equity executives and hedge fund managers with significant equity/performance linked compensation, are sometimes seen as a separate sub-segment of

57 . For example, channelling of income/assets into the hands of lower taxed family members or other related persons or entities (including trusts or foundations) while retaining control of the business or diverting private assets through business entities to obtain tax relief on expenditure and depreciation etc.

58 . See Annex D.

entrepreneurs. By the very nature of their business activities, these individuals is often well versed in finance and tax matters and tend to deploy relatively aggressive strategies. In several countries financial entrepreneurs are often able to structure their affairs such that the bulk of their earnings is subject to lower capital gains tax rates. Such structures may raise tax policy questions but do not typically constitute aggressive tax planning. However, there are also examples where aggressive tax planning schemes are used in an attempt to claim capital gains tax treatment for what the law intended to characterise as compensation income.

58. The prime value drivers of these businesses are people and intangible assets both of which are internationally mobile. Thus, significant changes in the overall taxation framework in one country may result in the relocation of the business or business functions as a simpler route to lower taxation as compared to the use of aggressive tax planning.

- *Sportspersons and entertainers*

59. Sportspersons and entertainers are a further HNWI sub-segment that can present distinct tax issues. Individuals in this segment are often internationally mobile by virtue of their occupation and accordingly cross border issues feature prominently. Those that are very successful in their field are likely to have created valuable intangible assets and can charge high fees for image rights, performance rights and product endorsements etc.

60. There have been a number of well publicised cases involving tennis players, motor racing drivers, pop singers and opera stars amongst others using tax mitigation strategies extending to a change of tax residence. Such cases often raise the question of whether these individuals have actually relinquished tax residency (and/or domicile where this is relevant) in their home country. Furthermore, such individuals, as with aggressive tax planning schemes used by corporates, may seek to transfer certain intangible rights to shell companies situated in no or nominal tax jurisdictions in an attempt to avoid paying tax on payments received for such intangible rights.[59] Such structures appear with varying degrees of complexity and sophistication, ranging from a simple shell company to several layers of entities involving trusts and other structures and the use of tax treaties.[60]

61. Team sportspersons may be less able to change residence for tax purposes but may engage in the same off-the-shelf schemes used by other high income individuals. Certain schemes are specifically designed for particular groups of sportspersons for example using dual or multiple contracts in an attempt to change the tax consequences for domestic and international appearances.[61] Some team sports see

59 . Note that several countries have the ability to counter such schemes. For instance, in France, a non-resident who uses an entity located abroad to receive payments for his or her services furnished in France can be taxed in France if, among other things, the provider of the service does not prove that the interposed entity has a predominant industrial or commercial activity (other than the furnishing of the services). See Article 155 A II du Code général des impôts.

60. In this regard also see Article 17, paragraph 2 of the OECD Model Convention on Income and on Capital. Some practical suggestions on addressing abuses of Article 17 were set out in the Report "Taxation of Entertainers, Artistes and Sportsmen" (OECD) 1987. The Committee of Fiscal Affairs through its Working Party No. 1 is currently reviewing the operation of Article 17.

61 . Dual contracts may be popular where a country taxes non-domiciled individuals on a remittance basis, such as in the United Kingdom. The foreign domiciled individual will enter into two contracts. Firstly, they will contract with a United Kingdom employer to perform duties in the United Kingdom and, by way of a second contract, will contract with an associated employer resident overseas to perform duties in the rest of the world excluding the United Kingdom. Where a dual contract is effective, the individual will be taxed on income arising from duties performed in the United Kingdom and, in respect of income from the overseas duties, only on amounts that are remitted to the United Kingdom. Where such an arrangement

frequent movement of players, giving rise to sometimes substantial transfer and signing-on fees. The teams' owners can make a financial saving where they reach agreement on after-tax (net) figures and are able to minimise tax on a payment by, for example, disguising the nature of the payment (for instance by characterising a "sign-on bonus" or other salary as an agent or transfer fee).[62]

- *Wealthy investors*

62. Wealthy investors are often highly mobile and may be attracted to countries perceived as offering a favourable taxation environment. This may include such factors as no or low capital gains tax on the disposition of privately-held assets and the presence of a good treaty network. Rather than migrating their tax residence, wealthy investors may hold investments through no or nominally taxed offshore entities with a view to mitigating tax on foreign source income or gains. Such structures may range from simple tax planning, to tax evasion structures, for example failing to disclose offshore income or gains despite an obligation to do so under the law.

63. HNWIs with significant levels of passive investments who seek to mitigate potential capital gains tax will do so in a similar manner to the entrepreneurs discussed above in paragraphs 51 to 56.

3.2 Other risk considerations

64. This section focuses on a number of additional factors which cut across each of the segments discussed above. Although these features will be particular to each HNWI, they are relevant in determining the tax risks.

- *Inheritance*

65. Inheritance as a source of wealth can present tax compliance issues not only for the person receiving wealth but also for the person transferring it. These issues do not necessarily arise solely because of a desire to minimise tax liabilities but from a combination of wealth management objectives including confidentiality, philanthropy, and how and by whom the inherited wealth is used.

66. HNWIs present particular risks for inheritance tax as exemption levels in most countries mean that the tax applies only where there is a relatively high level of wealth in the estate at the time of death.[63] Schemes in this area range from basic schemes such as fictitious transfers or gifts and gifts concealed as sales, to sophisticated planning using international asset holding vehicles, for example trusts and foundations, to avoid inheritance tax on assets such as real property. Schemes also involve the acquisition of inheritance tax preferred assets (e.g. tangible immovable property) for the sole purpose of reducing tax and diverting gifts via tax preferred entities, for example non-listed companies or partnerships, prior to the transfer of beneficial ownership to the gift recipient. The consultation process has shown that risks to the gift or inheritance tax base not only result from tax evasion or aggressive tax planning but also from the risk that HNWIs may transfer their residence and reconfigure their assets to avoid an inheritance tax burden perceived as too high. The consultation process has further shown that significant international inheritance tax planning is focused on avoiding double taxation rather than avoiding single taxation.

---

turns from planning to potential avoidance or evasion is where the arrangements conceal what is in substance only one employment relationship (with the same roles and responsibilities) and the two contracts are only a means to obtain a tax advantage.

62 . In response to particular issues raised by football and other sports tax administrations have set up specific structures to deal with the risk. See for example the "National Specialist Unit of Professional Sport" in the Netherlands.

63 . See Annex D.

67. Individuals inheriting substantial amounts may also inherit the structures that maintain that wealth. Issues can arise from arrangements made and structures put in place by donors prior to their death. These may have had the purpose of mitigating taxes by, for example, maintaining assets in an offshore trust or foundation that is not disclosed to the tax authorities. Beneficiaries of an estate may wish to maintain a transparent relationship with the tax authority and disclose the details of the offshore entities. Their willingness to make such a disclosure, however, will be influenced by the attitude of other beneficiaries, the risk of further charges such as interest and penalties and in some cases the risk that they may be required to assume the unpaid tax liability of their donor. In some countries this can result in tax liabilities equal to or even in excess of the amount of inheritance thus providing a major disincentive to voluntary disclosure.[64]

- *Sales and dispositions*

68. Almost by definition sales and other dispositions of assets present particular tax risks. Where assets have appreciated, taxpayers may seek to use schemes that eliminate or mitigate the resulting tax charge. Where the assets have depreciated alternative schemes may attempt to circumvent loss transfer rules and use them to offset other income or gains.

- *International mobility and tax residency*

69. A HNWI who is internationally mobile may hold a variety of business and personal assets in different countries. The complexity of dealing with different frameworks for tax and other areas of the law can make compliance more difficult but can also increase the opportunity for aggressive tax planning. In such circumstances the tax residence of a person can become an issue for tax administrations. However, the issue of residence is not just an issue for tax administrations but also for HNWIs and their advisers. A significant concern raised during the consultation process was the level of uncertainty that can surround the question of tax residence and in particular the application of the tie breaker rule in the context of an income tax convention.[65]

- *Professional advisers*

70. A competent and well informed adviser is of paramount importance for a HNWI to ensure his or her affairs are compliant. At the same time reputable advisers are aware of their duty of care to their client to ensure the client is made aware of tax planning opportunities. The reputational risk to the adviser is often a key feature in the type of tax planning arrangements advisers are prepared to recommend to their clients. However, issues may arise where the tax adviser is not made fully aware of all facts relevant to his or her client's tax position. This may be because of the presence of other advisers (including family offices[66]) or because of a particular desire of the HNWI to keep certain aspects of his or her affairs confidential. In these circumstances, the adviser is unable to fully analyse the position and thus provide the necessary guidance to his or her client. Furthermore, it is more difficult for the adviser to fully engage with the tax administration.

64 . See Part V below for a more detailed discussion of this issue.

65 . See Article 4, paragraph 2 of the OECD Model Tax Convention on Income and on Capital (2008), and for a more detailed discussion of the issue Part IV Section 3.

66 . A 'family office' is a company responsible for managing the investments, trusts, and tax affairs of a single wealthy family. In some cases its responsibilities may extend to managing the personal affairs of the family, for example arranging travel, managing household staff and organising family security.

71. Should the complexity of an HNWI's affairs outgrow the expertise of a longstanding adviser, there is an increased risk of an HNWI's affairs being poorly managed and a greater possibility of non-compliance.

72. A further risk factor and a potential indicator of aggressive tax planning is the use of those advisers who are known to be obstructive in their dealings with tax administrations and deliberately seek to obscure their client's affairs from the tax administration, either through concealment or by making procedural challenges to delay or close investigations. There are also some advisers who are prepared to assist their clients in tax evasion.

- *Offshore structures and bank accounts*

73. Offshore structures including trusts, foundations and similar entities, as well as offshore bank accounts constitute an increased tax risk. It is important to note, however, that offshore structures holding private wealth or collective investments, including those held via entities in no or nominal tax jurisdictions can have legitimate non-tax reasons and should not be automatically equated with aggressive tax planning or tax evasion. Key in evaluating the inherent risk is not only an understanding of foreign law but also a commercial understanding of the types and purpose of structures used by HNWIs.

4. The aggressive tax planning marketplace

74. This section seeks to explore how HNWIs come into contact with ATP schemes and how the supply chain works. It discusses the marketing and distribution of schemes and the benefits that a tax administration can draw from better understanding the "marketplace". The Focus Group recognises that the description below may equally apply to tax planning that may not meet the definition of aggressive tax planning. The marketplace and the participants vary country by country but tend to involve accountants, lawyers, bankers and tax and financial advisers.[67] The key reason is that they have a distribution platform in the form of their client list of HNWIs and thus often have the direct client contact. Initial discussions about particular tax planning may be either demand driven, where the customer approaches the adviser, or supply driven where the adviser develops a scheme and approaches potential clients.

4.1 Market drivers

75. An example of a supply driven market is discussed in a United States Senate Report on tax shelters.[68] The report found that by 2003 the United States' tax shelter industry had moved from providing individualised tax advice to developing generic "tax products" that could be aggressively marketed to multiple clients. It describes an accounting firm that looked beyond its own client list to secure introductions to the clients of other institutions such as banks and law and other accounting firms. The marketing of income tax reduction schemes was highly aggressive with the accounting firm selling to individuals "who appeared to have little interest in them or did not understand what they were being sold, and likely would not have used them to reduce their taxes without being approached by [the firm]."[69] Major banks facilitated these schemes by providing funding to the scheme users, tax exempt organisations acted as friendly counterparties and the scheme designers approached investment firms for financial advice

67 . Some schemes are largely created "in-house", e.g. by the employer corporation for key employees. However, even in these cases, outside advisers are often involved in the initial design stage.

68 . United States Senate's Permanent Subcommittee on Investigations (Committee on Government Affairs) (2005), *The Role of Professional Firms in the U.S. Tax Shelter Industry*, US Senate, Washington.

69 . United States Senate's Permanent Subcommittee on Investigations (Committee on Government Affairs) (2005), *The Role of Professional Firms in the U.S. Tax Shelter Industry*, US Senate, Washington, p.33.

and law firms for opinion letters. Following legislative and other action[70] it appears that the mass-marketed segment has been significantly reduced.

76. The United Kingdom has similarly experienced a supply-driven market in aggressive tax planning products where HNWIs will often take advice from Independent Financial Advisers (IFAs) on a range of topics, including investments, retirement planning, insurance, mortgages and other loans, and tax. These advisers act as a vital intermediary for designers and suppliers of tax products, enabling their products to be distributed to a large, yet targeted, market. Correspondingly, IFAs are able to offer their clients a range of tax products to meet their varying requirements, for example a shelter from tax on high income or on anticipated large capital gains.

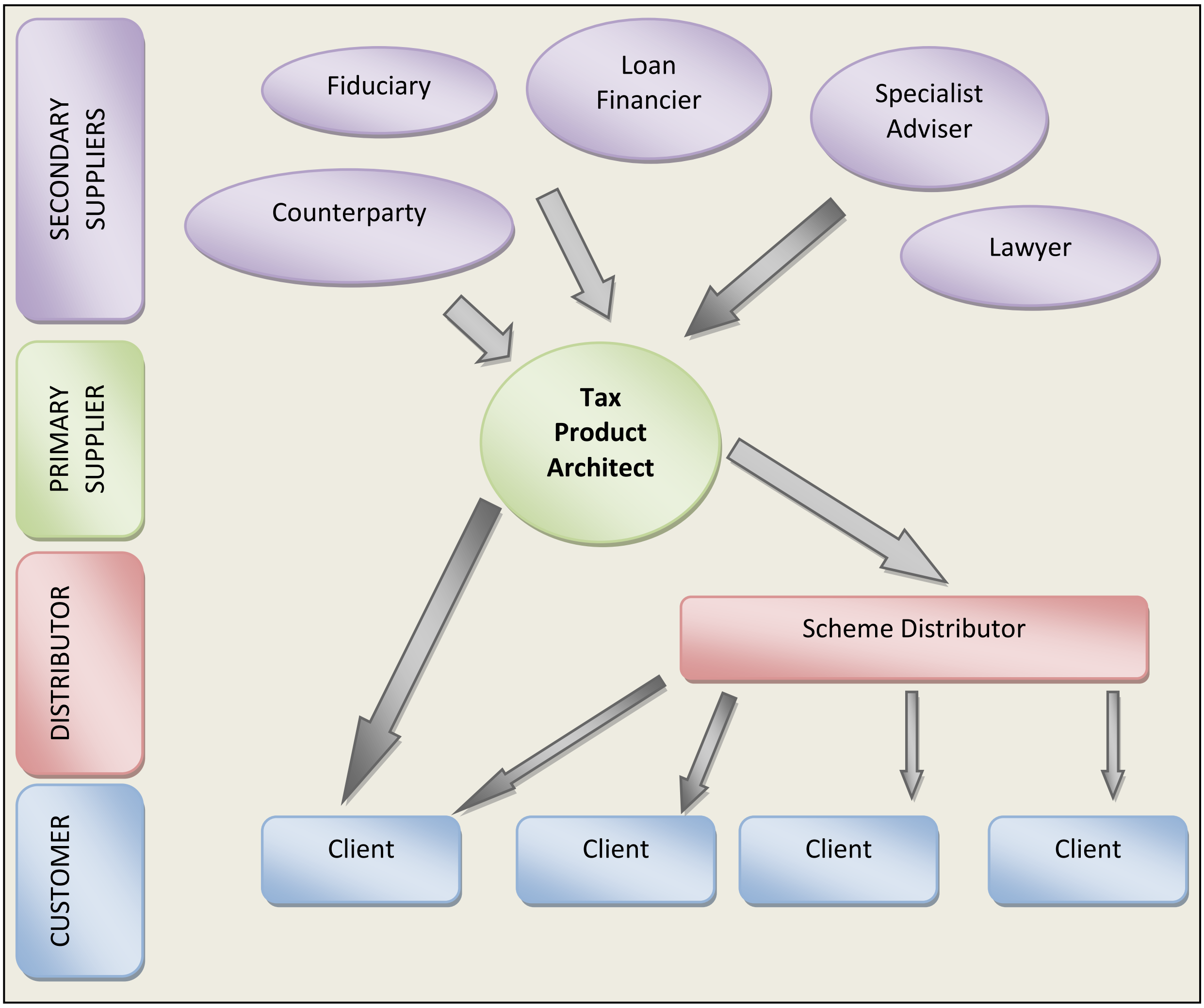
77. Where the tax planning market is demand-driven, mass-marketed schemes are infrequent. Instead HNWIs are more likely to approach their accountant and/or financial adviser to assist them with tax mitigation, who may in turn work with specialist tax lawyers and other advisers to provide a bespoke product.

4.2 The supply chain

78. Despite the differences, there remain fundamental components in the production of an aggressive tax planning arrangement or scheme as can be seen from Figure 4 below.

70 . See Part II below.

Figure 4.The ATP Supply Chain



79. There are infinite variations of the persons adopting the roles illustrated above. For example, accountants and financial advisers may be the architects of the scheme, designing and facilitating its execution, in addition to marketing and distributing the product to their client list. However, this dual role will only be possible where the adviser has the necessary expertise to develop the product and a network through which to sell it. The possession of a client list and the potential to expand that list is paramount to the success of marketing, as is evidenced in the example discussed above.

80. As asset wealth increases and the HNWI's affairs become more complex, advisers tend to provide a higher level of service and accordingly each adviser will have fewer clients. In the case of ultra-HNWIs they may have a dedicated private or family office.[71] These advisers will often act as an intermediary distributor, introducing their client to promoters (which may include the structured finance arm of a bank) who will deliver the appropriate product. Advisers then often interface with the family office and may not have face–to-face contact with the HNWI. The smaller client list of private bankers

71 . See footnote 66 above.

could explain why mass-marketed schemes are typically not used by ultra-HNWIs but rather high-income individuals whose advisers have a larger distribution network. This is certainly the experience of the French tax authority who has found that there is a predominance of individually tailored tax planning in the wealthier segment of HNWIs.

