

Wealth under the spotlight

Tax administration without borders



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Executive summary

Tax policy and tax administration around the world are both experiencing unprecedented levels of change, driven, in large part, by the Global Financial Crisis. This report highlights some of these global changes and the subsequent impact being felt by high net worth individuals (HNWIs). We explore current policy direction and the spectacular rise in collaboration and information sharing among tax administrations, and how many HNWIs are now starting to realize that their relationship with key taxing administrations needs to evolve and change, for which we set out a series of leading practices which may be considered. In preparing it, we drew upon Ernst & Young's extensive global network of personal tax, tax policy and tax controversy subject matter professionals and Ernst & Young interviews with leaders of many tax administrations around the world.

The financial crisis has prompted a major change in the way in which tax administrations engage with high net worth individuals (HNWIs). Although representing only a tiny proportion of society, wealthy individuals pay a significant proportion of income tax revenues and also tend to have highly complex personal and business affairs. By focusing their attention on HNWIs, tax administrations recognize that they can make more efficient use of scarce resources and increase overall revenues at a time when public finances are under severe strain.

On the tax policy side, headline tax rate increases are perhaps the most visible symptom of change. In recent months, a number of governments have raised headline tax rates for the highest earners, set higher rates of taxes on capital gains from the sale of assets or more generally widened the tax base paid by this segment. Wealthy individuals in the financial services sector have also come under particularly intense scrutiny.

But a more profound change relates to the way in which tax administrations share taxpayer information with their foreign counterparts and engage with wealthy taxpayers. As we outlined in

our 2009 report "*Tax administration without borders*,¹" there has been a rapid and sudden growth of taxpayer information exchange among tax administrations and the subsequent advent of joint examinations between countries.

The recognition that HNWIs have complex affairs and are an important component of the tax base has prompted administrations to re-think their engagement with wealthy individuals. A growing number of tax administrations are setting up dedicated high net worth units that aim to gain a more comprehensive understanding of the affairs and behavior of HNWIs. Tax administrations hope that this will lead to significant improvements in compliance and a better understanding of the risks posed by the HNWI segment.

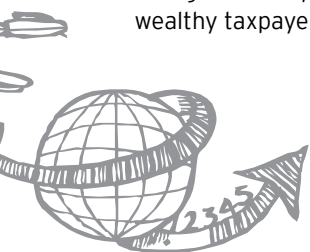
Some countries hope to take this approach a step further by building a more trusting, open relationship between taxpayer and administration that can be described as "co-operative compliance." These schemes aim to give HNWIs the opportunity to discuss and disclose potential issues at the pre-filing stage so that risks can be mitigated. In return, HNWIs would expect certainty

over these issues and a commitment that, once agreed in the pre-filing process, they would not be challenged during subsequent examinations.

Taken together, these trends represent a profound change in the relationship between taxpayer and tax administrations. The potential consequences are far-reaching and, for taxpayers who do not comply fully, could include more frequent and complex disputes, increased penalties for infringement and additional time and resources required for dealing with tax controversy.

But for the vast majority of HNWIs who want to do the right thing, these trends could represent a very positive shift in the relationship between taxpayer and tax administration. By showing a commitment to tax administrations that they are willing to engage on compliance issues and build a more constructive, open relationship, HNWIs could benefit from reduced risk of tax controversy, lower compliance costs, a better understanding of the fast-changing legislative environment, and, perhaps most importantly of all, saving time – a most precious commodity.

¹ www.ey.com/taxadministrationwithoutborders



Introduction

The global financial crisis that began in late 2007 had a devastating impact on the assets of HNWIs. According to the Global Wealth Report, which is published annually by the Boston Consulting Group, global wealth fell by 11.7% in 2008² from \$109.5 trillion to \$92.4 trillion.

A year later, the situation had much improved. A massive government stimulus helped to stabilize many major economies and led to a significant recovery in financial markets that began in the second quarter of 2009. This helped many HNWIs to recoup the losses that they had sustained earlier in the crisis and led to a rebound in HNW numbers. In 2009, the world's population of HNWIs grew by 17.1% to 10 million, collectively wielding US\$39 trillion³.

The number of HNWIs may have returned to pre-crisis levels, but government finances remain in a perilous state. In 2009, fiscal deficits in the G7 economies widened to an average of 10% of GDP⁴, according to the International Monetary Fund. Government debt-to-GDP ratios are rising to levels last seen at the end of World War II.