81. Lawyers, given their smaller client lists and higher cost structures are more likely to take one of two roles: they will be involved in providing opinions on the likely tax treatment of the products or arrangements, and for more complicated or higher value transactions, will act as scheme architect in advising individual clients that consider entering into such schemes or arrangements. Such bespoke planning will be more expensive for the taxpayer and will most likely be undertaken as part of a contemplated commercial transaction. Clearly where the architect designs a bespoke product for his or her client, no distributor is required.

82. In some situations the large accountancy and law firms will use the HNWI as an informal distributor. The experience in Norway for example is that promoters of tax products aimed at companies will use the wealth managers in their firms as a link to HNWIs who they wish to sway with a view to selling corporate schemes to entities under the HNWI's control or influence.

83. The secondary suppliers ensure that the tax product or design can be successfully implemented. Legal opinions will be required to prevent claims of negligence, a point of particular importance where penalties can be levied for failure to take due care. Loans may be required for leveraged investments and professional trustees and intermediary counterparties may be required to facilitate the transaction concerned.

84. These suppliers may also take on more than one role. For instance a bank may use its different divisions to provide loan finance to the taxpayers, act as the General Partner to their partnership and act as professional trustee. In this way, the scheme supplier reduces the complexity of implementation.

4.3 Benefits to be obtained from better understanding the "marketplace"

85. Any tax administration seeking to consider and address the risks posed by the HNWI sector needs a good understanding of the risks it seeks to tackle. This will include identifying the segment of HNWIs who pose the highest risk, quantifying the size of the risk, and recognising the growth and driving forces that shape the market. For example, understanding whether the market is supply-driven or demand-driven can assist in determining whether the response strategy should be targeted at the promoter or the taxpayer. A supply-driven product may be susceptible to implementation errors by the user due to deficient tax advice on the part of the promoter, in which case promoter sanctions or penalties may be relevant. Where a scheme is widely marketed to a large number of potential users, information gathering strategies such as a disclosure regime[72] may be more appropriate.

86. In designing and implementing any strategy,[73] the tax administration needs to ensure that it creates, develops and maintains appropriate communication channels. The administration needs to know who to interact with, whether this be professional bodies, industry associations or segments of the taxpaying public, and what that interaction can offer, for example, involvement in the consultation process for legislative or administrative change, communicating the tax authority's view on a particular tax scheme, or even securing expertise from outside the tax administration.

---

72. See Part II Section 4 below for a more detailed discussion.

73. Strategies to counter avoidance and evasion are discussed in more detail in Parts II and III whilst co-operative compliance strategies are discussed in Part IV.

87. Finally, understanding the marketplace is essential in challenging aggressive tax planning. An awareness of the nature and origin of information supplied during the distribution process can add to the greater knowledge of the scheme being investigated and assist in developing the most appropriate response strategy. Marketing material, for example, can provide evidence of a tax purpose and / or the absence of a business purpose which may assist in the application of anti-avoidance legislation, including general anti-avoidance rules.

PART II – GENERAL STRATEGIES TO COUNTER AGGRESSIVE TAX PLANNING BY HNWIS

1. Introduction

88. Tax administrations recognise that the majority of taxpayers pay the right amount of tax in the right place at the right time. As stated in the Introduction to this report, the limited resources available to them mean that resources have to be focussed on those areas perceived to be a higher risk to the tax base and there are several considerations justifying a particular focus on HNWIs.

89. The Intermediaries Study concluded that the market for aggressive tax planning follows a standard economic supply and demand model with intermediaries representing the supply side and taxpayers the demand side, with the level of demand depending to an extent on the taxpayers' appetites for tax risk.[74] Tax administrations can address these risks to their tax base by understanding the dynamics of supply and demand in the market for aggressive tax planning.

90. This section looks at strategies targeted at eliminating or reducing aggressive tax planning as well as considering how tax administrations can organise their resources to manage these risks. Many of the strategies apply more widely than just to HNWIs although the experience of tax administrations is that the uptake of aggressive tax planning schemes is more prevalent amongst that segment. Even within this group there are differences in the level of risk with sometimes a greater appetite for risk perceived in the high income rather than the high wealth subsets.[75] Before tax administrations can take steps to eliminate or reduce aggressive tax planning they must first understand the market within which it exists. As a general matter tax administrations need to develop their understanding of three key areas:

- **Demand** – tax administrations need strategies to understand the demand drivers for aggressive tax planning in the HNWI segment. This means getting information on the different behaviours of individuals within the HNWI segment, their appetite for risk and the commercial drivers. This helps administrations to understand the nature of the risks to the tax base and also where to target resources to manage those risks.

- **Supply** – this involves learning about the marketplace and how the network of promoters, advisers, private banks and others, such as family offices, interact in delivering the tax planning (including aggressive tax planning) that HNWIs seek. This not only aids risk management but also helps tax administrations to develop appropriate response strategies. Understanding the supply network further enables the tax administration to identify the appropriate parties to interact with when seeking to consult, draw on expertise or convey important policy messages.

- **Products** – strategies are needed by tax administrations to obtain good and early intelligence on the types of aggressive tax planning schemes in the marketplace. This helps to identify areas of tax legislation targeted by tax planners and provides evidence for use in policy development.

91. The supply and demand for aggressive tax planning are inextricably linked. Strategies that focus on reducing demand should ultimately result in a reduction in supply as promoters move out of the market.

---

74 . See Intermediaries Study, page 11.

75 . See the more detailed discussion of different tax risks in Part I.

Similarly, legislation that is effective in preventing certain types of scheme from achieving the expected tax benefits will cut the supply and ultimately reduce demand as the market shrinks. At an organisational and management level several tax administrations have structures in place to address some or all of these areas. Some have developed specialist units to gather, process and disseminate information on aggressive tax planning schemes obtained through, for example, mandatory or voluntary disclosure regimes. Others have units that specialise in auditing aggressive tax planning, while some focus on the HNWI population, seeking to provide a dedicated service in handling the often complex tax affairs of this segment.[76] Where aggressive tax planning is found within the HNWI segment it is imperative that such units work closely together within the tax administration to understand the demand, supply and products in the market for aggressive tax planning as it applies to HNWIs.

92. The remainder of this part first looks at general measures that give tax administrations better information on products, demand and supply and then turns to strategies specifically addressed at one of the three aspects.

2. General measures

2.1 Gathering and using information efficiently

93. A tax administration will gather information most effectively on the HNWI segment where it dedicates resource to that specific task. Having a part of the organisation that can interact with HNWIs or, more likely, their advisers can increase both specific understanding of the taxpayer and a broader understanding of the HNWI population.

94. Increasing the level of dialogue with HNWIs and their advisers is fundamental to the better provision of information. Experience from the Focus Group indicates that such dialogue improves as the unit matures. More detail on the organisation and operation of tax administrations including the use of HNWI units is discussed in Part III of this report.

95. Tax administrations also organise resources to gather and analyse a wide range of publicly available information. This ranges from information in magazines and newspapers that contain details about lifestyle, properties, centre of personal interests and from where a HNWI conducts business, through the use of internet search engines. In addition, tax administrations frequently obtain information from other government bodies, regulatory bodies (who may maintain asset registers for properties, aircraft, shares and securities), and third parties that are obliged to provide certain customer data. An analysis of these information sources allows tax administrations to create a profile for the HNWI that takes into account factors other than tax thus raising the level of understanding of the behavioural drivers of that person.

96. To optimise the potential for understanding and challenging aggressive tax planning it is essential that the information gathered is shared within the tax administration and that it is used competently and effectively. It is also important that the tax administration communicates effectively vis-à-vis taxpayers and the public at large.

97. Where relevant information about an aggressive tax planning scheme is received by a member of the tax administration it is important that the information circulates quickly within the administration, that all users of the scheme are detected and that individual cases involving the same or a similar scheme are co-ordinated. While there are considerable differences in the way that administrations organise themselves to deal with aggressive tax planning and the way in which they handle the affairs of their HNWI

76 . See discussion in Part III below.

population, the common thread is that the receipt, analysis and dissemination of information is managed through a specific process.

98. Where specialist anti-avoidance or aggressive tax planning units exist they play a central role in the analysis and management of information within the administration. This role includes, but is not limited to:

- the internal publication and maintenance of an aggressive tax planning database providing operational units with details of schemes and providing a reporting chain where the use of aggressive tax planning schemes is discovered;

- providing a specific framework for transferring information to operational units which also facilitates feedback to the centre; and

- the appointment of "Issue Champions" providing a single point of contact with responsibility for collecting and distributing information on specific schemes.

2.2 Hiring staff from the private sector

99. The consultation process showed broad support for the concept of hiring staff from the private sector; bringing in people who understand the complexities that often surround the affairs of HNWIs is seen as a way of improving skills and commercial awareness[77] within the tax administration and in turn improving the relationship between taxpayers, their advisers and tax administrators. Concerns were raised over the incidence and handling of potential conflicts of interest and how this might be perceived by the public, particularly if it were seen as the tax administration giving beneficial treatment to the "wealthy". However, experience shows that such issues can be addressed and while there are cultural challenges integrating former private sector professionals into the tax administration these are outweighed by the valuable experience and new thinking that they can bring.

100. Recruiting professionals with experience in working directly with HNWI clients can improve an administration's overall understanding of the key factors driving the demand for tax planning advice and provide a better understanding of the schemes used and the "marketplace" within which they operate. In addition, the insight and intelligence gained from such recruits can remove some of the burden placed on HNWIs to provide explanations of complex transactions and the products used.

101. A number of countries in the Focus Group have recruited with a view to assigning at least some staff hired from the private sector to areas dealing with aggressive tax planning but the focus has generally been more on business and commercial experience in the corporate sector than on individuals. Some recruitment has been targeted at bringing in specific skills and qualifications. Australia, for instance, has actively recruited experienced accountants both domestically and from abroad. Other administrations have identified knowledge gaps and have sought to fill them accordingly. The United Kingdom has recently hired a small number of tax professionals from the private sector with experience in the banking sector or who have worked in the tax function of multi-national groups. A professional with experience in working with the HNWI segment has also been recruited. Where Focus Group countries have hired from the private sector to improve their anti-avoidance capabilities they have indicated that their overall experience has been positive.

102. For tax administrations not wishing or unable to hire from the private sector, good dialogue and regular contact with advisers and other professionals may deliver some of the same benefits.

---

77 . See Part III.

2.3 International co-operation

103. As has been discussed, HNWIs are highly mobile and may have a presence in several countries and therefore international co-operation is another useful source of information to detect aggressive tax planning among HNWIs. Tax administrations therefore need to work together in a coordinated and targeted way particularly in dealing with cross border issues. A point made in the consultation was that for rulings systems to have meaning they may require a multilateral dimension in particular to address tax residence matters.[78]

104. Some countries within the JITSIC[79] framework have taken part in information exchanges relating to tax schemes involving HNWIs. The JITSIC countries have recently agreed to continue their joint efforts to curb abusive tax avoidance transactions, arrangements, and schemes and to broaden the group's activities against cross-border transactions involving tax compliance risk. Use of off-shore arrangements to avoid tax will also come under closer scrutiny and there will be a fresh focus on the ways in which some HNWIs artificially minimise their tax liabilities.

105. Recently, bilateral exchanges have focused on the tax evasion side, in particular in connection with the investigations relating to individuals who used Liechtenstein to evade taxes in their countries of residence.

106. Countries also work together in the context of the OECD's Aggressive Tax Planning Steering Group whose work is supported by the Aggressive Tax Planning Directory (ATP Directory). The ATP Directory provides a platform for sharing non-taxpayer specific information on aggressive tax planning schemes to improve the response time to emerging global tax risks, trends and patterns already identified and experienced by some tax administrations, and to share experiences in dealing with them.

107. A small number of tax administrations[80] have taken part in co-ordinated simultaneous audits of multi-national groups of companies owned by HNWIs, or who have HNWIs as executives. As there are a limited number of HNWI groups that operate globally, the scope for such simultaneous audits is naturally restricted, but where these have taken place the countries involved have reported positive results.

108. International co-operation, in particular simultaneous audits, could be improved by a greater interchange of staff between tax administrations to act as a direct point of contact to their home authority, identify the information the other tax administrations are likely to possess and enable better exchange of information than may be the case at present. Co-operation at a more strategic level could also be enhanced through an OECD forum, in particular between heads of HNWI units. Members of the Focus Group are of the general view that there is scope for more international co-operation in the future.

2.4 Communication strategies

109. Communication is a key aspect to influencing the compliance behaviour of taxpayers generally but, because of their higher profile in the community, is particularly effective with HNWIs. Tax administrations use a range of communications strategies, from targeted information about particular scheme types that they do not find acceptable or about which they have concerns (for example the use of taxpayer alerts) to wider compliance messages. Many of these strategies focus on aggressive tax planning and so may not be specific to the HNWI segment. However, tax cases involving high profile HNWIs often

---

78 . See Part IV Section 3.2.

79 . Joint International Tax Shelter Information Centre (JITSIC).

80 . Australia, Norway, the United Kingdom and the United States.

attract huge interest from the public at large. Italy for instance, has recently issued notices of assessment to several famous taxpayers, including singers, racing car drivers and football players. The information, to the extent not covered by tax confidentiality, was then made available to the mass media in order to influence the behaviour of other taxpayers in the same position. Many other countries have also used court cases to send a message both to the general public that all taxpayers have to pay their share of taxes and to other wealthy taxpayers warning them that there are real risks in engaging in aggressive tax planning.

110. Some countries[81] reported that the creation of HNWI units generates considerable publicity, as it is seen as providing an approach outside of the norm, whilst also raising awareness amongst the country's wealthiest about the likelihood that their activities are being monitored. In New Zealand, for instance, any taxpayer that will be dealt with by the unit receives a letter explaining the function and purpose of the unit and the reasons for his or her inclusion.

111. Australia has probably the most developed communication strategy for engaging with HNWIs with particular components for both its High Wealth Individuals Taskforce and its High Income Individuals Taskforce. As part of this, the Australian Tax Office (ATO) has published a tax guide for Australia's wealthiest people which sets out its processes for monitoring compliance, the risk factors that draw attention and suggestions as to how HNWI taxpayers can better manage their tax risks.[82]

3. Demand focused strategies

112. To understand and reduce demand for aggressive tax planning tax administrations must focus on the behaviours of those taxpayers who drive the appetite for tax risk. One possibility is to alter the economic risk-reward profile of engaging in aggressive tax planning schemes.

3.1 Taxpayer penalties

113. Penalties can be an effective deterrent. The likelihood of a penalty being imposed on a taxpayer using an aggressive tax planning scheme that is found not to achieve its desired effect resulting in the underpayment of tax can have an effect on the demand for aggressive tax planning schemes. In principle, most countries in the Focus Group are in a position to impose such penalties; however, the precise conditions under which penalties can be imposed vary significantly.

114. Of particular relevance are situations where the taxpayer has obtained an opinion of a lawyer or other legal adviser holding that the position taken by the taxpayer is likely (or more likely than not) to succeed if challenged by the tax administration. Such situations are common as nearly all aggressive tax planning schemes will come with some form of legal advice, either given to the individual taxpayer or commenting more generally on the tax consequences for taxpayers investing in a particular product.

115. Where a taxpayer has taken a reasonably arguable position based on legal advice but loses the case in court then in several countries the taxpayer would be unlikely to be exposed to any penalties.[83] In Japan, whilst taxpayers are exempt from penalties where they have "reasonable grounds" to underreport, Japan's Supreme Court has ruled that taxpayers do not have "reasonable grounds" where they follow specialist tax advice to reduce their tax obligations without due attention. In France, the penalty follows

81 . Australia, Ireland, New Zealand and South Africa.

82 . ATO (2008) Wealthy and Wise: a tax guide for Australia's wealthiest people, page 12. The booklet was officially released on 31 March 2008.

83 . For example Canada, Ireland, Germany, the Netherlands and Mexico.

automatically if the anti-abuse rule is found to apply.[84] The fact that a taxpayer has relied on a legal opinion is not material in determining either the application of the anti-abuse rule or the imposition of the penalty. The distinguishing feature of the French position appears to be that the French penalty rules turn less on whether a reasonable position has been taken (and hence there is no act of negligence),[85] but rather on whether the taxpayer deliberately entered into an arrangement for the sole purpose of saving tax. The position in Ireland is similar to that in France as a legal opinion does not provide protection from the imposition of a surcharge that will be triggered if the Irish General Anti-Avoidance rule is found to apply.[86]

116. The fact that legal opinions are less likely to provide penalty "protection" than in other countries, coupled with the fact that the penalty is rather high (at 40%, having been reduced from 80% in 2008) may have been one of the reasons why the French tax administration has not seen the types or volume of aggressive schemes encountered in other countries such as the United States, the United Kingdom and Australia.

3.2 Litigation strategies

117. Whatever strategies are employed to reduce the desire or opportunity for aggressive tax planning there will still be occasions where the tax administration and taxpayers disagree on the correct application of the law. While tax administrations will in the first instance seek to settle matters with taxpayers by agreement there will be occasions where the outcome will be determined by litigation. Consequently, some countries have developed litigation strategies which while not specific to HNWIs may have a particular bearing for the HNWI taxpayer population or certain subsections thereof.

118. Australia operates a test case funding programme to assist in dealing with widely promoted aggressive tax planning schemes. Although the ATO considers the financial capacity of the taxpayer to pursue litigation, those with sufficient funds (for example HNWIs) will not necessarily be excluded. In addition, the ATO has an established procedure when undertaking settlement negotiations which ensures that any settlement agreement reached will withstand scrutiny, internally and externally, and will demonstrate a proper regard for the principles of accountability and good governance.

119. In the United States, cases of high strategic importance (for example, cases in which the administration wishes to seek legal clarification from the courts) will be withdrawn from the appeals process and selected for litigation. This means that the taxpayer cannot settle their tax position without litigation thus providing the Internal Revenue Service (IRS) with some discretion over which cases receive judicial review.

120. The United Kingdom has recently revised and published its Litigation and Settlement Strategy.[87] Under the new strategy the focus is on making an early assessment of the risk reward profile of cases that may go to litigation. Considerations that will determine whether to litigate include: the cost of litigation; deficient settlement offers; determined or organised attempts to undermine legislation; defence of strategically important principles, and the amount of tax at stake. The key feature of the new strategy is that once the tax administration has decided to pursue litigation, it will no longer be willing to settle for less than 100% of the tax and interest due. This includes the tax that the taxpayer sought to avoid but may

---

84 . However, there are certain procedural safeguards before anti-abuse rule can be applied.

85 . Which is generally the question in the above mentioned countries.

86 . However, a taxpayer can avoid the imposition of the surcharge by filing a so called "protective notification".

87 . www.hmrc.gov.uk/practitioners/lss.pdf

also include any additional tax charge arising from the arrangements entered into.[88] Thus, pursuing litigation has become increasingly risky for taxpayers and their advisers. Anecdotal evidence suggests that the higher risk of litigation and additional costs for the taxpayer (interest and surcharges as well as litigation costs) have made marketed aggressive tax planning products less attractive for the taxpayer and have made it more difficult for promoters to sell these products.

4. Product focused strategies

121. Early intelligence on the types of aggressive tax planning schemes in the marketplace is essential if tax administrations are to identify areas of tax legislation being targeted by tax planners and to respond to these in a manner that minimises the risk to the tax base. Several strategies have been developed both to obtain information more quickly and to deny the intended tax benefit.

122. Historically the main source of information on aggressive tax planning schemes was from audits or other "field" activities. While this remains an important source, there is always a delay between the use of the scheme and the reporting of a transaction in a tax return, and further delay before the tax return is audited. This means that the tax administration is forever "playing catch up," dealing with old schemes while the market has moved on. However, a number of countries have adopted strategies that have significantly increased their information gathering capabilities in terms of the time at which information is obtained and with respect to understanding the HNWI population and the schemes they are using. This enables tax authorities to organise their resources more efficiently by, for example, reducing the time taken to close loopholes and thus reduce the amount of tax lost.

123. There are further strategies that enable the tax administration to use the information gathered to reduce the opportunity for aggressive tax planning. Such strategies focus on the tax legislation and may be either reactive in the sense that they terminate identified schemes or arrangements (for example specific anti-avoidance rules), or pre-emptive by seeking to reduce the opportunity for aggressive planning more generally (for example, "avoidance proofing"[89] all proposed legislation).

4.1 Mandatory disclosure and reporting rules

124. One method of significantly reducing the time between an aggressive tax planning scheme being marketed and the tax administration becoming aware of it is the use of mandatory disclosure regimes, which have been introduced by three countries in the Focus Group.[90] By requiring early disclosure it is possible to quickly enact legislative changes to stop the use of the schemes where they are regarded as posing a significant risk to the tax base. In the United Kingdom over half of the disclosures received have informed legislative changes. Anecdotal evidence is that the speed at which legislative changes are announced after disclosure has had a significant adverse impact on the creation and marketing of mass marketed aggressive tax planning schemes.

---

88 . For instance in investigating schemes involving Employment Benefits Trusts (EBT), the United Kingdom tax administration concluded that a close company (essentially one controlled by 5 or fewer individuals) that had transferred capital to an EBT for the benefit of one of its shareholders was not entitled to a deduction for tax purposes for the contribution. In addition, the individual beneficiary of the trust was liable to Inheritance Tax on a similar amount, something which had not been factored in as a risk when the scheme was being sold. See also Part I Section 3.

89 . See discussion at paragraph 138.

90 . Canada, the United States and the United Kingdom. Also note that Portugal has recently brought in a similar disclosure regime.

125. In addition to disclosure regimes that target and obtain information on aggressive tax planning transactions, there are a range of other reporting obligations imposed by Focus Group countries. Such reporting obligations tend to have a specific focus. They often relate to cross border transactions and may focus on certain types of transactions (e.g. Canada) or particular tax havens or foreign preferential regimes (e.g. Mexico). Any information gathered is correspondingly limited.

4.2 Additional information reporting

126. Several countries in the Focus Group require HNWIs to report additional information. The request typically takes the form of a requirement to provide a statement of affairs detailing the assets and liabilities of the HNWI. However, the trigger for seeking such a statement varies between tax administrations. In some countries the request is made when income exceeds a certain level (such as in Japan) or the trigger may be a liability for Wealth Tax (as in Norway and France) or it may only apply to company directors (as in South Africa).

127. Some countries can also ask for additional information where the HNWI is dealt with by a high wealth unit. This can take the form of a questionnaire issued to all individuals when their tax affairs are first transferred into the unit (such as in Australia and New Zealand) or may require completion of an expanded return to cover the individual and associated entities (such as in Australia).

128. Where an automatic trigger is used by a tax administration, all HNWIs who meet the criteria will be asked for additional information. Where the additional reporting requirement is discretionary the additional information may be requested due to a perceived higher compliance risk from past behaviour, current risk profile or involvement in issues which the tax administration needs to understand further.

4.3 Using targeted legislation and anti-avoidance or anti-abuse rules

129. All the countries in the Focus Group have some form of legislation against schemes that seek to stretch the interpretation of statute beyond the boundaries intended by the legislators. This may take the form of general anti-avoidance or anti-abuse rules that can be used to protect the tax base, targeted anti-avoidance rules that seek to protect a particular aspect of the tax system or specific legislation aimed at preventing tax loss from identified aggressive tax planning schemes. Effective anti-avoidance or anti-abuse rules prevent schemes from being brought to the market.

130. While such legislation applies to all taxpayers, it often has a greater effect on HNWIs as opposed to other individual taxpayers as they are the main users of certain schemes due to the high initial costs of participating in them.

131. Anti-avoidance or anti-abuse rules have been used with varying success to counter aggressive tax planning schemes used by HNWIs, however a discussion of individual cases is beyond the scope of the report.

132. In Australia, for example, the courts have supported the application of a general anti-avoidance rule (GAAR) on numerous occasions.[91] The effect of this rule on HNWIs is a more complex matter, as there are usually multiple lines of argument applied by the ATO using ordinary taxing provisions. Furthermore, specific anti-avoidance provisions may be effective before the general anti-avoidance rules

---

91 . Australia's Taxpayer Alert system provides multiple examples of such arrangements that have been publicly disclosed, many of which consider the application of the general anti-avoidance rule as a provision of last resort. For further details see www.ato.gov.au/atp.

are applied (as a provision of last resort). Many Australian tax cases are therefore argued on the basis that the GAAR may apply in the alternative rather than in isolation.

133. The GAAR is therefore seen by many in the accounting, tax and legal professions as a preventative measure with respect to the conduct of some, but not all, taxpayers. The higher rates of penalty likely to apply in cases where a specific or general anti-avoidance provision applies also support this preventative effect.

134. While GAARs can be effective they are not a panacea for all forms of tax avoidance and will generally have to be supported with targeted measures.

135. Some countries have brought in a number of specific anti-avoidance or anti-abuse rules. In 2007 the United Kingdom introduced a targeted anti-avoidance rule disallowing losses arising from arrangements the main purpose of which was to generate a capital loss. The rule was brought in to counter a common practice by HNWIs who realised a capital gain (for example on the sale of shares) and sought to mitigate the tax by purchasing an off-the-shelf scheme that matched the gain with an artificial loss. The lack of disclosures of new schemes in this area since the introduction of the rule suggests that the measure has been successful.[92]

136. Other rules seek to counter conversion of higher taxed ordinary income into lower taxed capital gains. In Ireland such rules exist to combat schemes that claim to convert a distribution of profits chargeable to income tax into the proceeds of a disposal of shares chargeable at the lower rate of capital gains tax.[93]

137. Anti-avoidance rules also include those that facilitate the taxation of undistributed profits of foreign entities,[94] reporting rules for certain international transactions (for example transfers to or distributions from certain foreign entities, ownership of foreign entities or assets), extended tax liability and/or gain recognition for departing residents,[95] and rules that counter attempts typically by athletes and artists to avoid source taxation via the interposition of foreign entities.[96]

- *"Avoidance proofing" new legislation*

138. Much aggressive tax planning is based on promoters seeking to exploit perceived loopholes in legislation. Historically there might have been a tendency to seek specific "fixes" for particular instances of aggressive tax planning when designing anti-avoidance rules, which led the creators of schemes to design around the "fix" and in turn necessitated further legislation to block the new variations. In the opinion of Lord Hoffmann,[97] regarded as one of the leading judges in the United Kingdom, the objective should be to draft legislation that is clear in its purpose and to then trust the courts to interpret the statute in

92 . There is reason to believe that more "bespoke" schemes are now used to mitigate capital gains although this will involve more advance planning and cost to the taxpayer, thus making aggressive tax planning uneconomical for a certain segment of the taxpayer population.

93 . Section 817 Taxes Consolidation Act 1997.

94 . Such as Controlled Foreign Company (CFC), Potential Taxes on Foreign Investments (PFIC) or Foreign Personal Holding Company (FPHC) type rules.

95 . In this regard Italy notes that where a taxpayer claims to have moved to certain "tax haven" jurisdictions (as defined in Italian law), the law creates a presumption of continued tax residence in Italy.

96 . E.g. France, Article 155 A du Code général des impôts.

97 . Hoffman, L (2005), *Tax Avoidance: Lecture in honour of Sir Roy Goode by Lord Hoffmann*, British Tax Journal No. 2.

a way that is compatible with that purpose. When designing legislation the potential for creating avoidance opportunities has to be considered. A clear statement of purpose, sometimes referred to as "principles based drafting", is one tool for making the law robust and assists the courts in interpreting legislation in a way that fits with its original intention.

139. Another strategy is to proof and test the proposed legislation with a view to exposing any areas of weakness that may be exploited and, if necessary, to incorporate anti-avoidance provisions into the legislation before it is enacted rather than seeking to rectify the problem via subsequent remedial legislation. The more effective this process is the less opportunity there is for the developers of aggressive tax planning schemes.

140. No matter how good the proofing process the inventiveness of tax planners is such that there will always be a danger that a novel interpretation of the legislation will be found that presents an opportunity for planning that is inconsistent with the intention of the legislature. At best, the proofing and testing process reduces these planning opportunities, easing the tax administration's response management going forward.

- *Using retroactive legislation*

141. Tax administrations occasionally need to act quickly to protect the tax base from aggressive tax planning schemes but are faced with a legislative process that may not permit it to rectify the situation within a short time frame. It can therefore be necessary for the government to consider the introduction of legislation which has a retroactive effect.

142. There are two forms of retroactivity[98] that can be apply with respect to legislation, "limited" retroactivity and "full" retroactivity. Limited retroactivity occurs when an announcement is made that legislation will be enacted at a future date but will have effect from the date of the announcement. The announcement may take different forms in different countries but it communicates the intention of the government to change the law in a particular way. "Full" retroactivity goes further and attempts to apply the legislation to transactions or taxable periods preceding any announcement.

143. Some countries are prevented by their constitutions from applying any form of retroactivity except in very specific circumstances. France can only apply retroactivity to tax measures if it is for the benefit of the taxpayer. Italy is restricted to retroactive measures that clarify existing law without changing it.

144. However, most countries are able to use limited retroactivity and have done so in the area of tax legislation. This can be an effective way of stopping aggressive tax planning devices before they are widely marketed or where the risk to the tax base has reached unacceptable levels. For instance, in the United Kingdom the *Disclosure of Tax Avoidance Schemes* regime has been a prime source of information for identifying risk and has led to a number of instances where legislation has been announced within a relatively short period of time thus preventing wider marketing of the particular scheme. To date, 53% of disclosures have informed legislative changes and whilst most have been dealt with through the annual Finance Bill cycle a number have led to early announcements.

145. When applying limited retroactivity to a measure the announcement needs to be sufficiently detailed to make it clear what the legislation is seeking to achieve in order to provide taxpayers with a sufficient level of certainty on the effect of the change.

---

98 . Refer to the Glossary for an explanation of this term.

146. "Full" retroactivity is rarely used to counter aggressive tax planning schemes. It may not be permitted under the constitution[99] or it may only be used where it is clear that the intention of the law has been undermined.

147. One exception is the United Kingdom where the government in one case gave advance notice that retroactive legislation would be used if schemes continued to be devised and sold that sought to avoid employment taxes. The users and promoters of such schemes were put on notice by a ministerial statement made on 2 December 2004 –

> [E]vidence has taught us that we are not always able to anticipate the ingenuity and inventiveness of the avoidance industry. Nor should we have to. Our objective is clear and the time has come to close this activity down permanently.
>
> I am therefore giving notice of our intention to deal with any arrangements that emerge in future designed to frustrate our intention that employers and employees should pay the proper amount of tax and NICs[100] on the rewards of employment. Where we become aware of arrangements which attempt to frustrate this intention we will introduce legislation to close them down, where necessary from today.[101]

148. A scheme was disclosed after this announcement involving the avoidance of tax and NICs on employment income using options linked to employment related securities. Legislation was introduced in the 2006 Finance Act to counter this avoidance but was made effective for transactions that were part of the arrangements and which had been carried out on or after 2 December 2004.[102]

149. In some instances, simply the threat of legislative change can be effective in deterring taxpayers from entering into aggressive tax planning. In the Netherlands, where full retroactivity is not possible under the constitution, if a scheme that is seen as being in a grey area is detected, the Secretary of State may set out a policy in a proclamation (a policy decision) that the particular scheme will be countered.

5. Supply focused strategies

150. An increasing number of countries have focused their penalty regime not just on taxpayers using aggressive tax planning transactions (the "demand side") but also on certain third parties engaged in activities such as designing or promoting these schemes, giving misleading opinions (including making unreasonable assumptions),[103] or preparing incorrect returns. The objective of these penalty rules is to alter the risk reward profile for promoters and others that seek to benefit from aggressive tax planning. Promoter penalty regimes also have the advantage that they may apply to circumstances with a tax evasion flavour, but where, for different reasons, aiding or abetting penalties may be difficult to apply to a promoter. For

---

99 . This is the case in the Netherlands, for example.

100 . National Insurance Contributions.

101 . HC Deb 4 December 2004 vol 667 ccWS40-41.

102 . Section 92 Finance Act 2006.

103 . For example, Internal Revenue Code Section 6694 in the United States imposes penalties on tax return preparers who prepare returns taking positions that may not be fully supported by current law. The preparer must advise clients that, for tax shelter purposes, there needs to be at a minimum substantial authority and a reasonable belief that the tax treatment was more likely than not the proper treatment. In May 2007 Congress extended the definition of 'tax return preparers' to include those preparing returns and claims for refunds of income tax, estate, gift, employment and excise tax returns. This is in addition to any sanction under Circular 230 – see below.

example, a tax administration may be unwilling or unable to build a tax evasion case against the taxpayer, or the taxpayer may have acted in good faith, with the result that because aiding and abetting requires tax evasion by the taxpayer, the tax administration could not pursue the promoter.

151. In addition to monetary penalties, promoters may also be exposed to other sanctions including injunctions to stop the promotion of a scheme. Other sanctions may include action by professional bodies that may censure, suspend or disbar the promoter from practice under professional conduct rules. The United States and France have used such professional conduct rules to counter or reduce aggressive tax planning. In the United States, regulations known as "Circular 230" list certain requirements that a practitioner must meet when providing an opinion on a listed[104] or avoidance transaction. Any practitioner that wilfully, or through gross incompetence, violates the rules in the circular can be censured, suspended or disbarred from practice before the IRS.[105] In France, tax intermediaries, typically lawyers and accountants, are bound by their professional regulations to make their clients aware of the full consequences of the planning contemplated. The application of anti-abuse legislation[106] is one consequence that must therefore be advised upon and is considered by France to successfully suppress schemes of a fictitious character with no other motive than to evade or diminish the tax burden.

152. Finally, promoters also run the risk of civil suits by their clients for failed tax schemes. In Germany, for instance, an investor in a failed "film distribution fund" partnership successfully sued the scheme promoter.[107] The taxpayer had sought an investment that would assist in reducing his tax liability and turned to a local bank whose sales prospectus claimed that 130% of the investment would be immediately deductible for tax purposes, thus creating a loss to offset against taxable income. In conversation with the taxpayer, an employee of the bank claimed that the tax treatment had already been agreed with the tax office. In reality, the tax office had only given a tentative, and explicitly non-binding, opinion on this untested tax issue. Ultimately only 10% of the investment was permitted as a deduction. The civil appeals court held that the scheme promoter had insufficiently explained the tax risks of the investment and assumed that if the taxpayer had been correctly advised he would not have entered into the investment. The promoter was ordered to reimburse the taxpayer's net costs (the cost of investment and interest less profits distributed by the partnership).

153. In the United Kingdom, 75 claimants lodged a compensation claim in the High Court of around GBP 22 million against an accountancy firm and a barrister for negligent advice on the operation of a scheme designed to generate tax relief on investments in films. Both the respondents had allowed their names to be used in the scheme's marketing material on the understanding that this would encourage individuals to invest. However, following an investigation of the scheme by Her Majesty's Revenue and Customs (HMRC) the tax relief sought was denied. The negligence claim was ultimately settled out of court following a 4-week trial in July 2008 but resulted in much unwelcome press coverage for both the HNWI users of the scheme and the professional advisers who had marketed it.