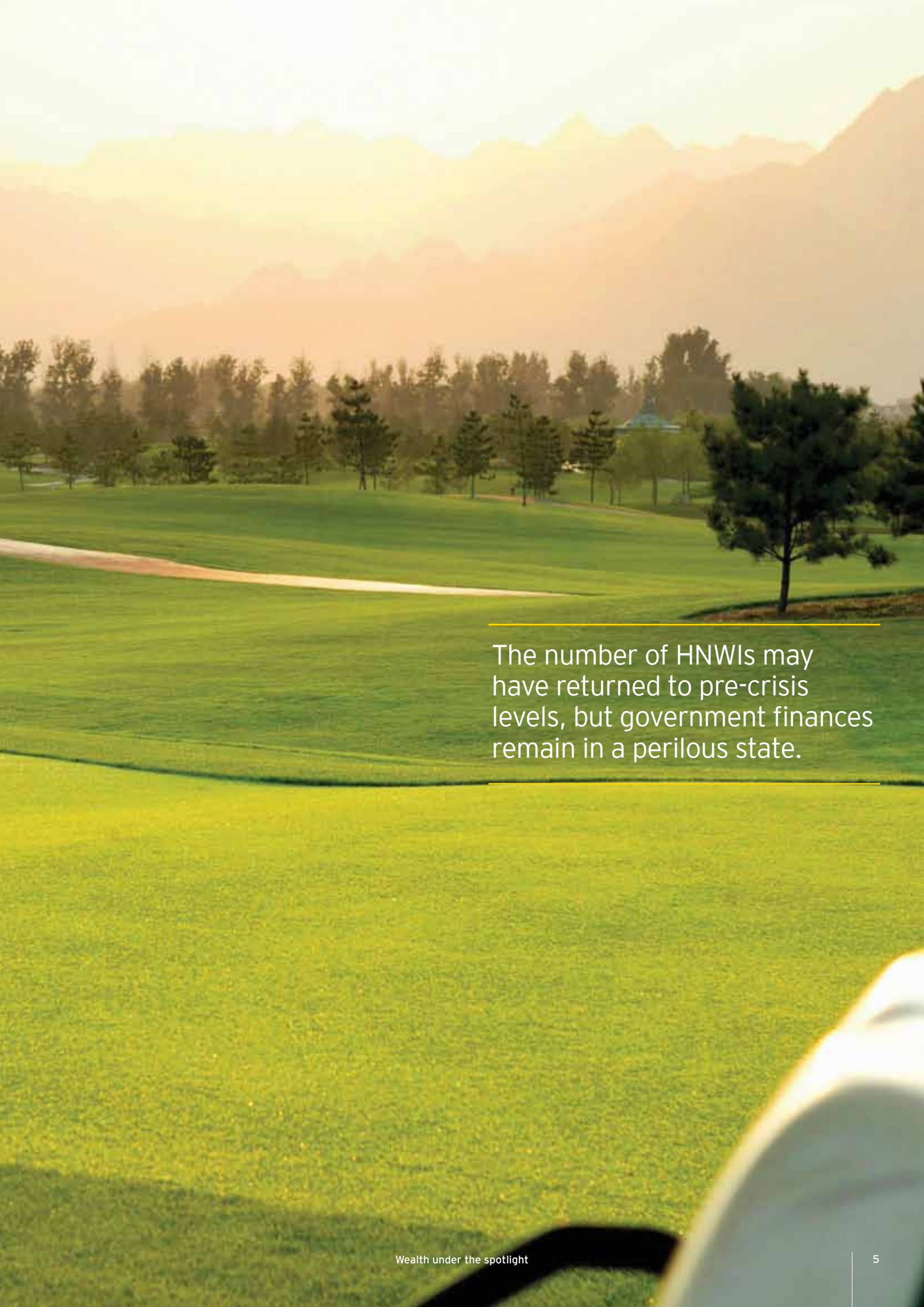
Attention is now turning to ways of reducing government debt levels and increasing economic output. Some economies, such as the United Kingdom, Germany and Ireland, have introduced deep public spending cuts in order to reduce deficit levels. Other countries, such as the US, are taking a more measured approach to their exit strategies. But regardless of the speed and force with which governments exit the stimulus period, one factor is universal: economies around the world recognize that they need to increase their revenues and address the effectiveness with which they administer, collect and enforce taxation among both corporates and individuals.

² "Global Wealth 2009: Delivering on the Client Promise," Boston Consulting Group, 2009
http://www.bcg.com/expertise_impact/publications/PublicationDetails.aspx?id=tcm:12-28362

³ The Boston Consulting Group Global Wealth Report defines a millionaire household as those with at least \$1 million in assets under management (AuM)

⁴ IMF Fiscal Monitor: "Navigating the Fiscal Challenges Ahead," May 2010,
<http://www.imf.org/external/pubs/ft/fm/2010/fm1001.pdf>





The number of HNWIs may have returned to pre-crisis levels, but government finances remain in a perilous state.

"HMRC recognizes that very wealthy individuals usually have complex affairs and financial arrangements that often span a wide range of tax legislation. Their wealth and high levels of income means that there are significant tax contributions from this group, both as individuals and through the entities that they control. In addition, wealthy entrepreneurs and investors are important contributors to the UK economy. Many HNWI's have activities that are located within other tax jurisdictions and have access to a range of professionals to advise them on structuring and managing their affairs. Thus, in many ways, they are similar to very large businesses in their complexity; and, as with large business, tax administrations see a range of motivations towards tax compliance among HNWI's that need to be understood and addressed appropriately and fairly."

*Martin Randall Head of HM Revenue & Customs
(HMRC) High Net Worth Unit*



Fourth, HNWI's are more likely than other groups in society to engage in aggressive tax planning, simply because they have more complex financial affairs and are more likely to be able to access these services. In its Study into the Role of Tax Intermediaries, the OECD noted that "high net worth individuals are the second principal market for aggressive tax planning." This is not to say aggressive tax planning is a common characteristic of HNWI's, but simply that they have greater opportunity to use these techniques should they choose to do so.

Faced with this potent combination of factors, tax administrations around the world are re-examining the way in which they engage with HNWI's. By focusing their attention on this relatively small group of individuals, the authorities recognize that they can make more

efficient use of their limited resources and can increase their overall revenues by placing the tax affairs of wealthy individuals under greater scrutiny.

A number of governments have already announced additional investment aimed at strengthening tax compliance and enforcement. In the United Kingdom Government's 2010 Comprehensive Spending Review⁷ the Chancellor, George Osborne, outlined that the coalition government will allocate an additional £900 million to HMRC to crack down on tax avoidance, evasion fraud and debt, particularly arising from offshore activities. The move is expected to bring in an additional £7 billion a year in tax revenues by 2014-15 and includes a proposed five-fold increase in criminal prosecutions to act as a deterrent to others.

This revised approach among individual governments must be viewed in a much broader context of fundamental transformation to the way in which jurisdictions coordinate with each other on tax affairs. After years of faltering progress in facilitating greater exchange of tax information between jurisdictions, the financial crisis served as a massive catalyst for change. Under the auspices of the G20 and the OECD, cooperation between tax administrations has become the rule, rather than the exception, while the threshold of tolerance for tax evasion has fallen to zero.

⁷ "Spending Review 2010," complete document, HM Treasury, October 2010, http://cdn.hm-treasury.gov.uk/sr2010_completetereport.pdf

The shifting tax landscape

Governments essentially have two levers they can pull to increase the revenues that they collect from HNWIs. They can raise the tax rates for the highest earners (as well as changing various exemptions, deductions, personal allowances and reliefs), and they can improve the effectiveness of their collection, compliance and enforcement methods. Most governments have always used a combination of both tax policy and tax enforcement in their dealings with HNWIs, but what has changed is the speed, and uncertainty, with which they are applying them. A key risk for HNWIs today is that they do not keep up with the pace of change.

Tax increases for the wealthy are just one symptom of change. In recent months, there have been numerous examples from around the world of governments setting their sights on higher earners. In the UK, the headline rate of income tax increased in April 2010 from 40% to 50% for those earning more than £150,000, while restrictions in relief for pension contributions were also announced. Then, in June, the Coalition Government introduced a new rate of capital gains tax of 28% for higher earners in its Emergency Budget.

In Spain, a September 2010 budget introduced two new tax brackets for those earning more than €120,000 and €175,000 that the government hoped would generate an additional €200m of revenue. In the United States, meanwhile, the potential expiration of the tax cuts introduced under the Bush administration has been the source of intense political debate, and at the time of writing, a clear resolution was still not in place.





High earners in the financial sector have also come under particular scrutiny in recent months. In 2009, the UK government imposed a 50% tax on bonuses over £25,000, a move that was swiftly followed by France. The Italian government introduced similar legislation in July 2010. Under the new Law Decree No.78, variable compensation for those in the banking and financial sector that exceeds three times the amount of fixed compensation will be subject to an additional 10% tax burden.