104 . A listed transaction is any transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. See Section 6707A of the Internal Revenue Code.

105 . Circular 230 is authorised by Section 330 of title 31 of the United States Code.

106 . Livre des Procédures Fiscales (LPF) Article L64.

107 . Oberlandesgericht Koblenz, judgment of 16 November 2006, case number 6 U 150/06.

6. Conclusions

154. The basic message is that marketed aggressive tax planning schemes used by high net wealth and high income individuals can be managed by tax administrations such that the risk to the tax base is significantly reduced. The strategies to do that are described above. Different strategies will be appropriate for different countries as will the combination in which they are used. For example, a model which combines a general anti-avoidance rule or an abuse of law rule with strict taxpayer penalties against which legal opinions offer no or only limited protection may deter taxpayers from entering into aggressive tax planning schemes. Another approach may combine a disclosure regime with quick legislative or other action to withdraw the potential planning opportunity. Yet another approach may consist of combining an extensive rulings regime with a promoter penalty rule and a general anti-avoidance rule. Interestingly, the experience of the members of the Focus Group shows that substantive rules designed to deny the desired benefit will typically not be sufficient to counter marketed ATP schemes on their own and supplementary measures such as penalties or disclosure regimes will usually be required.

155. Effectively implementing the tools described above does not mean that there will be no more promoters or advisers marketing such schemes, but it does mean that the risk to the tax base can be contained. As can be seen by the experiences of countries that have made a concerted effort to counter aggressive tax planning, more aggressive schemes are likely to move out of the mainstream and become the prerogative of smaller boutique operators.

156. One risk of aggressively clamping down on the aggressive tax planning industry is that a certain segment of the taxpaying population may then resort to straight tax evasion. Whether such a risk materialises will depend on a number of factors including the opportunity for taxpayers to do so.

157. While the more mass-marketed side of aggressive tax planning can therefore be contained, tailor made or bespoke aggressive tax planning remains a risk not easily dealt with by the strategies described above. Individual tax planning can be designed so as to fall outside the scope of disclosure rules, something that is harder to do with more mass-marketed arrangements.[108] Careful planning may find ways around targeted legislation or specific avoidance rules.[109]

158. Since obtaining advice that is specifically tailored to the requirements of the individual HNWI is expensive, it will only be used where significant tax is at stake. This also means that taxpayers often implement all the necessary steps and typically make sure that there is some economic reality to the transaction, thus making the transaction much harder to attack under general anti-avoidance or abuse rules.[110] This not only reduces the chances of a successful challenge by the tax administration but also reduces the penalty exposure. At the same time, once a HNWI has invested in expensive advice, he or she will likely maintain the tax position initially adopted and if necessary exhaust the full appeals process, making such cases very costly and time consuming for tax administrations. Finally, where the potential tax

---

108 . For instance, lawyers providing individual advice on a structure specifically designed for a particular client have no economic incentive to insist on a confidentiality clause (something that would trigger disclosure obligations) because as a customised design it could probably not be sold to anyone else, thus eliminating any incentive to do so.

109 . For instance, the German rules brought in to counter film and other loss schemes only apply to schemes that are standardised or "model-like" and do not apply to films funds or other such arrangements designed for just one wealthy investor.

110 . For instance, if the tax savings were significant enough a HNWI may decide to spend 10 hours a week on film production, hence successfully circumventing the loss restriction in the United Kingdom. See above at paragraph 45.

cost and hence the potential tax savings are significant, the HNWI may decide to change residence to a more favourable location (for example with lower income tax and low or no inheritance tax).

159. This is, however, not to say that none of the strategies discussed above have application in the area of bespoke advice. Cost and risk are factors that apply to both taxpayer and tax administration. There is a risk that courts may side with the tax administration and there is a risk that a penalty might be imposed. There is the cost for the advice and the structuring of the transaction and there is the cost related to potential litigation. Furthermore, tax litigation often creates unwanted publicity and can be a major distraction for a HNWI.

160. Tax administrations may need to explore different strategies in addition to those already discussed when focusing on the risk of bespoke aggressive tax planning. Part IV discusses strategies that seek to reduce risks through a cooperative framework.

PART III – ORGANISATIONAL RESPONSES TO DEALING WITH TAX RISK POSED BY HNWIS

1. Introduction

161. As discussed in Part II, tax administrations need good information about the HNWI segment and must have processes in place to use this information effectively. This goes beyond understanding the market for aggressive tax planning as it must also include an understanding of the particular needs of this segment and the responses that tax administrations can provide to service those needs.

162. This part of the report focuses on the organisational responses available to tax administrations when seeking to meet these objectives with reference to both processes already put in place by Focus Group countries and comments received as part of the consultation process.

2. Focusing Resources

163. It is important that tax administrations have regular and continued interaction with the HNWI segment and their advisers on issues such as planning, compliance and service. This can increase the tax administration's understanding[111]of not only specific taxpayers but also its broader understanding of the HNWI population. It will also help the HNWI segment and their advisers gain an understanding of the tax administration.[112] A tax administration will most effectively gather information on the HNWI segment where it tasks certain parts of its organisation with doing so.

164. The way in which resources are focussed on the HNWI segment can take a number of forms. The most prevalent is that of a dedicated unit. Advisers clearly stated in the consultation process that this was also their preferred method of dealing with the tax administration in relation to their HNWI clients. Such a unit will typically take responsibility for those taxes that have a direct impact on the HNWI's personal tax liabilities. In some countries the coverage extends further to dealing with associated investment and business entities such as trusts, controlled investment companies and other operating entities, and the unit may also take responsibility for family members to enable the administration to take a wider view of the HNWI.

165. A dedicated unit is not a goal in itself but is a delivery vehicle that serves several functions: it sends a clear message to the non-compliant HNWI that he or she faces a real risk of being pursued by the tax administration which may in turn reduce aggressive behaviour and improve voluntary compliance; it enables a tax administration to match the level of expertise and knowledge of the HNWI's advisers in addition to developing the commercial awareness of tax administration staff; and it also allows for the concentration of skills, targeted training, the retention of knowledge and thus an improvement over time of the understanding of the HNWI population. A dedicated unit can be monitored, and further improved, more easily than when resources are spread.

111 . Such as a familiarity with long-held structures and the tax risks these can present, together with a better understanding of the HNWI's overall tax strategy.

112 . For example, structures frequently used for investment, business and succession planning and the non-tax drivers that contribute to their proliferation.

2.1 Identifying the HNWI segment

166. Tax administrations have limited resources to dedicate to this taxpayer segment. Managing resources requires an understanding of the segment to establish the thresholds and other limits that are used for identifying those individuals to be included in any focus on the HNWI population.

167. The countries of the Focus Group use a range of criteria to define the HNWI population for administrative purposes. These include income and/or wealth thresholds,[113] and criteria indicating complex tax affairs, such as a variety of income sources and international tax issues.[114] Some countries pay particular attention to public company executives and directors or to wealthy individuals with high public profiles. Others are particularly concerned about "emerging" wealthy taxpayers. Generally there will be a combination of these factors together with others that a particular administration feels are relevant to its own situation.[115]

168. "Wealth" may be used as a criterion even by countries that do not have a wealth tax. To acquire wealth an individual generally requires substantial income, whether taxed or not. In addition, wealth as an indicator tends to be relatively stable whereas income can vary substantially from year to year and, as a measure, can also be affected by tax planning. Consequently, a definition of the HNWI population based on income alone may be problematic. Relevant data can be derived from sources such as the tax return (which in some countries includes a statement of assets and liabilities), data held by other government departments, information returns made by financial institutions, media reports, etc.

169. Particular issues arise on the cut-off point which needs to be appropriately targeted to ensure the unit includes only those that the tax administration wishes to focus on. There will be issues around those individuals at the margins so there must be sufficient flexibility to ensure that the movement of HNWIs in and out of the unit is managed effectively. For example, one solution may be to consider movement into or out of the unit only if the conditions for inclusion are met or failed for two consecutive years. This may prevent problems with consistency of treatment that might arise if an individual is moved into and out of the unit too frequently. Monetary criteria may need to be revisited at least annually to take into account inflation and the general growth of the HNWI sector to ensure that the available resources are adequately matched to its allocation of taxpayers.

2.2 Resource organisation

170. There are a number of factors that may have an impact on an administration's ability or willingness to organise specialised teams to deal with HNWIs. Specialised teams can take the form of a single centralised unit or a number of regional units. In some countries a specialised HNWI unit may not

---

113 . In Australia and Canada, high wealth and high income individuals are separately defined with the two groups being managed by separate units and processes. In Australia the focus of the High Income Individuals team in its first year of operation (2007-08) was on public company executives and directors with total remuneration of more than AUD 1 million who appeared to have underreported their income. This is being expanded in 2008-09 to include senior executives of private companies and foreign-owned companies. See: Australian Taxation Office (2008), *Compliance Program 2008-09*, Australian Taxation Office, Canberra, p.17.

114 . Japan's unit focuses on the international tax avoidance schemes used by small to medium enterprises (SMEs) and HNWIs. The reason for this focus is the recognition that the issue of international tax avoidance has been spreading amongst these segments of taxpayers.

115 . The United Kingdom, for example, separately defines two other categories of wealthy individuals - expatriate employees and professional partnerships - and looks at particular issues relevant to those sub-populations.

align with a tax administration's existing organisational structure, for example, where a HNWI's tax affairs are already dealt with by a number of specialised units. In such circumstances, it may be more appropriate to establish support units (for example special competence centres) to provide expert advice on issues particular to HNWIs,[116] without taking responsibility for the taxpayer's affairs themselves. Constitutional restrictions may also prevent a 'national' unit and thus regional units may be more appropriate. In addition, regional units may be more suitable where tax administrations perceive regional diversity within their HNWI population.

171. The perception of the wider public is an important consideration in dedicating resources to this taxpayer segment. Tax administrations will need to be seen to be acting impartially, applying a consistent treatment to all taxpayers. Australia has published a guide, *Wealthy and Wise: a tax guide for Australia's wealthiest people*, which contains information on what a taxpayer can expect when dealt with by the unit, suggestions to help taxpayers manage their tax obligations, and details of information and support services to help with compliance with tax obligations. Additionally the ATO maintains on-line guidance that features a range of up-to-date information tailored for wealthy individuals.[117]

172. Of the fourteen counties in the study group, eight have established formal programmes with a direct focus on individuals with high wealth.[118] Each of these tax administrations has gone through a strategic risk assessment and made a decision to focus some of its resources on HNWIs. The various country units have been in existence for differing periods, with France having commenced operation in 1983, followed by Australia in 1996 and most of the other countries between 2002 and 2008. Table 1 sets out details of the units, including the number of HNWIs dealt with by the units, the functions carried out in the units and the applicable taxes covered.

173. Two countries within the Focus Group (Australia and Canada) have, in addition and subsequent to programmes concentrating on high wealth, established programmes for high income individuals that aim to enhance the tax administration's risk assessing capability for this segment. France and South Africa also use criteria that ensure that high income individuals are included in their specialist programmes.

116 . For example, the treatment of foreign asset holding vehicles and trusts for domestic tax purposes.

117 . See www.ato.gov.au/individuals.

118 . Australia, Canada, France, Ireland, Japan, New Zealand, South Africa and the United Kingdom.

Table 1. Approaches for Country HNWI Units, their Responsibilities and Taxes Covered by the HNWI Units

Country	Estimated. HNWI/HII Population[1]	Year Established	Unit dealing with			Roles and Responsibilities			Taxes Covered	
			HNWI	HII	Controlled entities	Taxpayer Contact Point	Risk Assessment	Audit	Income Tax Only	All Taxes
Australia	1300 (HNWI)	1996	X		X	X[2]	X	X	X[3]	
	1700 (HII)	2007		X			X	X	X[3]	
Canada	550 (HNWI)[4]	2006	X		X		X	X		X[5]
	Unknown (HII)	2007		X			X	X		
France	10,000[6]	1983	X	X	X			X		X
Ireland	430	2003	X		X[7]	X	X	X		X
Japan[8]	Unknown	2001	X	X	X		X	X		X
Mexico[9]	Unknown							X		X
Netherlands[10]	Unknown	2008	X			X			X	
New Zealand	100	2002 -2006[11]	X		X	X	X	X		X[12]
South Africa	1,000	2006	X	X	X	X	X	X		X
United Kingdom[13]	5,000[14]	2009	X			X	X	X		X[15]
	60,000[16]	2002		X		X	X	X		X

1. The criteria used to define the HNWI and HII population may vary between each tax administration and are not necessarily the same as criteria used in wealth reports (see Part I Section 1).
2. Contact point for risk assessment, audit and disputes.
3. Unit works with other areas of the office regarding other taxes administered by the ATO.

4. Those with net asset holdings greater than CAD 50 million.
5. At least income tax and GST.
6. This includes entities controlled by the HNWI.
7. Includes all investment related entities but excludes trading entities.
8. Specialist units are located at regional level to examine international taxation issues of HNWIs and small to medium size enterprises (SMEs).
9. Mexico's unit examines the tax affairs of certain public figures (politicians, artists and sportspeople) that may have significant assets. There are no criteria however for determining whether an individual has high wealth.
10. This is currently a pilot initiative.
11. Additional Assistance Team established in 2006 to assist with lower risk individuals / operational matters.
12. At least income tax and GST.
13. Does not include the Professional Partnership Team which predominantly includes non-HNWIs
14. Individuals dealt with by the HNWI unit.
15. Excludes VAT and inheritance tax.
16. Individuals dealt with by the Expatriate Team.

2.3 Skills of staff

174. The overarching principles for the interaction between tax administrations and the HNWI segment are the five revenue body attributes set out in the Intermediaries Study: understanding based on commercial awareness; impartiality; proportionality; openness through disclosure and transparency; and responsiveness. To fully understand the supply and demand of aggressive tax planning by HNWIs together with the complex products used, the staff dedicated to this taxpayer segment should be highly capable and able to display these five attributes.

175. These staff need to be able to identify the tax risks in complex structures and arrangements, build professional relationships with HNWIs and their advisers to encourage disclosure and transparency, and work efficiently to respond to the HNWI risk in a timely, consistent and clear manner.

176. The consultation process on the HNWI project indicated that the first of the five attributes – commercial awareness – was a strong requirement for HNWI taxpayers and those advising them. Taxpayers are unlikely to display the behaviours of disclosure and openness if they believe that the subsequent dialogue with the tax administration will be unnecessarily detailed and prolonged as a result of the administration's poor understanding of the commercial background.

177. The Intermediaries Study further described commercial awareness of large corporates as including an understanding of the 'business of how to do business', the characteristics of the industry sector, and the unique characteristics of the particular taxpayer's business. Whilst an awareness of these business factors will be relevant for those HNWIs with such interests it is important to understand the, different motivations behind arrangements and structures, perhaps based on personal or family rather than business concerns. Commercial awareness is likely to take a broader meaning for HNWIs including those activities giving rise to personal, gift and inheritance taxes. The understanding required will therefore include, but is not restricted to:

- financial arrangements;
- structures used for investment and wealth planning e.g. trusts, stichtung, stifelse, private foundations;
- international tax issues including, tax residence, double taxation agreements, controlled foreign companies, foreign trusts and foreign investment funds;
- succession issues;
- privacy concerns; and
- the HNWI's risk position.

178. An understanding of these issues should enable the tax administration to produce a more accurate tax profile of the taxpayer and target the risks efficiently with the appropriate resources. For the HNWI, compliance action will be more focused, reducing the cost and administrative burden of dealing with repetitive and unnecessary questions.

179. It is not surprising given their commercial backgrounds that most HNWIs are accustomed to doing deals and are likely to approach settlements with the tax administration accordingly. Tax administrations will need to appreciate the behavioural drivers to successfully interact with HNWIs and their advisers while ensuring full accountability and good governance.

180. Commercial awareness develops through regular and continued interaction and can be enhanced by a dedicated unit. This basic awareness can then be built on through training existing staff and by recruiting specialists from outside the tax administration.

181. The Intermediaries Study lists a number of ways in which commercial awareness can be achieved through training. These included:

- development programmes such as mentoring and secondments;
- in-house training and induction;
- partnering with business and representative bodies to deliver specific training requirements; and
- informal networking events.[119]

182. The consultation process indicated that the above examples would be equally appropriate to the HNWI segment. In addition, the consultation process indicated that tax advisers, bankers and even HNWIs may be willing to provide tax administrations with presentations on relevant issues. It is of course important that commercial awareness is kept up to date and therefore training and development must be ongoing.

183. Employing or seconding staff from private practice and banks offers opportunities to bring fresh commercial awareness into the organisation and a dedicated unit may be more attractive to private sector staff, providing an opportunity to use their current experience in a complementary environment. The ATO operates a panel of both internal and external experts to advise on the application of anti-avoidance provisions, ensuring that decisions reached are “objectively based and consistent”.[120] A panel of experts could also enable tax administrations to obtain an insight into complex affairs and distinguish business drivers from aggressive tax planning. Tax administrations should take appropriate measures to ensure conflicts of interest are managed, confidentiality is preserved and that such measures are fully transparent.[121]

184. Staff dealing with HNWIs need strong technical tax skills for those taxes dealt with by the unit and in particular knowledge of tax provisions most likely to affect HNWIs (such as residency rules, ‘specified reliefs’ in Ireland and rules for non-domiciled individuals in the United Kingdom). There also must be a broad awareness of tax issues dealt with by other parts of the administration and staff need to be able to call on their expertise and possess the coordination skills to draw these strands together to resolve complex issues.

185. For staff to maintain a higher level of knowledge tax administrations need to equip their staff with adequate initial and ongoing training to ensure that they can deal with the range of taxes and commercial issues they face. For example, the Irish Office of Revenue Commissioners has, in conjunction with a local University, established a diploma course to enable staff to increase their tax knowledge. Further initiatives such as mentoring programmes and secondments to the private sector may also prove useful.

---

119 . Intermediaries Study, p.69.

120 . ATO (2005), *Part IVA: the general anti-avoidance rule for income tax*, ATO, Canberra, p.8.

121 . For the wider benefits of hiring from the private sector to understand supply, demand and the schemes, see Part II Section 2.2.

2.4 Roles and responsibilities

186. While established HNWI units in Focus Group countries focus predominantly on personal taxes[122] few cover all of them.[123] There are, however, a number of benefits to be realised where the broader range of personal taxes, including gift and estate taxes, are dealt with by a specialist team, including:

- certain transactions have implications on more than one tax: where these taxes are dealt with by the same team, information requests can be minimised and intelligence gathered more efficiently; and

- A single point of contact for the taxpayer offers a more consistent and efficient response from the tax administration.

187. Where HNWIs operate businesses further taxes need to be considered, for example corporation taxes, payroll taxes and consumption taxes. Coverage of all these taxes would require very broad tax knowledge by those employed within the unit and may preclude a more in-depth knowledge of, and focus on, the more common and interlinked personal taxes.

188. In some countries there are limits to the range of taxes that can be dealt with by a dedicated unit. For example, it could not deal with both federal and regional taxes in countries where both of these exist. However, where the responsibility for dealing with taxes lies elsewhere in the tax administration, a coordinated response can ensure that the benefits described above can still be realised.

189. A separate but related issue arises where a HNWI operates through separate legal entities or other arrangements. One approach is that the unit deals with the HNWI together with all entities under his or her control. There are advantages to this approach, such as better security for the sensitive data held by the unit, a more considered risk assessment process and a co-ordinated approach to audits.[124] Australia, for instance, has reported that its success with HNWI audits is due to the fact that the whole of the effectively controlled group is considered irrespective of whether a particular entity in the group was traditionally managed by a different area of the ATO. The ATO takes a holistic approach to understanding the HNWIs' compliance behaviour, bringing all associated entities, both business and private (including the personal affairs of a highly wealthy individual's family), into the analysis.

190. Placing too much emphasis on the sector that a particular entity falls into may miss the important links with the HNWI who controls them. Canada advised that the Agency's approach of dividing its compliance programme into taxpayer categories (e.g. Small and Medium Business, Large Business and Specialty Audit) meant that it was easy to overlook high-risk transactions involving HNWIs that crossed over various business lines. This was due to the fact that the various audit programmes would select files

---

122 . In this context, 'personal taxes' is taken to include income, capital gains, inheritance / estate and gift taxes.

123 . See Table 1 above.

124 . In France, for example the DNVSF carries out audits covering both the individual's personal tax affairs and those of their controlled entities (unless that entity is to be audited by a specialist unit in the French tax administration, for example, units dealing with companies in a particular industry). The review is also extended to include the remuneration arrangements for the senior managers of the HNWI-controlled entities. Audits into controlled entities amount to around 40% of those carried out by the HNWI unit. Audit teams specialise in certain areas such as international operations (international fraud, globalisation of economic activities and tax havens), financial operations (focussing on leveraged buy outs and the valuation of assets), and stocks and shares. In addition, "back up" teams provide specialist technical advice and support whilst a further team plans the largest cases and offers advice on tactical issues to the audit teams.

for audit that met their programme-specific work plans without having a global view of the overall structure of large HNWI groups. The knowledge of other related transactions and economic entities gained by a HNWI focus enables auditors to ascertain whether a series of transactions may be potentially abusive.

191. The range of tax and commercial knowledge required may, however, prevent the unit from adequately and expertly addressing all tax issues raised. For example, some private companies are of such a size that a very high level of corporate tax specialisation is required. Such an approach may also cause problems of consistency where, for example, an administration organises its response to companies by grouping them in industrial or business sectors.

192. In some cases it may not be appropriate to include controlled entities within the HNWI unit. There may also be some debate as to whether in fact the HNWI actually controls the entity. Some entities may operate completely independently of the HNWI, with their own management and reporting and financial structures, and are separate taxpayers in their own right. Entities may also have minority equity holders whose affairs are not dealt with by the dedicated unit. Here again, good lines of communication within the tax administration and, a co-ordinated response can ensure that a unit can operate well by restricting its coverage to the HNWIs personal and non-trading activities.[125]

193. A HNWI unit that does not undertake compliance initiatives (including audits) is likely to miss a valuable opportunity to increase its understanding of the taxpayer segment. Furthermore, it is unlikely to be able to influence taxpayer behaviour. Units which combine audit activity with a single point of contact, research capability and risk assessment are likely to make a significant contribution to the gathering and sharing of intelligence resulting in audits that are better targeted and more efficiently carried out.

194. The consultation process indicated that there may be advantages in separating the service and compliance aspects of the HNWI relationship. Indeed, Ireland is currently considering such an approach. Such a demarcation of responsibilities would protect the integrity of the unit (and thus the wider tax system) and ensure that audit activity does not impinge on building a productive relationship with the HNWI.

195. In a number of Focus Group countries the dedicated unit currently provides a single point of contact in addition to undertaking compliance activities,[126] an approach which is largely supported by HNWIs and their advisers. The extent to which the relationship with the HNWI and his or her advisers is managed can vary, from simply a named contact at the dedicated unit to an individual who takes sole responsibility for the whole of the administration of the tax affairs of the HNWI. Feedback from those involved in initiatives whereby large corporates are provided with a dedicated contact within the tax administration report that such a facility has worked well. The benefits include:

- accountability for a consistent and timely response from the tax administration;
- enhancing the relationship between advisers to HNWIs and the tax administration; and
- certainty and consistency for the HNWI.

196. As has been discussed effective relationship management requires a general knowledge of all relevant taxes to respond to queries in the first instance and to identify any further resources that may be required to address the issues presented. To get the full benefit of such an approach the relationship

125 . This may include trusts.

126 . See Table 1 above. Australia's unit does not provide this single point of contact. However, in the initial contact letter taxpayers are provided with a contact officer who will most likely be involved in any risk assessment, audit or dispute work.

manager should assume responsibility for seeking necessary input from staff within the unit and from other specialists within the tax administration and have the authority and interpersonal skills to bring resolution to complex situations.

197. To retain knowledge and experience administrations should take measures to reduce staff turnover while at the same time preventing over-familiarity or a loss of impartiality.

198. Staff dealing with the affairs of HNWIs on a day-to-day basis are ideally placed to monitor the impact and success of new legislation and procedures and can act as a useful feedback tool for the legislator and policy colleagues. This is likely to be most successful where there is an effective interaction between unit staff and the HNWI's advisers. Those responding to the consultation paper suggested that staff specialising in HNWI issues should also be involved in the preparation and improvement of relevant tax legislation and associated guidance material. This would enable the unit to better respond to issues that arise subsequently as a result of the application of the legislation.

199. Interaction with the HNWI segment can also take a more formal approach. In the United Kingdom, senior members of the HNWI unit meet regularly with tax advisers from the larger accounting firms for the purpose of improving voluntary compliance. In addition, the unit operates two external forums: *The Wealthy Forum* which discusses risk, customer service issues and enables consultation on proposed policy changes (the notes of which are published on the HMRC internet site), and *The Expatriate Forum* which deals with issues in relation to foreign national employees. In Australia, the ATO has set up a consultative committee for HNWIs that comprises representatives of legal and accounting firms known to represent a significant number of HNWIs.

200. Formal dialogue may also take the form of consultation events where such interaction would not only facilitate better legislation and administration practices, but would also give the tax administration greater insight into the issues faced by the HNWI segment and those advising them.

3. Conclusions

201. Dedicating resources to the HNWI segment can greatly assist in understanding the products and supply and demand for aggressive tax planning, which in turn can result in increased tax yield and assist in understanding the commercial and personal drivers that inform the HNWI's appetite for tax planning. These benefits can be optimised by taking into consideration the HNWI's broader tax profile, encompassing the range of taxes as well as entities under the HNWI's control.

202. A number of countries have reported increased taxpayer satisfaction as a result of establishing HNWI units (whether centralised or regional), largely because of dedicated contact points. In addition these units generally attract higher calibre staff. In France, for example, the good dialogue between the dedicated unit (DNVSF), the headquarters of the Ministry of Finance and HNWIs has resulted in a greater willingness to exchange information. This has encouraged a better understanding of each party's environment and led to a reduction in the amount of litigation.

203. Focusing on the HNWI segment can produce an increase in tax revenue. Whilst countries were not specifically surveyed about the return on their investment in a dedicated HNWI unit (and for countries whose units have only been in operation for a short period it is too early for any revenue results), there is some publicly available information to suggest that the focus on this group of taxpayers has produced positive results, both in terms of additional revenue and disallowed losses. In Ireland, there is some evidence that the activities of the unit have had an impact on the approach of HNWI advisers to tax related items such as asset valuations where greater care is now being taken with the valuations presented to the Irish tax administration.

204. Australia reported in March 2008 that in the period 1997-2008 an additional AUD 2,115 million in revenue had been collected and AUD 1,752 million in losses had been disallowed as a result of active compliance activities (such as audits) of HNWIs and their associated entities. The following table sets out the adjustments made by the unit.[127]

Table 2. Australia HNWI Unit Performance Data 1996-2007

Year of collection /adjustment	Direct Revenue (AUD M)	Reduction in Revenue Losses (AUD M)	Reduction in Capital Losses (AUD M)
1996-97	37.8		
1997-98	23.0	196.1	56.9
1998-99	63.9	243.8	382.5
1999-00	73.5	24.5	24.1
2000-01	185.5	91.6	155.2
2001-02	128.4	146.5	12.8
2002-03	325.9	17.6	16.2
2003-04	400.6	195.3	55.8
2004-05	116.8	0.0	19.2
2005-06	186.8	12.5	47.8
2006-07	224.0	6.8	8.1
2007-08	348.5	3.6	36.0
Total	**2,114.7**	**938.3**	**813.6**

205. As is evidenced by the Australian figures above, whilst identifying potential cases for review and resolving the issues presented is time consuming, the potential results are substantial.

206. The Australian experience provides further evidence that focussing on the HNWI segment can improve compliance. Initial research carried out by the ATO into growth of tax paid by HNWIs as compared to growth of household income of a comparable demographic segment shows a marked acceleration of tax paid compared to income in the 1990s, corresponding with the creation of the taskforce and the initial injection of resources into the ATO's activities. This clear improvement in voluntary compliance appears to have been maintained in all subsequent years. Regular and continued interaction with HNWIs and their advisers can encourage a flow of information and mutual awareness of current issues.

127 . ATO (2008) Wealthy and Wise: a tax guide for Australia's wealthiest people, p. 7.

PART IV – CO-OPERATIVE STRATEGIES

1. Introduction

207. Tax administrations need to use a range of strategies to address the challenges presented by HNWIs. Countries need to consider the strategies discussed in Part II and to reflect on the organisational and management responses discussed in Part III. They should also explore strategies which rely on the co-operation of the taxpayer to volunteer relevant information and that aim to influence his or her behaviour to reduce the prevalence of aggressive tax planning arrangements.

2. Prerequisites for a co-operative compliance approach

208. Co-operative compliance is based on developing trust and co-operation between the taxpayer and the administration. Certain features of the tax environment need to be established before a co-operative compliance approach can be developed. Some of these are fundamental to earning the trust of all taxpayers (for example, a fully developed legal system). Other features may be especially important to HNWIs, such as safeguards to ensure the confidentiality of sensitive personal information.

209. Features that were mentioned repeatedly during the consultation process included the existence of a developed legal system, the respect for confidentiality of taxpayer information and the fact that tax administrations demonstrate impartiality, proportionality, responsiveness and competence in their dealings with taxpayers. The fact that many OECD member countries already practice aspects of co-operative compliance is ample evidence that such features are already well established in many countries. For such countries the discussion of these features in the section below should be read merely as a confirmation of what they already do. However, as this report is likely to have a wide and diverse readership it was thought useful to start with basic requirements even at the risk of appearing to state the obvious.

210. There are a number of key prerequisites that are fundamental to the co-operative approach:

- **A developed legal system**. Earning the trust of taxpayers requires that the legislative and administrative framework of a country is well established and sufficiently developed to ensure that the law is applied fairly and equally. It may be unrealistic or even undesirable for countries that are still working towards developing an independent judiciary and a fully functioning tax administration to seek to engage in co-operative compliance.

- **Respecting confidentiality**. The obligation to keep taxpayer information confidential and only release it in accordance with the law is a fundamental principle in all countries in the Focus Group. While this principle of tax confidentiality applies equally to all taxpayers, the need to preserve it represents a key behavioural driver of many HNWIs, and in particular ultra-HNWIs. The consequences of information being inadvertently made public can be particularly detrimental to this category of taxpayers. Concerns expressed include ensuring the physical safety of the HNWI and his or her family. In some countries there is a risk of kidnapping should information around levels of wealth stray outside of the tax administration's possession. Other factors include preventing disclosure of market-sensitive or other investment information and shielding younger, more impressionable family members from knowledge of wealth levels.

From the perspective of HNWIs it is particularly important that existing procedures are correctly applied. Where additional measures are required, they may include:

i. retaining information on HNWIs within the team who manage the individual's affairs. Where further expertise is required from within the tax administration, it may be appropriate for dialogue to take place on an anonymous basis;

ii. restricting access to taxpayer files to a need to know basis and imposing additional security features such as passwords for electronic access to data and pseudonyms for paper files; and

iii. considering taxpayer requests to conduct communication in a particular way, for example, through a particular adviser, by way of meeting only etc. However, such an undertaking requires care as arrangements that seek to hide the identity of taxpayers can also be an indication of risk.

– **Impartiality, proportionality, responsiveness and competence**. To retain the trust of taxpayers the consultation has shown that tax administrations need to demonstrate impartiality, proportionality, responsiveness and competence (including commercial awareness).[128] At a practical level that means a tax administration needs to interact with taxpayers in the following ways: actions must be timely, consistent and objective, proportionate to the tax risk and clearly communicated. To achieve this, tax administration staff need to be competent with good commercial awareness, tax technical skills and professionalism. HNWIs also need to know that, if disagreements arise as to the tax position taken, they will be resolved objectively and consistently. Whilst not essential, these attributes are more easily developed, maintained and monitored within a dedicated unit.[129]

211. Even where a tax administration meets the prerequisites discussed above, there are no guarantees that HNWIs will wish to engage in a co-operative dialogue with the tax administration. A co-operative approach requires "buy-in" by HNWIs and their advisers. In the vast majority of cases the interaction between tax administrations and HNWIs will not be direct but will take place via a lawyer, accountant or other representative, such as a member of a family office.[130] A co-operative relationship with HNWIs is thus likely to differ somewhat from the tripartite relationship discussed in the Intermediaries Study;[131] instead, any co-operative approach will likely take place via the intermediary. This means that both the adviser and the HNWI must be willing to engage. If the tax administration is unable to gain the trust and confidence of the adviser, it is unlikely that the HNWI will be recommended to adopt a more co-operative approach.

212. The vast majority of advisers representing HNWIs are competent professionals who are subject to regulation by their professional bodies and who provide their clients with sound advice on their dealings with the tax administration. However, there will always be a small minority of advisers, sometimes not holding a professional qualification, who are prepared to recommend strategies that can have a negative impact on their client's desire to enter into a co-operative relationship with the tax authority.[132] Finally, there are cases where both the HNWI and the adviser have a high tax risk profile and the HNWI may in fact have chosen the adviser on that basis. In such circumstances, seeking to engage with the adviser with a view to reducing appetite for tax risk may be futile.

---

128 . See also Part III Section 2.3.

129 . See Part II.

130 . See footnote 66 above.

131 . Intermediaries Study, p.13.

132 . See Part I 'risk factors'.

213. Advisers are bound by their client's wishes and some HNWIs may decide against any approach that extends beyond their statutory obligations. This decision may be the consequence of any number of factors including the desire for privacy or long-held beliefs and values, but does not necessarily indicate that a taxpayer is high-risk. The Focus Group respects this decision. There can be no adverse consequences for those taxpayers who decide not to participate, other than not benefiting from the advantages that the co-operative approach has to offer. However, the Focus Group also recognises that in order for advisers and tax administrations to establish a truly co-operative and effective relationship, there needs to be transparency and disclosure that goes beyond statutory obligations. In this regard, advisers who have knowledge of aggressive tax planning products or tax evasion schemes, regardless of whether or not their clients use such products or participate in such schemes, are expected to be forthcoming with this information.

3. Co-operative compliance approaches

214. The previous section discussed the general prerequisites for any form of co-operative compliance. Specific co-operative compliance programmes may of course take different forms and no single framework can be applied in all countries: different constitutional law requirements, differences in tax and legal systems (in particular, different scope or basis of legal relationships), as well as cultural differences mean that what may be appropriate in the circumstances of one country may not be appropriate in the context of another. The remainder of this section therefore discusses a range of different frameworks, from comprehensive programmes for engaging with HNWIs to individual aspects of co-operative compliance.