Strengthening compliance efforts


Several countries are focusing on the mobility of high earners as a factor in their compliance efforts. In July 2010, the Australian Taxation Office released details of its compliance program for 2010 to 2011. Among other proposals, it promised to “closely scrutinize reporting of income from employee share schemes . . . and remuneration payments received from overseas entities or paid from Australia to overseas accounts.”⁸ This renewed focus on the affairs of internationally mobile high earners highlights the importance of understanding the complex rules relating to cross-border moves in order to ensure compliance.

In New Zealand, individuals who are planning to leave the country are increasingly being requested to complete a questionnaire called an IR886. While this may appear straightforward, the New Zealand Institute of Chartered Accountants has recently warned individuals against taking a “do-it-yourself” attitude towards completing the form. Getting the details wrong could alter the outcome of individuals’ tax residency determinations and mean that they are

taxable on their worldwide income in New Zealand, rather than being taxable only on their New Zealand-sourced income.


China's State Administration of Taxation (SAT), meanwhile, issued Circular Guoshuifa (2010) No. 54 in late May 2010, instructing local tax officials to increase their tax compliance enforcement efforts on high-income expatriate and PRC taxpayers. Circular 54, aimed at taxpayers earning more than around \$18,000 (about five times the national average, according to 2009 IMF figures) expanded the types of income to which the local tax authorities would pay increased scrutiny. As well as employment income, dividends, interest and capital gains were all included. The SAT, in common with other tax administrations worldwide, also plans to significantly enhance the level of taxpayer information sharing within their own country, targeting increased information sharing processes among the State Administration for Industry and Commerce, Real Estate Administration Bureau, Social Security Bureau and a range of securities brokerages.

The examples described above – and others like them from around the world – demonstrate the increasing readiness of tax administrations to make sure they are doing all they can to collect the right – and full – amount of tax due from HNWIs. But there is also a more significant trend underway that goes well beyond efforts being made at a national level. In the past two years, there has been an unprecedented level of international coordination and cooperation between governments on tax affairs. And already, this is starting to have a profound effect on the relationship between HNWIs, their advisers and tax administrations.



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⁸“Compliance program 2010-11”, Australian Tax Office, http://ato.gov.au/content/downloads/cor00248103_NAT7769.pdf



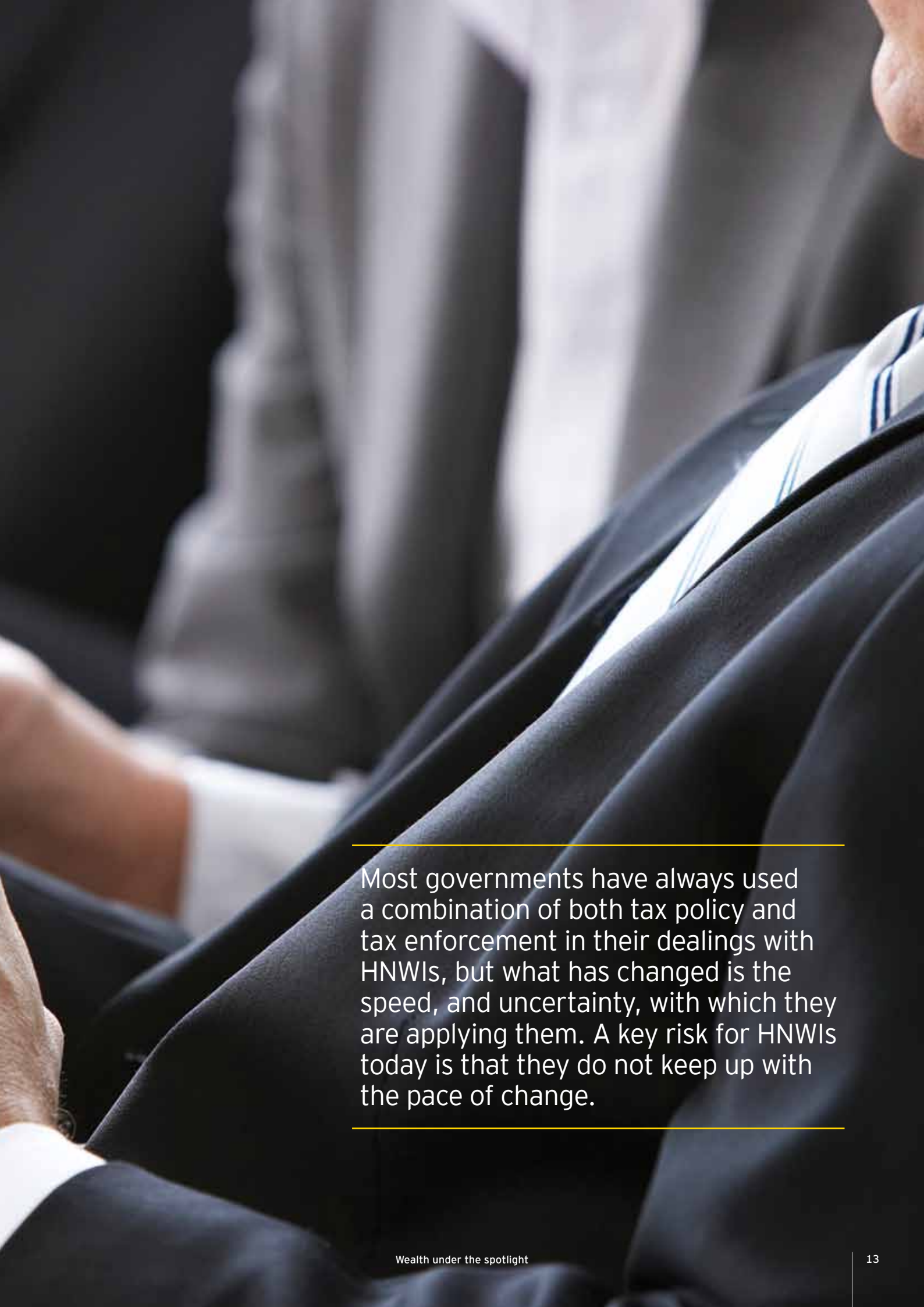
"Greater complexity and rapid change in the tax environment are having a significant impact on how HNWIs must manage their affairs. With tax administrations sharing information and working together in an unprecedented way, the traditional approach whereby a wealthy taxpayer deals with tax authorities individually is fast becoming outdated. Instead, HNWIs must take a much more coherent approach to their entire international business and personal tax affairs."