3.1 Comprehensive programmes

215. Several countries already use comprehensive programmes to engage with large corporate taxpayers[133] which could be used as a model for the interaction with HNWIs. Such an arrangement could take the form of a voluntary pre-filing programme that would include at least one pre-filing meeting. The HNWI and his or her adviser would be expected to fully disclose material changes in the HNWI's financial affairs and any tax position they know involves a material degree of uncertainty or unpredictability. This might include 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.[134] It could also include questions of legal interpretation as well as valuation issues and could cover a range of taxes such as income, gift and inheritance taxes. The HNWI who volunteers relevant information[135] can expect to file his or her return in the full knowledge of the administration's view of the tax consequences of the matter brought to his or her attention and thus potentially avoid the need for an enquiry involving the use of formal information requests.

216. The benefit for the tax administration of such a programme is the provision of early, reliable, comprehensive and relevant information for better risk-assessment and potentially allowing tax administrations to shift resources from low-risk to high-risk taxpayers. A further benefit of such a

133 . See the Intermediaries Study, Annex 8.1. This demonstrates a positive experience from those countries that have introduced cooperative programmes. In Ireland, for instance, the programme has had a positive impact on compliance behaviour with the tax authority also noting an increasing number of voluntary disclosures and expressions of doubt. The consultation process indicated that the programme introduced in the United Kingdom for large corporates has also been successful for all involved.

134 . See also the Intermediaries Study, page 41.

135 . The information that would be expected to be volunteered would be no more than could be requested under existing legislation. Thus, the programme would not expand on the type of information to be provided but would only change the process of gathering the necessary information from one of asking for information to one of volunteering information.

programme would be that the tax administration and taxpayer would work in real time, when information is readily available and the parties involved in the transaction can be identified and contacted. Discussions are therefore relevant and efficient. Furthermore, where discussions take place prior to filing the return, any confrontation sometimes experienced with self-assessment systems is avoided (partly because penalties are not an issue as the return has not yet been filed) and the tax administration has greater ability to influence the taxpayer against aggressive tax planning. Finally, it would assist the tax administration in better understanding the overall arrangements and activities of the HNWI, simplifying future discussions and avoiding unnecessary questions.

217. As the consultation process has shown, the benefits of such a programme to HNWIs may be less readily apparent. A relationship that imposes requirements on the HNWI over and above what he or she is statutorily obliged to do is likely to lead to increased compliance costs at the outset, although there are potential savings in the future. The benefits to be realised from the relationship need to outweigh these costs. Some advisers also expressed a preference for a transaction specific (rather than a comprehensive) pre-filing programme.

218. Tax administrations would need to communicate clearly the potential benefits for the HNWI of engaging in pre-filing discussions. HNWIs are likely to be attracted to a programme that, on balance, reduces the time and cost incurred in dealing with compliance checks. Where a pre-filing meeting, for example, is merely preliminary to a substantial audit of the HNWI's tax affairs, the attractiveness of the programme will be limited. There is a balance to be struck between accurately assessing and updating the individual's risk profile, and overburdening the taxpayer with detailed requests for information. However where there is an open and frank exchange of information and views, the burden is likely to be much less for taxpayers compared with the alternative of a statutory audit sometime in the future when relevant information may not be so readily available.

219. Furthermore, a pre-filing meeting may sometimes be more attractive for a HNWI than an advance rulings regime given that commercial deadlines may make obtaining a ruling not a realistic option. In this case, obtaining certainty of tax treatment, after the transaction but before the return is filed, may be the best way of delivering early certainty.[136]

220. Despite the potential benefits to both taxpayers and tax administrations, no member of the Focus group has yet introduced such a comprehensive programme for HNWIs. Countries with a dedicated HNWI unit may be better placed to offer such a programme but there are several reasons that may explain the absence of such programmes at the moment:

- **The concept is novel**. Whilst similar programmes exist for corporates, these are relatively new and some are only at the pilot stage. Tax administrations may therefore not have sufficient evidence as to the merits of the programme as a general concept, or of its further extension to HNWIs.

- **Tax administration resource**. The programme may require up-front resource commitment at a time when many governments face significant funding difficulties. Whilst post-filing compliance activities are likely to be reduced, the process as a whole will need to ensure that the front-loading of activities does not increase resource requirements. There is also a possibility that taxpayers otherwise deemed to be low-risk, and thus a low resource requirement in terms of compliance activity, take advantage of pre-transaction facilities and increase the resource requirement.

136 . In such cases certainty could of course also be achieved by a transaction specific post-transaction but pre-filing meeting.

- **Uncertainty of uptake**. A significant number of HNWIs may not opt into such a programme because of fundamental differences as compared to the situation of corporates. Corporates are especially attracted to early resolution of tax issues as it offers them certainty as to their tax liability and as a consequence predictability as to earnings projections, future cash flows and ultimately allowing more accurate assessment and public reporting of the value of the business. Openness and transparency further enhance the appeal of corporates to their investors and are thus essential for the survival and growth of the company. Individuals, however, are not subject to the same external pressures or scrutiny. Individuals seek privacy. For some it is the most important consideration, and they may find it difficult to discuss their affairs openly with the tax authorities. On the other hand, early certainty and with it knowledge that the HNWI will experience no or very little further compliance activity (including audit) may be as important to HNWIs as it is for corporates, albeit for different reasons. For individual taxpayers audits are likely to involve an examination of their personal affairs and, in some countries, this can involve tax administration staff visiting the individual's private residence. Individuals who may be uncomfortable with such levels of intrusiveness may therefore be more interested in embracing opportunities that have the potential to reduce the likelihood of audit.

- **Public perceptions.** There is a risk that the introduction of such a programme would create the perception that HNWIs are unfairly receiving special treatment not available to other, less wealthy taxpayers. It may be difficult for tax administrations to communicate to the public that different approaches could be justified to improve compliance within different taxpayer segments.[137]

221. For these reasons, the Focus Group considers that it would be premature to make any recommendations regarding comprehensive programmes, but nevertheless would encourage countries with established administrative structures around the HNWI taxpayer segment to consider a pilot programme along the lines discussed above. In fact, Australia will proceed with a programme for a subset of its HNWI taxpayer population. The ATO has noted that over 40% of tax collected by its HWI Taskforce is paid by just 50 taxpayers and, accordingly, the ATO believes that maintaining voluntary compliance amongst this group is vital. In the coming financial year, the ATO will be devoting additional resources to developing and piloting a number of innovative compliance strategies targeted at this group. These will include a programme of on-going revenue monitoring, with the provision for face to face taxpayer meetings where tax collections are seen to fluctuate unexpectedly, and also the trial of a limited program of Advance Compliance Agreements, whereby the ATO will review the systems in place for selected taxpayers to ensure compliance[138] with the law. Where compliance is demonstrated, the taxpayer will then be invited to enter into an agreement with the ATO regarding future compliance activity. This will provide increased certainty for the taxpayer, avoiding the potential risk of penalties and interest, and is strongly aligned with the ATO's intent to increase voluntary compliance.

222. Furthermore, the discussion within the Focus Group and the consultation process has produced useful guidance for countries wishing to further develop comprehensive programmes for HNWIs. This guidance is summarised below:

- **Actively consult on the scope, operation and framework of such a programme.** The consultation should involve HNWIs, their advisers and professional organisations. This consultation process should take place in the development stages and as part of subsequent

137 . See the third bullet point of paragraph 222.

138 . The aim of an advance compliance agreement is to provide greater certainty, reduced compliance costs and improved administration for both the tax administration and the taxpayer.

reviews to ensure that those affected are able to influence the process. Discussions should include the expectations of the parties, how these can be best managed and how and when the success of the programme will be measured.

– **Develop and publish guidelines or otherwise communicate the operation of the programme**. The roles and responsibilities of taxpayers, advisers and the tax administration need to be clearly understood. Points that would need to be addressed include service levels, targeted response times, consequences of a satisfactory pre-filing meeting on subsequent compliance activity, clarification of the types of issues that the HNWI and the advisers would be expected to bring to the attention of the tax administration (i.e. meaning of "materiality"), questions of procedure, and general timelines.

Countries may then choose to implement the programme in different ways. For instance, a tax administration could issue a unilateral declaration, guidance note or other official pronunciation setting out how the approach would work. Alternatively, the tax administration, together with advisers, their representative bodies and other stakeholders could develop a charter or memorandum of understanding that would then be adopted jointly.[139] Tax administrations would further have to determine whether there was a need for a formal or informal agreement with HNWIs wishing to participate in the programme. Options may range from a simple election to join the programme to a more detailed agreement that could provide details on how the tax administration and the HNWI would work together.

– **Adhere to the principle of impartiality in developing the programme.** The programme should neither discriminate, or be perceived to discriminate, against or in favour of a particular taxpayer segment.

Non-discrimination or impartiality will be achieved where there is the appropriate balance between the level of service provided and the extent and frequency of compliance monitoring. Whilst HNWIs' tax affairs are subject to increased scrutiny, they are also likely to receive additional support from the tax administration to enable them to comply, such as targeted guidance material, a dedicated contact point and access to specialist tax officials. Thus, the increased focus coupled with an enhanced service level suggests that on balance HNWIs will not receive less or more favourable treatment than other taxpayers.

The wider taxpaying public's perception of the programme will also be of paramount importance. Tax administrations will need to communicate to the taxpaying public the benefits for all taxpayers of strategically focused resources and achieving compliance more effectively.

3.2 Enhancing particular aspects of co-operative compliance

- *Dedicated contact point*

223. Those responding to the public consultation document were strongly in favour of assigning a dedicated contact point within the tax administration to HNWI taxpayers.[140] A single point of contact provides the framework for building trust and developing a relationship between advisers to HNWIs and tax administrators. Taxpayer knowledge is more effectively retained and applied and, where these staff

139 . 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.

140 . See Part III for further discussion.

members are accountable for coordinating resources and resolving complex issues, the interaction with HNWIs will be more efficient and effective.

224. A dedicated contact point is most likely to feature in a specialist unit where training and development can be targeted at the staff's specific needs.

- *Individual rulings*

225. All countries in the Focus Group provide some form of rulings regime for certain planned transactions. The scope of such rulings regimes varies widely and with it the relevance of the regime to HNWIs. For instance, while the United Kingdom currently limits "rulings" (referred to as "clearances") to a very narrow set of circumstances,[141] other countries[142] have indicated a willingness to express a view on the tax consequences of any planned transaction that a HNWI is contemplating.

226. In France, the ruling system is available to every taxpayer and covers all taxes.[143] Since 2008, rulings must be given within 3 months and, if the taxpayer does not receive a response, the consequences most favourable to the taxpayer are presumed to be correct. The system is extensively used with around 13,700 rulings issued in 2008.

227. In the Focus Group countries, rulings for individuals are not restricted to HNWIs. They are available on the same terms to all individual taxpayers. Some countries[144] have fast track rulings processes that are available to all if the criteria for fast tracking are met. Even without formal eligibility restrictions HNWIs will, as a practical matter, be the most frequent users of rulings within the individual taxpayer segment.

228. Rulings can be an important tool in complex matters[145] where often significant amounts of tax are at stake. In such cases rulings offer benefits to both taxpayer and tax administration: they reduce cost, provide early certainty, and avoid potential litigation. Furthermore, the ability to obtain certainty on a less aggressive transaction may positively alter the risk-reward profile when compared to an alternative more aggressive, higher risk transaction where a ruling is less likely to be given.

229. While the availability of rulings may reduce the appetite for aggressive tax planning, the experience of Focus Group members suggests that taxpayers do not use rulings regimes on structures "very close to the line" even where a specific anti-abuse or anti-avoidance mechanism exists.[146] France, for instance, has a specific ruling regime to provide certainty on whether a proposed transaction constitutes abuse of law, but requests for such rulings tend to be in the low double digits per year. Thus, in most countries, rulings regimes are probably not a very good source of information on aggressive transactions for HNWIs.

---

141 . For further details, see www.hmrc.gov.uk/cap/statutory-clearances.pdf.

142 . For example, Ireland.

143 . The ruling request has to be made in writing and is free. Rulings relating to general matters are published in anonymous form on the French tax administration website www.impôts.gouv.fr. From 1 July 2009 taxpayers will also have the ability to lodge an appeal against a ruling with which they disagree.

144 . For example, Australia.

145 . Either because interpretation of the law is complex or because the application of the law to the facts is complex.

146 . In the United Kingdom, for example, the *Code of Practice 10* precludes the provision of guidance in respect of transactions which, in the view of HMRC, may have been undertaken with the purpose of avoiding tax. See www.hmrc.gov.uk/pdfs/cop10.htm.

230. Over the course of the consultation process advisers stressed the importance of rulings, particularly in the areas of investment-driven products, entity classification, inheritance and estate planning, the application of anti-avoidance legislation and questions of tax residence. The demand for extensive use of rulings on the part of advisers was, however, not always reflective of the experiences of a number of Focus Group members with well established and broad rulings programmes. They noted that despite the perceived need for rulings individuals were only infrequent users.

231. Whilst there are no firm explanations for this low demand, it could be that individuals do not want to disclose their affairs to the tax administration for the reasons discussed earlier. The need for certainty may not be as great as for corporate taxpayers for whom governance is an important issue. Furthermore, in some areas the certainty that rulings would otherwise seek to provide is delivered, for example, by the employment of highly competent advisers or through official guidance material and taxpayer alerts. Finally, it may be that a HNWI requires a response time that the existing rulings process cannot deliver and hence he or she refrains from even initiating the process.

232. The Focus Group agrees that rulings can be a useful tool in improving compliance via co-operative means. Where there are indications that an existing regime has not realised its potential, or where tax administrations are considering introducing a regime, it is beneficial for tax administrations to enter into consultations with advisers and other stakeholders on how the process could be improved. Relevant considerations in this regard that have emerged from the consultations include the following:

- **Invite initial discussions on a no-name basis**. A number of countries permit initial discussions on a no-name basis.[147] Furthermore, the consultation process demonstrated a keen interest in discussing a prospective ruling on a no-name basis. All ruling requests would of course be submitted with full taxpayer details, but there could be benefits for both tax administrations and HNWIs in initially proceeding on a no-name basis. Taxpayers would benefit from such discussions by gaining greater insight (albeit not-binding) into the tax administration's view on a certain position without disclosing, for example, market sensitive or highly personal information. The tax administration would benefit by improving its commercial understanding and through more openness and increased dialogue, ultimately reduce the taxpayers' appetite for tax risk. Where such a possibility exists, there is a risk that hypothetical questions may be posed under the guise of anonymity and that some advisers may seek to identify and exploit inconsistencies between individual tax officers. These risks need to be considered and managed.

- **Publish rulings**. The publication of rulings in anonymous form, particularly those considered to be of general interest,[148] creates additional practical guidance as well as transparency in the tax system. There is potential to reduce ruling requests for very similar issues[149] through publicising prior decisions and to lower the resource requirement whilst still providing taxpayer certainty.

- **Explore response requirements and innovative resource solutions**. Rapid response times place a significant burden on the tax administration: it needs to have the resources and the flexibility to re-deploy resources according to taxpayer demand. However, there are likely to be a range of response times required by HNWIs depending on whether the ruling is pre-

147 . For example, the Netherlands and South Africa.

148 . This is the case in France, where decisions are published on the tax administration's website, www.impôts.gouv.fr. Japan, the Netherlands, Norway and the United States also publish rulings on an anonymous basis.

149 . An example may include rulings concerning the classification of foreign entities.

transaction or pre-filing and whether the tax administration's opinion is a precondition for other events, for example obtaining probate in the determination of an inheritance tax liability. Tax administrations should explore these expectations with potential users and their advisers, as well as looking at ways to provide the necessary resources in a cost-effective manner. In the area of large corporates, for example, Advanced Pricing Agreements (APAs) often involve a fee.[150] Whilst this on its face it creates an advantage for those taxpayers that can afford such a fee, in effect it ensures that tax administrations are not diverting resources at the expense of other taxpayers. Other approaches may include the creation of "fast-track" rulings programmes which dedicate resources to high priority matters.

233. The consultation process further identified a strong interest in rulings that are binding on more than one tax administration, most particularly concerning the application of double taxation treaties to tax residency where the tie-breaker clause is in issue. However, the Focus Group wishes to express some words of caution in this area. Firstly, a residency ruling can only apply to the facts as they currently stand. There will inevitably be considerable difficulties in anticipating the lifestyle of an individual in the future. Secondly, residency issues often arise with countries outside of the treaty network for which no tie-breaker clause can be invoked. Thirdly, current experience shows that there is very little uptake of domestic residence rulings, which may also indicate that there will be limited demand for bilateral or multilateral rulings. Finally, taxpayers may require a very quick response time for a ruling whereas multilateral rulings are likely to take considerably longer to deliver. Nevertheless, the Focus Group recognises that the provisions in income tax conventions based on Article 25 of the OECD Model Tax Convention[151] provide a basis for such rulings and that, as a technical matter, the Advance Pricing Agreement (APA) process contains aspects on which such rulings could be modelled. However, in the absence of fully established HNWI units in countries affected, it may be optimistic to anticipate a bilateral / multilateral rulings service that would meet a HNWI's expectations.

\- *Product rulings*

234. As opposed to individual rulings, product rulings are given in reference to a particular product rather than a particular taxpayer. They are generally intended to be relied upon not just by the person making the request but by any person or persons in a specified class that may invest in the particular product.

235. Like individual rulings, product rulings offer early certainty for both the tax administration and the taxpayer. The provision of additional taxpayer information improves the tax administration's risk assessment and allows it to close any potential loopholes identified. In Australia product rulings are currently available for tax effective investment schemes in certain industries.[152] There are indications to suggest that the general public will not invest in widely-circulated tax products unless they have a favourable product ruling from the ATO.