*Chris Sanger, Global Director
for Tax Policy at Ernst & Young*

Tax administrations change their model of engagement

Tax administrations around the world are adapting their enforcement strategies, focus and policies in response to the changing dynamics of businesses and individuals and the need to make sure that all due taxes are paid. They are developing better tools, processes and capabilities to help ensure that their limited resources are being applied to the right issues and taxpayers. They are also sharing more information with their foreign counterparts, collaborating together to share leading practices, growing more sophisticated and sharpening their enforcement focus to ensure they collect as much due tax as possible. The result, when things go wrong, is more frequent and complex disputes between taxpayers and taxing authorities, increased penalties for infringements and an unnecessary waste of time and resources in dealing with tax controversy. On the other side of the equation, getting tax compliance right, while it may seem like a burden at the time, can pay dividends for the high net worth taxpayer for whom time is the most valuable commodity.





Most governments have always used a combination of both tax policy and tax enforcement in their dealings with HNWIs, but what has changed is the speed, and uncertainty, with which they are applying them. A key risk for HNWIs today is that they do not keep up with the pace of change.

The rise of taxpayer information exchange

Many governments consider that the shift towards better exchange of information on tax is long overdue. Globalization has had a profound effect on markets, trade and cross-border flows of capital. Today, both corporates and HNWI's are likely to have business interests spanning multiple countries that depend on complex structures and cross-border transactions. Yet tax has remained, until recently, largely a national affair. Without a mechanism to share information between jurisdictions, tax authorities are effectively unaware about a company or individual's international dealings. The potential for aggressive tax planning, often through the use of offshore structures including trusts, has therefore been significant.

The G20 summit in London on 2 April 2009, proved to be a watershed moment in the administration of taxation across borders. As world leaders grappled with the fall-out from the worst financial crisis in more than a generation, there was a clear consensus that more had to be done at an international level to promote greater transparency and exchange of tax information between jurisdictions.

As well as achieving the longer term goal of greater visibility into international tax affairs, a more open relationship between tax administrations would, leaders hoped, be an important step forward in the battle against tax evasion. Estimates from the United States Senate suggest that money lost as a result of tax evasion amounts to US\$100 billion every year, while in many European

countries, the sums run into billions of euro⁹. Opening the lid on secretive "tax havens" and forcing them to reveal information about residents and account holders would, it was hoped, tighten the net on tax evasion and make aggressive tax planning more transparent and subject to review or scrutiny.

Following the G20 meeting in London, the OECD published a progress report that listed the countries that it believed had either implemented, or committed to, its internationally agreed tax standard. Four countries – Costa Rica, Malaysia, the Philippines and Uruguay – were listed as having not committed to the standard. Another 38 countries, which the OECD described either as tax havens or "other financial centers," were described as having committed to the standards but not yet implemented them.