236. Product rulings are designed for schemes or arrangements intended to be widely marketed. While a number of countries in the Focus Group have experienced such products being marketed to High Income Individuals, High Wealth Individuals are more likely to carry out bespoke planning. The reactions of advisers to product rulings were mixed. The points made included the following:

---

150 . In the United States, for example, the fee is USD 50,000.

151 . OECD (2008), Model Tax Convention on Income and on Capital, OECD, Paris.

152 . See www.ato.gov.au/businesses/pathway.asp?pc=001/003/032/005.

– product rulings would be most beneficial to the product supplier, for example banks and other financial institutions;

– product rulings lower compliance costs because not all taxpayers have to request individual rulings;

– market pressure may encourage product providers to apply for rulings, thus shifting the demand to products with positive rulings ("safe harbour products") and away from more risky unapproved products;

– there is a risk that product rulings could be seen as an implicit endorsement of a specific financial product as an investment. This could create a competitive disadvantage for promoters of legitimate alternative arrangements by increasing their compliance costs through seeking similar endorsements of their products;

– there are resource implications for tax administrations in dealing with many applications, including the risk that unsuccessful submissions will be amended and resubmitted; and

– providing timely and comprehensive public guidance may be a better use of resources as compared to a product ruling regime.

237. Given the complexities surrounding product rulings and the importance of the legislative context (for example penalties, existence of disclosure regimes, constitutional or other legal parameters) within which they operate, the Focus Group refrains from expressing a general view on product rulings.

- *Civil penalty protection for full disclosure*

238. There are a number of countries where disclosure of a position before or at the time of filing can protect the taxpayer from civil penalties if the position is later shown to be incorrect and results in under-declaration of tax. This strategy[153] offers a financial incentive to disclose especially in circumstances where early certainty cannot be guaranteed through pre-transaction or pre-filing rulings. For example, in New Zealand taxpayers are encouraged to make additional disclosures at the time of filing their tax return in return for mitigation of any subsequent shortfall penalty that may be applied for taking an unacceptable tax position.[154] France and the United States also have rules pursuant to which a full disclosure of an uncertain tax position on the tax return avoids or mitigates civil penalties.[155] Other countries provide mechanisms outside of the tax return which contemplate a reduction or elimination of a penalty if the taxpayer makes a timely and full disclosure.[156]

---

153 . This approach is of course only relevant where a taxpayer who has engaged in an aggressive tax planning transaction that is found not to have its desired effect (and hence results in the underpayment of tax) is exposed to penalties. Most countries in the Focus Group are in principle in a position to impose penalties on such transactions but conditions vary significantly.

154 . This penalty may be reduced by up to 75%.

155 . In the United States, the disclosure exception to the application of penalties does not apply in the case where the taxpayer's position does not have a reasonable basis or where the taxpayer fails to keep adequate books and records or to substantiate items properly. See IRM 20.1.5.7.2.1(4) and (5); Treasury Reg. Section 1.6662-3(3).

156 . Ireland, for instance, has a system which allows a taxpayer to avoid a surcharge (initially 10% but recently increased to 20%) and interest on a transaction later found to constitute a "tax avoidance transaction" as defined by Irish legislation (Section 811 Taxes Consolidation Act 1997).

239. There is little evidence to suggest that such measures are very effective in encouraging taxpayers to disclose aggressive tax planning transactions.

- *Wider aspects of co-operative approach to improve taxpayer relations and tax compliance*

240. As discussed in Part III, regular interaction with HNWIs and their advisers will encourage a flow of information and a mutual awareness of current issues. Furthermore, taxpayers are most likely to perceive fairness in the tax system where changes occur only after appropriate consultation with those that will be affected by the change. Wide consultation on proposed legislative changes can therefore assist in creating a trusted framework within which taxpayers are more likely to volunteer information and improve the quality of the legislation, a further factor in assisting voluntary compliance.

241. Tax administrations can also help taxpayers to comply by providing timely and comprehensive guidance. Some respondents to the consultation process considered that this was likely to be of significance to a HNWI. Advisers noted that early guidance on new legislation is particularly important and should be published no later than the date that the legislation comes into force. As with legislation, guidance developed in consultation with professional bodies and others who have firsthand experience of the kinds of difficulties which might be experienced with the legislation can greatly improve the quality of the guidance material produced. An example of this approach is the IRS' Industry Issue Resolution (IIR) Program.[157] This programme aims to resolve frequently disputed or burdensome tax issues that affect a significant number of business taxpayers through the issuance of guidance with subjects suggested by taxpayers, representatives and industry associations.

242. Taxpayers want certainty in their tax affairs and clear policy that is translated into clear legislation encourages voluntary compliance. There is less scope for differing interpretations and the incidence and extent of disputes with the tax authority are reduced. Correspondingly, legislation that is so broad that its purpose is unclear often requires litigation to provide clarity, placing additional burdens on the taxpayer as well as the tax administration.

243. Frequent changes in legislation, particularly where there has been an absence of consultation, can have an adverse impact on the taxpayers' and their advisers' trust in the tax system. This may reduce their appetite for openness and preclude early certainty.

157 . See www.irs.gov/businesses/article/0,,id=109645,00.html.

PART V – VOLUNTARY DISCLOSURE REGARDING PAST NON-COMPLIANCE

244. Over the past few months the international tax environment has changed dramatically towards greater transparency and exchange of information for tax purposes. All financial centers[158] have now committed to the OECD standard on transparency and exchange of information[159]. Austria, Belgium, Luxembourg and Switzerland have withdrawn their reservation to Article 26 of the OECD Model Tax Convention. Countries are now moving towards implementation of these standards as emphasised by the leaders of the G20 at the London Summit on 2 April 2009. The OECD has issued a report which shows the progress in implementation. An ever larger number of tax information exchange agreements are being signed. Progress is also being made in updating treaty networks to the OECD standard and some countries are bringing in domestic law mechanisms that permit exchange of information for tax purposes.[160] Tax administrations are active in promoting new tools which will provide them with more information, such as the United States Qualified Intermediary programme.[161] The European Union is discussing the extension of its Savings Directive to investments not currently covered. In response to the current financial and economic crisis governments are taking increasingly robust measures to counter international tax evasion and those who assist in facilitating it.

245. In this changing environment, HNWIs and other taxpayers with undisclosed income and/or assets are realising that in the foreseeable future there will be no more safe havens for money on which tax has been evaded. The time required for exchange of information agreements or other mechanisms to come into force offers a unique opportunity for them to voluntarily disclose their income and assets rather than wait for the tax administration to find them. Tax administrations may also seize this opportunity to facilitate such voluntary disclosures.

246. Governments deal firmly with taxpayers who have committed tax evasion and who have failed to come forward before being found out by the tax authorities. At the same time, a number of countries have implemented initiatives to encourage taxpayers to disclose past non-compliance, including administrative measures such as the recent voluntary compliance initiatives in Ireland and the United Kingdom. Canada has had a voluntary disclosure program for many years. It allows taxpayers to come forward and correct inaccurate or incomplete information they have not reported during previous dealings with the Canada Revenue Agency, without penalty or prosecution.[162] Countries in the Focus Group will continue to use the

158 . For more information see www.oecd.org/taxation/htp.

159 . The standard inherent in both Article 26 of the OECD Model Convention on Income and on Capital and the Model Agreement on Information Exchange has been endorsed by the G20, by the EU and by the United Nations Committee on Taxation. The standard requires exchange of information in all tax matters for the administration and enforcement of domestic tax law ("broad exchange clause") and (inter alia) provides that there can be no limitations to the exchange caused by either a domestic tax interest or bank secrecy.

160 . www.oecd.org/taxation/htp

161 . See www.irs.gov/businesses/corporations/article/0,,id=150934,00.html.

162 . For more information on voluntary compliance strategies see also *Improving Access to Bank Information for Tax Purposes: the 2007 Progress Report* (OECD) 2007, pages 26 ff.

twin track approach of using the full force of the law against those unwilling to co-operate and, at the same time, trying to encourage the largest number of non-compliant taxpayers to come forward.

247. This section only deals with measures designed to improve voluntary compliance.[163] Such initiatives (or general rules) need to walk a fine line between providing sufficient incentives for those engaged in non-compliance to come forward and not rewarding or encouraging such conduct in the first instance.

248. The issue the consultation sought to explore was, given the backdrop of current events, what is stopping taxpayers from coming forward? It emerged that, at a high level, there were two categories of taxpayers: (i) those who continued to be unwilling to pay the tax due and (ii) those who would be prepared to pay the tax but had other reasons preventing them from coming forward.

249. For the first group, the resistance to compliance relates to particular aspects of the tax legislation, such as the rate of income tax. Administrative measures are thus unlikely to impact the compliance behaviour of such taxpayers. However, taxpayers in this group should be aware that tax co-operation between countries is increasing at a rapid pace. The Focus Group notes that more and more countries provide information to other countries upon request in cases of suspected tax evasion. Thus, such taxpayers run an ever increasing risk that they will be identified irrespective of where they may hold their assets. They have been put on notice and should not be surprised if, once detected, both the tax administration and the prosecution authorities apply the full force of the law.

250. Taxpayers in the second group (i.e. those in principle willing to pay the tax) may be receptive to measures within the control of a tax administration. There may be a range of reasons that discourage them from coming forward. The primary concern for taxpayers in this group appears to be a lack of certainty: what will happen where they make a full and accurate disclosure and whether criminal charges will be brought. Further concerns expressed included questions as to the confidentiality of the information that is provided, reputational damage through wider publicity of their tax offences, the inability to fund a settlement including interest and penalties, and the risk that a disclosure would influence future risk assessments and trigger wider or future audit activity.

251. To assist taxpayers in the second category countries could issue clear guidance on the following issues:

- **Process for voluntary disclosure**. Guidance could outline the process, the person to contact, and the documentation required. The information pack could also include a contact point where answers regarding procedural questions could be given on a no-name basis. This information (a "how to guide") could be made available on the tax administration's website in a way that makes it easy to find for both advisers and taxpayers concerned. Additionally, tax administrations may consider media releases to draw attention to the existence of such information. Procedures will vary country by country with some countries, for instance, using a designated disclosure unit[164] while others may use a decentralised model.

- **Incomplete records**. The guidance could explain how the tax administration deals with incomplete records. In a number of cases, in particular those where assets were hidden abroad by a parent or grandparent, the taxpayer may not be in position to provide complete records. While much will depend on the facts in each individual case, guidance could include both examples and statements of principle.

163 . For other measures see Annex B.

164 . For example, Belgium.

– **Confidentiality of information disclosed**. Countries have developed different responses to such concerns and to varying degrees. These concerns may also be more pressing in some countries as compared to others. Such approaches range from limiting the information disclosed to designated tax officials, to protecting the information further via special legislative tax secrecy provisions applying to tax officials in the disclosure unit,[165] to operating a disclosure system via the banking system.[166]

– **Future compliance activities**. Taxpayers have concerns that a disclosure will give rise to further investigation of their affairs either as an immediate response to the disclosure or that it will affect their risk profile and thus future compliance monitoring and audits. Many tax authorities will already have internal guidance and procedures that stipulate how different degrees and types of non-compliance impact on further compliance monitoring. Where possible, these broad principles could be made public. Where information obtained from the disclosure is only made available to certain designated tax officials outside the assessment and audit function (or operated via third parties),[167] further compliance activity is unlikely to be affected.

– **Contacting third parties**. This concern extends to the tax authorities gathering and verifying information from third parties such as business partners, employers and banks. The guidance material could outline the circumstances in which tax administrations will contact third parties.

– **Penalties and Interest**. Guidance material could describe the circumstances in which penalties and interest will be sought and the basis on which they are calculated. It could also detail the circumstances in which these will be mitigated. In some countries, penalties can be 100% of the unpaid tax and interest can accrue over a period of more than a decade, sometimes without any statute of limitation. Taxpayers need to be aware of the potential costs of settlement.

– **Criminal Prosecution**. Guidance could set out the circumstances under which no criminal charges will be brought. This could include both statements of principles and examples including cases where the undisclosed assets were initially deposited abroad by a parent or grandparent of the taxpayer. In some countries information on policy for prosecution of tax crimes may have to be issued in a joint statement between the tax administration and public prosecutor, or solely by the public prosecutor.

– **No-name discussions**. Tax administrations could indicate whether there is a facility, such as a dedicated phone number, where taxpayers and/or advisers are able to have initial discussions without the requirement to disclose the identity of the taxpayer concerned.

252. This report is concerned with tax administration rather than tax policy. However, it is clear that certain tax policy choices impact on voluntary disclosure. The Focus Group reaches no conclusions on such choices but notes that comments received in response to the consultation paper highlighted the following two factors:

165 . For example, Belgium.

166 . For example, Mexico.

167 . See preceding bullet point.

- where this is not already the case, consider financial mitigation for interest and/or penalties in circumstances where the liabilities result from an ancestor's non-compliance;[168] and

- where this is not already the case, consider giving certainty of no prosecution where a taxpayer makes an unprompted full and complete disclosure.

253. Finally, advisers have indicated that in some countries, individuals may be deterred from seeking professional advice where they consider that the adviser will be obliged to notify government bodies of the compliance failure under anti-money laundering rules. In such cases, the ability of the adviser to assist the tax administration in improving voluntary disclosure may be significantly curtailed and countries where this situation arises may wish to explore this issue further.

168 . See paragraph 67. In some instances, the settlement sought by the tax administration can equal the sum of the inheritance.

ANNEX A: CONSULTATION DOCUMENT

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 2006[3] and was presented and discussed at the FTA's Cape Town meeting on 10-11 January 2008.[4]

4. The Study focuses on the large corporate taxpayer segment. The Study notes 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

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 wealth[8] and increasing number of HNWIs and the potential impact of their non-compliance on the community. Whilst it is recognised that HNWIs 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

---

[6] Data relating to tax year 2004. Statistiches 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.

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.

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.

[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.

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 owners/shareholders and managers. Large corporate taxpayers also have frequent and ongoing interaction with tax administrations (including e.g. VAT, wage tax withholding) while HNWIs 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 Study[15] are relevant attributes in connection with HNWIs. 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.

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 HNWIs 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.

[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.

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 countries[16] 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 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.*
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?*

***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?*

Section B - Possible elements of a co-operative compliance approach

What type of framework could a tax administration develop to encourage HNWIs 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 HNWIs and their advisors, as well as developers of tax related products, to be more transparent and volunteer current, relevant and reliable information.

[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.

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. HNWIs

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.

***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.*

[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.

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 HNWIs 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 HNWIs 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 HNWIs 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 HNWIs 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 HNWIs. 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 HNWIs you think would be the users of the types of products for which product rulings could be made available (i.e., certain HNWIs 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 pronunciation 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 HNWIs 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

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 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.*
- *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

***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

***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

***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

***Question 6**: Please express your views on the merits of a product ruling regime in connection with HNWIs. 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 HNWIs you think would be the users of the types of products for which product rulings could be made available (i.e., certain HNWIs 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

ANNEX B: PROPOSALS FOR CONSIDERATION BY COUNTRIES CONCERNED BY THE OFFSHORE TAX RISK

- Assess the offshore tax risk to your tax base. Gaining a better understanding of the size of the risk makes for better informed decisions on resource allocation and treatment strategies.

- Put somebody in charge to design a comprehensive offshore strategy comprising both administrative and policy (legislative) responses. It should cover the organisational and operational structure to support the strategy, including questions on staffing levels, necessary skills, support services, reporting lines, the interaction with other parts of the tax administration and other governmental agencies or ministries.

- Focus on banks and other repositories of financial data and revisit the framework conditions within which they operate.

  – Consider powers to obtain information on a class of unnamed taxpayers.

  – Consider creating a presumption of non compliance with respect to information held in high risk no or nominal tax jurisdictions (NNTJs).

  – Improve access to information through local affiliates.

- Analyse the implications of anti-money laundering rules in countering offshore tax evasion and explore how the interplay between these sets of rules could be further improved.

- Analyse the incentive structure for third parties to volunteer information.

- Improve voluntary compliance through communication, education and targeted initiatives.

  – Inform advisers and others that may assist taxpayers that commit offshore tax evasion on the risks to them including potential criminal liability regarding aiding and abetting tax evasion and violation of anti-money laundering rules.

  – Promote strategies that keep the individual informed about their obligations and entitlements and educate them as to the consequences of offshore tax evasion and avoidance with a view to changing attitudes and non-compliant behaviour.

  – Consider the use of offshore voluntary disclosure initiatives.

- Intensify international tax co-operation both through the OECD and through other appropriate fora.

- Target promoters. Review access to information powers so that access can be obtained of client lists of promoters that have been involved in tax evasion schemes or that market schemes that if implemented would constitute tax evasion. Pursue promoters and advisers involved in offshore tax evasion.

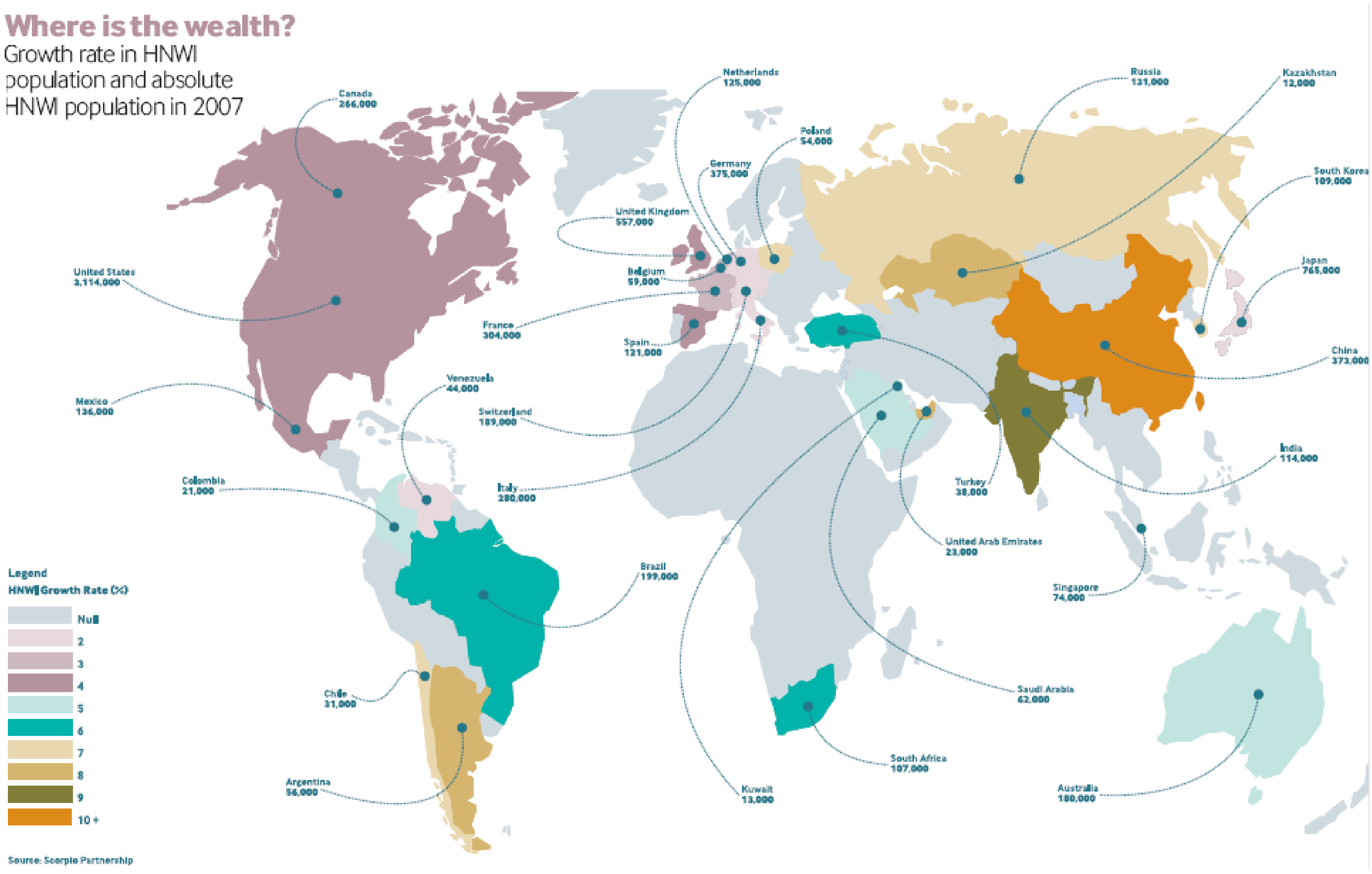
- Review and, if necessary, make changes to the application of controlled foreign company and similar rules to foreign trusts, foundations and other offshore entities such as Anstalten and protected or segregated cell companies.

- Strengthen tax return, tax reporting and substantiation obligations.

ANNEX C: GLOBAL GROWTH OF HNWI POPULATION

Source: Citi Private Bank and Knight Frank (2008), *Wealth Report 2008*, pages 8-9

In this report, HNWIs are defined as those with more than USD 1 million of investible assets, excluding their private residence.


Where is the wealth?
Growth rate in HNWI population and absolute HNWI population in 2007
Canada 266,000
United States 3,114,000
Mexico 136,000
Colombia 21,000
Venezuela 44,000
Brazil 199,000
Chile 31,000
Argentina 56,000
United Kingdom 557,000
Netherlands 125,000
Germany 375,000
Poland 54,000
Belgium 59,000
France 304,000
Spain 121,000
Switzerland 189,000
Italy 280,000
Russia 131,000
Kazakhstan 12,000
South Korea 109,000
Japan 765,000
China 373,000
India 114,000
Turkey 38,000
United Arab Emirates 23,000
Singapore 74,000
Saudi Arabia 62,000
South Africa 107,000
Kuwait 13,000
Australia 180,000
Legend
HNWI Growth Rate (%)
Null
2
3
4
5
6
7
8
9
10 +
Source: Scorpio Partnership

ANNEX D: MAIN PERSONAL TAXES AND RATES BY COUNTRY

Correct as at March 2009

Country	Top income tax rate (%)[1]	Tax on capital gains[2 3]	Wealth tax	Inheritance and Gift taxes	
				Inheritance	Gift
Australia	46.5	Chargeable to income tax Gains on assets held since before 1985 not chargeable. Since 1999, 50% discount on gains (net of losses) for assets held for more than a year. Discount not available to companies. Further 50% relief for small business assets.	None	None	
Canada[4]	46.4	Chargeable to income tax Only 50% of the gain is chargeable Relief up to CAD 375,000 (after 50% reduction above) for shares in small companies and land and assets used for farming.	None	None	
France[5]	45.8	Chargeable to capital gains tax Sale of real estate is taxed at 16%. The gain is reduced by 10% for each year after the 5th year that the asset is held. Sale of shares is taxed at 18%. Shares held for 8 years or more are exempt from tax. Gains arising from disposals of other assets are taxed at 16%. The gain is reduced by 10% for each year after the 2nd that the asset is held. Social charges of 11% are levied on top of the above rates.	Rate: 0.55% - 1.8% Tax applies to all non-exempt assets if their value exceeds threshold of EUR 770,000	Inheritance Tax: 5% - 60% Same rate structure for inheritance and gifts. Lower rates and greater exemptions (e.g. EUR 151,950 where the donee is a parent of child of the donor) apply to close relatives with the highest rate (60%) applying to gifts to unrelated persons.	

<table>
<tr><th rowspan="2">Country</th><th rowspan="2">Top income tax rate (%)[1]</th><th rowspan="2">Tax on capital gains[2,3]</th><th rowspan="2">Wealth tax</th><th colspan="2">Inheritance and Gift taxes</th></tr>
<tr><th>Inheritance</th><th>Gift</th></tr>
<tr><td>Germany</td><td>47.5[6]</td><td>Chargeable to income tax if taxable.

Taxable capital gains are, especially, gains arising from the disposal of business assets, gains arising from the disposal of real estate held by not more than 10 years, and all gains arising from the disposal of shares.

Gains arising from the disposal of portfolio shares are taxed at a flat rate of 26.4%

40% of gains arising from the disposal of other shares are exempt from tax.</td><td>None[7]</td><td colspan="2">Rates: 7% - 50%

Same rate structure for inheritance and gifts determined by the relationship between the donor and donee as well as by the value of the inheritance/gift.

Exemption of EUR 500,000 where donee is the donor's spouse and EUR 400,000 where donee is a child.</td></tr>
<tr><td>Ireland[8]</td><td>41.0</td><td>Chargeable to capital gains tax

Rate: 20%

40% rate applies to disposals of certain foreign life assurance policies and foreign investment products.</td><td>None</td><td colspan="2">Rate: 20%

Larger exemptions apply to close relatives than unrelated persons (e.g. EUR 521,208 where the donee is a child of the donor).

Relief is available for legacies comprising agricultural or business property, reducing the market value by up to 90%</td></tr>
<tr><td>Italy</td><td>44.9</td><td>Chargeable to income tax

Only 40% of the gain arising from the disposal of 'qualifying' shares (essentially, more than an insignificant proportion of the voting or capital rights in the company) is chargeable to income tax.

Gains arising from the disposal of 'non-qualifying' shares are taxed at 12.5%.

Gains arising from the sale of real estate, held for less than 5 years, is taxed at 20%</td><td>None</td><td colspan="2">Rate: 4% - 8%

Lower rates and greater exemptions apply where the donee is spouse or linear descendant of the donor (e.g. exemption of EUR1 million) with a higher rate and no exemption applying to gifts to unrelated persons.

(reintroduced – 2006)</td></tr>
<tr><td>Japan</td><td>50.0</td><td>Chargeable to income tax.

Real estate is taxed separately. Property held for less than 5 years is taxed at 39%, and more than 5 years at 20%

Gains arising from disposals of shares are taxed at 20%</td><td>None</td><td>Rate: 10% - 50% depending on the property value

Exemption: JPY 50 million, plus JPY 10 million for each statutory heir.</td><td>Rate: 10% - 50% depending on the property value

Exemption: JPY 1.1 million.</td></tr>
</table>

<table>
<tr><th rowspan="2">Country</th><th rowspan="2">Top income tax rate (%)[1]</th><th rowspan="2">Tax on capital gains[2 3]</th><th rowspan="2">Wealth tax</th><th colspan="2">Inheritance and Gift taxes</th></tr>
<tr><th>Inheritance</th><th>Gift</th></tr>
<tr><td>Mexico</td><td>28.0</td><td>Chargeable to income tax.

Disposals of property are taxed at either 28% of the net profit or 25% of the gross sales proceeds

Different rules apply to different types of assets e.g. individuals realising capital gains from the alienation of real property must make an advanced payment for each disposal.

Exemption for gains arising to resident individuals from the disposal of shares in Mexican companies listed on the Stock Exchange.</td><td>None

(abolished in 2007)</td><td colspan="2">None</td></tr>
<tr><td>New Zealand</td><td>39.0</td><td>Capital gains are generally not taxable.

Exceptions include gains from the sale of land acquired for the purpose of disposal, which are chargeable to income tax.</td><td>None</td><td colspan="2">Gift duty: 5% - 25%

Rate is determined by the value of the gifts.

Exemption for gifts below NZD 27,000</td></tr>
<tr><td>Netherlands[9]</td><td>52.0</td><td>Capital gains are generally not taxable.

Sales of significant (> 5%) shareholdings in a company are taxed at 25%

The net asset value of savings and investments is taxed annually at an effective rate of 1.2%</td><td>None

(abolished - 2001)</td><td colspan="2">Rates: 5% - 68%

Same rate structure for inheritances, gifts and transfers determined by the category of recipient.

Exemption of EUR 532,570 where recipient of legacy is the surviving spouse (from 1 January 2009).</td></tr>
<tr><td>Norway</td><td>40.0</td><td>Chargeable to income tax at 28%

Holiday homes are exempt from tax if they have been held for at least 5 years and have been used by the owner for at least 5 of the 8 years prior to sale.</td><td>State tax: 0.4%

Municipality tax: 0.7%

Applies to wealth in excess of NOK 470,000</td><td colspan="2">Rates: 6% - 15%
(6% - 10% for inheritances and gifts to children and parents)

Applies to transfers in excess of NOK 470,000

Applicable rate is determined by the relationship between the donor and donee and the amount received.</td></tr>
<tr><td>South Africa</td><td>40.0</td><td>Income tax rates apply.

Only 25% of the gain is chargeable.

Annual exclusion of ZAR 15,000.</td><td>None</td><td>Estate duty: 20%

Exempt amount: ZAR 3.5 million</td><td>Donation tax: 20%

Exemption for property disposals less than or equal to ZAR 0.1 million</td></tr>
</table>

Country	Top income tax rate (%)[1]	Tax on capital gains[2 3]	Wealth tax	Inheritance and Gift taxes	
				Inheritance	Gift
United Kingdom[10]	40.0[11]	Chargeable to capital gain tax. Rate: 18%[12] Annual exemption of GBP 9,600. 'Entrepreneurs' relief of [4/9 x gain] for disposals of a business, or assets used in a business, with a lifetime limit of GBP 1 million	None	Inheritance Tax: 40% No gift tax but there is an advance charge of 20% on settlement of certain trusts. Up to 100% relief for legacies of business and agricultural assets. Exemption: GBP 312,000; full exemption where recipient of legacy is surviving spouse	
United States	41.85[13]	Chargeable to income tax Reduced rates (5% and 15%) for disposals of long-held assets by individuals in the lowest two income tax brackets.	None	Rates: 18% - 50% Lifetime excluded amount: USD 3.5 million Property passing to a spouse is exempt	Rates: 18% - 50% Lifetime excluded amount: USD 1 million Annual exclusion: USD 12,000 Gifts to spouses are excluded

1. Combined state and federal tax.
2. "Income tax rates apply" indicates that the capital gain is assessed separately to income tax but applies the same rate of tax
3. In general, gains arising from the disposal of the taxpayer's main residence are exempt from tax. The precise rules differ by jurisdiction.
4. The top federal rate is 29% with provisional rates ranging from 10.0% in Alberta to 24.0% in Québec
5. In 2008 France extended its range of tax reliefs for foreign executives working in the country. With effect from 1 January 2008, foreign workers who have not been resident in France for the 5 years immediately preceding the commencement of their employment or assignment qualify for tax benefits for a maximum of 6 years. These benefits include: tax exemption on the incentive / relocation payment (referred to as the 'impatriate premium'); 30% of remuneration exempted from French income tax; tax relief of 50% on French income tax due on non-French sourced dividends, interest and capital gains realised on shares of non-French companies, and an exemption from French wealth tax for a maximum period of 6 years on overseas wealth.
6. The top rate of 47.5% includes solidarity surcharge. A flat rate of 26.4% (25% income tax plus solidarity surcharge) exists for 'income from capital assets' (e.g. dividends and portfolio interest).
7. Wealth tax has not been applied since 1997 owing to a Federal Constitutional Court decision which held that the valuation rules used violated the constitution.
8. Ireland operates a remittance basis of taxation for non-domiciled individuals. Accordingly for these individuals income tax applies only to Irish-source income together with any foreign income that is remitted to Ireland.
9. The Netherlands offers an income tax reduction for certain foreign individuals commencing employment in the Netherlands. Individuals with skills not or scarcely available in the Dutch labour market can benefit from up to 30% of their total remuneration being tax free for the first 10 years of their stay in the country. Skilled workers may include, for example, a senior executive of an international group with at least 30 months' experience.
10. Individuals not domiciled in the United Kingdom are taxed on their worldwide income and gains unless they claim for taxation on the remittance basis. Where an individual has been resident in the United Kingdom for more than 7 of the preceding 10 years, they will only be able to claim the remittance basis of taxation if they pay an annual charge of GBP 30,000 in respect of the foreign income and gains they leave outside the United Kingdom. In addition, those electing for taxation on the remittance basis do not qualify for tax-free allowance for income tax (GBP 6,035) or capital gains tax (GBP 9,200).

11. Proposals have been announced in the United Kingdom's Budget (23 April 2009) to increase the rate of income tax to 50 % for those earning in excess of GBP 150,000 with effect from April 2010.

12. Where there has not been a distribution of monies within 6 years by trustees of an offshore trust realising a capital gain, an effective rate of 28.8% will apply to subsequent distributions of capital to UK resident and domiciled individuals.

13. This rate is the top statutory personal income tax rate also used in the OECD Taxing Wages (2008) publication using a worker living in Detroit, Michigan. The rate is the sum of the federal top statutory personal income tax rate of 35%, the statutory rate levied by the state of Michigan of 4.35% and by the city of Detroit of 2.5%.

GLOSSARY

Aggressive Tax Planning (ATP)

This report uses the term "aggressive tax planning" and has adopted the definition of "aggressive tax planning" found in the Intermediaries Study (pp. 10-11). Thus the following two areas of concerns are referred to as aggressive tax planning:

- **Planning involving a tax position that is tenable but has unintended and unexpected tax revenue consequences**. Revenue bodies' concerns relate to the risk that tax legislation can be misused to achieve results which were not foreseen by the legislators.

  […]

- **Taking a tax position that is favourable to the taxpayer without openly disclosing that there is uncertainty whether significant matters in the tax return accord with the law**. Revenue bodies' concerns relate to the risk that taxpayers will not disclose their view on the uncertainty or risk taken in relation to grey areas of law (sometimes, revenue bodies would not even agree that the law is in doubt).

Please note that this definition may be different to definitions of "aggressive tax planning" adopted by individual countries.

Bespoke Schemes

Schemes that are designed for a particular taxpayer or group of taxpayers.

Forum on Tax Administration (FTA)

The Forum on Tax Administration was created in July 2002 by the OECD's Committee on Fiscal Affairs (CFA) with the aim of promoting dialogue between tax administrations and of identifying good tax administration practices. Its members are the heads of tax administrations from 40 OECD and non OECD countries.

High Net Worth Individual (HNWI)

Individuals at the top of the wealth or income scale. The term "High Net Worth Individuals" (HNWI) is used broadly and thus includes both high wealth individuals[1] and high income individuals.[2] The report does not otherwise attempt to define the term as any conclusions from this report will have to be implemented in the context of what is most appropriate in the circumstances of each country.

---

1. The term 'net wealth' or "net worth' is generally understood to refer to assets less liabilities. The term 'high net wealth' or "high net worth' is used interchangeably in this report with the term 'high wealth' to loosely refer to those at the top of the wealth scale.

2. The term 'high income individuals' is used very broadly also, to refer to those at the top of the income scale.

Intermediaries Study

OECD (2008), *Study into the Role of Tax Intermediaries*, OECD, Paris

Off-the-shelf schemes

Schemes that are designed to require little involvement of the taxpayer in the implementation of the transactions. They are often characterised by the large number of individuals investing in the structure. The term “plug and play” is also used to refer to this type of scheme.

Retroactive legislation

A law which, when enacted, affects events occurring before the date of enactment. The effective date of the law may be the date of an announcement or some other date.

Tax Evasion

Action by the taxpayer which entails breaking the law and which moreover can be shown to have been taken willingly with the intention of escaping payment of tax.

Working Party No. 8 on Tax Avoidance and Evasion

Working Party No. 8 is a subsidiary body of the OECD’s Committee on Fiscal Affairs. Part of its mandate is to examine, both from a domestic and international point of view, the legal, policy, and administrative aspects of tax avoidance and evasion.