In order to qualify as having implemented the OECD's standards, a jurisdiction must demonstrate that it has signed a minimum of 12 bilateral tax information exchange agreements (TIEAs). A TIEA is a legal instrument that sets out expected standards around the exchange of tax information. Under a TIEA, one country can request from another tax information about a certain individual or corporate entity. The recipient of the request is then obliged to provide relevant information held by banks, or regarding the ownership of companies, partnerships, trusts or foundations.

"We agree to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information."

*G20 Communiqué London
April 2009*

⁹ Tax Haven Banks and U.S. Tax Compliance Staff Report, Permanent Subcommittee on Investigations United States Senate Released in Conjunction with the Permanent Subcommittee on Investigations 17 July 2008 Hearing http://hsgac.senate.gov/public/_files/071708PSIReport.pdf





Progress following the publication of the OECD's April 2009 progress report was remarkably swift. Within a week, the four blacklisted countries had committed to implementing the standards. A flurry of TIEAs ensued as governments sought to demonstrate their commitment to the OECD's standards and avoid the threat of sanctions. Prior to the November 2008 G20 Summit in Washington, only 44 TIEAs or double-tax conventions had been signed. By the end of December 2009, there were 364 such agreements in place. The result was that, between April 2009 and June 2010, 28 countries moved to the category of jurisdictions that had substantially implemented the OECD's standards. Every country within the OECD has now endorsed the standards and has either implemented them or is in the process of doing so.

Another recent development points to a shift towards a multilateral, rather than a bilateral, approach to information exchange. In April 2010, the OECD and Council of Europe announced that they had updated their 1988 multilateral pact on administrative cooperation in tax matters. This reinforces the protocols for information exchange, including those related to bank information, and also broadens the scope of potential agreements to non-OECD or Council of Europe members.



The rise of the joint audit

But perhaps most interestingly, the update of the 1988 pact also emphasizes the use of examinations conducted by two or more jurisdictions. These so-called joint audits allow more than one administration to work together on an examination of a company or individual's tax affairs in the same physical site. In the past, examinations would have been carried out separately by each jurisdiction in which the taxpayer had business or personal affairs. In September 2010, the OECD published a report that provided practical guidance for administrations on how to implement and manage joint audits.

Although the focus of joint audits is likely, at least initially, to be on multinational businesses, HNWIs also potentially fall under their scope. Indeed, the South African Revenue Service has already reported that it is undertaking a joint audit of an HNW with the UK's HMRC, so there is good reason to expect that more examinations of this nature will follow.

In developing this joint audit approach, leading tax administrations have been keen to point out the benefits for those who are subject to these examinations. Speaking in January 2010, Douglas Shulman, the Commissioner of the US Internal Revenue Service, said he believed that it would reduce, rather than increase, the burden on taxpayers. "In theory, a joint audit conducted with another country's tax authority and the IRS will reduce the burden on a corporate taxpayer, who won't need to go through a similar exercise twice, as well as allow for competent authority resolution earlier in the process," he explained¹⁰.

It is clear that the rapid and sudden trend towards the exchange of tax information has dramatic implications for HNWIs. First and foremost, it highlights that full compliance has now become essential. With jurisdictions now able to share information on request, and conduct joint examinations on a bilateral or multilateral basis, it has become abundantly clear that HNWIs must be consistent in their reporting and must disclose fully all business and personal interests to the authorities.

But beyond this requirement for 100% compliance, it is important to bear in mind that there are opportunities associated with this development. A joint audit carried out by more than one tax administration could greatly streamline and accelerate the examination process, which may lead to lower compliance costs and a more open, transparent relationship with international tax administrations. For the vast majority of HNWIs who want to do the right thing with their tax affairs, this new environment of transparency and disclosure across borders could be of significant benefit.

"For private wealth with family members we have issues with privacy. For example, Ernst and Young might deal with the business side of a taxpayer's affairs but a private accountant might deal with the private side. These people are wealthy and thought leaders in society so we need to be able to work with them to get the best outcomes for everyone."

*Greg Williams
Assistant Deputy Commissioner
Australian Tax Office*

"Disjointed, multi-government, uncoordinated oversight is not helpful for taxpayers and it is not optimal for government tax authorities. The taxpayer often wastes time and resources navigating between conflicting signals from multiple governments. That is why I am a believer in moving beyond cooperative government relationships, to true coordinated action. The joint audit is an example of this."

*Prepared Remarks of IRS
Commissioner Doug Shulman
before the 23rd Annual Institute
on Current Issues in International
Taxation, Washington, DC
9 December 2010*

¹⁰ Prepared Remarks of IRS Commissioner Doug Shulman to New York State Bar Association Taxation Section Annual Meeting in New York City, 26 January 2010, <http://www.irs.gov/newsroom/article/0,,id=218705,00.html>



Taxpayer information exchange on the rise

"What has happened in the tax area over the past 10 months is nothing less than a revolution! ... For decades, it has been possible for a taxpayer to hide income and assets from the taxman, by abusing bank secrecy or other impediments to information exchange. This will no longer be the case. Co-operation between tax administrations is now becoming the rule. The threshold of tolerance for tax evasion has dropped to zero. And in the context of the crisis, governments need tax revenue and citizens need to be reassured that the tax burden is being fairly shared. We have delivered more in 10 months than we achieved in more than 10 years."

Remarks by Angel Gurría, OECD Secretary-General, delivered at the Global Forum on Transparency and Exchange of Information – Los Cabos, Mexico City. 1-2 September 2009

"While 87 nations have now pledged to adopt the OECD's model tax information exchange agreement, it is critical that the international community ensure that these pledges are followed by concrete actions – that tax havens not only sign tax sharing agreements but implement them. If words are not followed by deeds, the international community must have a way to respond."

Keynote Address by Senator Carl Levin at the Conference on Increasing Transparency in Global Finance: A Development Imperative – Washington DC, 16 September 2009

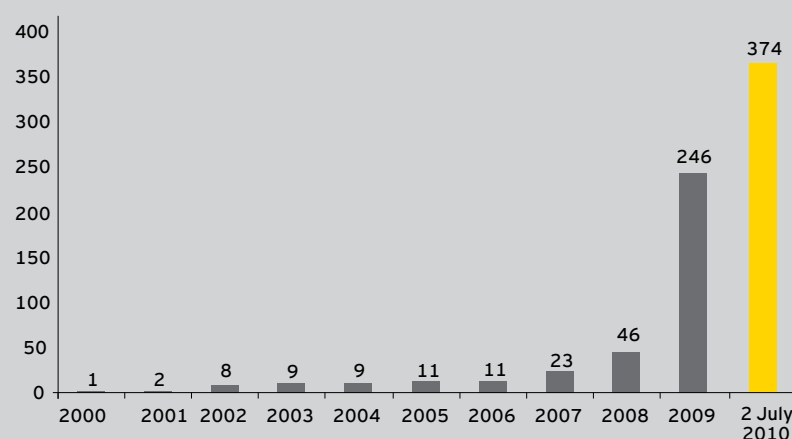
"We are committed to maintain the momentum in dealing with tax havens... We stand ready to use countermeasures against tax havens from March 2010."

G20 Leaders' Statement – Pittsburgh, U.S. 25 September 2009

The G20 summit in London on 2 April 2009, proved to be a watershed moment in the administration of taxation across borders. As world leaders grappled with the fall-out from the worst financial crisis in more than a generation, there was a clear consensus that more had to be done at an international level to promote greater transparency and exchange of tax information between jurisdictions. As well as achieving the longer-term goal of greater visibility into international tax affairs, a more open relationship between tax administrations would, leaders hoped, be an important step forward in the battle against tax evasion.

- ▶ Prior to the November 2008 G20 Summit in Washington D. C., a total of 44 Tax Information Exchange Agreements (TIEAs) had been signed. Following the Washington summit and in the run-up to the London Summit in April 2009 TIEA signings skyrocketed
- ▶ Nearly 200 TIEAs were signed in 2009 – marking a 600% increase on the number signed in 2008
- ▶ Many of these agreements were made following pressure from the G20 in April 2009 as countries attempted to avoid the OECD's "blacklist" of non-cooperative jurisdictions (NCJs) and then the "grey list" of "Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented" which came to be seen as a de-facto blacklist of countries
- ▶ In 2009 over 100 new or upgraded Double Taxation Conventions (DTCs) or protocols to existing DTCs that incorporated the OECD standard on information exchange also took place
- ▶ Since April 2009 almost 500 TIEAs or DTCs have been signed by jurisdictions which were originally identified by the OECD as having "not substantially implemented" the standard on information exchange. 29 jurisdictions have been removed from that category for having signed a minimum of 12 agreements to the standards.
- ▶ Some Offshore Financial Centres (OFCs) have signed agreements with other OFCs
- ▶ In December 2009, the OECD announced that a new Information Exchange Peer Review mechanism is to be piloted. Canada volunteers to be among the first countries selected for review
- ▶ In March 2010, the OECD formally launches country-by-country reviews, with a group of 18 countries announced as the first to participate in the process, with 7 countries (Australia, Canada, Denmark, Germany, Ireland, Mauritius and Norway) scheduled to carry out their reviews in the first 6 months of 2010
- ▶ In April 2010 the OECD and the Council of Europe announced that an the international Council of Europe treaty has undergone a major update in order to boost multilateral cooperation. The treaty aims to help governments enforce their tax laws, as part of the worldwide drive to combat cross-border tax evasion
- ▶ On 30 September 2010 the OECD delivered the first global report card on phase one of the peer reviews covering the legal and regulatory frameworks for transparency and exchange of tax information in Bermuda, Botswana, Cayman Islands, India, Jamaica, Monaco, Panama and Qatar. The reports describe each jurisdiction's rules for ensuring that information is available, how it can be accessed by competent authorities and the mechanisms in place to exchange the information with foreign tax authorities along with recommendations on how to improve co-operation in international tax matters.

TIEAs signed annually



Source: OECD, figures are aggregated year on year

Tax amnesty and disclosure opportunities

As the OECD notes in its discussion paper for public comment¹¹, the massive increase in information exchange leads to a not unreasonable assumption that a growing number of taxpayers may be willing to come forward and disclose their past noncompliance. In response to this demand, many countries are giving their taxpayers an opportunity to disclose undeclared assets in return for reduced penalties or an exemption from legal action. By encouraging the repatriation of funds and applying a tax to them, these schemes also have the added benefit of strengthening the balance sheets of domestic financial institutions and providing a quick injection of funds to bolster the public finances.

Most governments that offer voluntary disclosure schemes stress that they are temporary. Often, they coincide with the time required for TIEAs or other information exchange mechanisms to come into force. As a result, HNWLs and other taxpayers have a relatively short window of opportunity in which to disclose their undeclared assets before tax authorities can put their exchange agreements to work and request information about taxpayers whom they suspect of tax evasion. And once disclosure schemes expire, penalties can increase substantially.

Perhaps not surprisingly, many such schemes are enjoying considerable success. One of the longest running is Project Wickenby, which was launched in 2006 by the Australian Taxation Office (ATO). It consists of a series of measures designed to combat tax evasion, one of which is voluntary compliance. According to the ATO, voluntary disclosure by individuals under the Project Wickenby scheme had generated an additional A\$301.7 million in revenues by June 2010¹².

The Italian government found similar success with its temporary “tax shield” scheme, which aimed to raise as much as €12 billion. Covering all offshore tax accounts held by individuals and small and medium-sized businesses established on or before 31 December 2008, the amnesty ran between 15 September 2009 and 15 April 2010 (although was later extended to 30 April 2010). Offshore income and assets could be repatriated upon payment of a 6% extraordinary tax if the taxpayer applied by 28 February; applications thereafter were subject to a 7% tax.

"I don't think there'll be another Offshore Voluntary Disclosure Initiative (OVDI). There was a significant uptake and as a result, now we have more data available from offshore. Those who haven't come forward have adopted a non co-operative position which has paved the way for the next steps. We will follow those people up."

*Leo Bater, Deputy Commissioner
Australian Tax Office*



¹¹ "OECD's Project on High-Net Worth Individuals: Discussion Paper for Public Comment; 30 October-31 December 2008", Centre for Tax Policy and Administration. OECD, 2008

¹² ATO "Project Wickenby – is it worth the risk?", Project Wickenby CEO meeting – 24 June 2010 <http://www.ato.gov.au/corporate/content.asp?doc=/content/00220075.htm&page=3&H3>



The new scheme went on to report a record number of companies and individuals eager to repatriate their assets. During the first month of the amnesty, €3.3 billion was returned to Italy, which generated €165 million in additional tax revenues. By comparison, an earlier scheme in 2006 that ran over seven months led to a total repatriation of €6.2 billion.

In the UK, HM Revenue and Customs (HMRC) enabled taxpayers to disclose their undeclared offshore assets between September 2009 and March 2010. Under the New Disclosure Opportunity, residents who came forward to declare assets were able to settle their tax liabilities at a favorable fixed penalty rate of 10%, subject to certain conditions. There were some doubts, however, over the effectiveness of this particular scheme. According to information provided to the Tax Faculty of the Institute of Chartered Accountants in England and Wales, the New Disclosure Scheme netted HMRC around £82m from 5,500 disclosures. A similar scheme in 2007 generated £450m.



"HNWIs today face increasing tax rates in many jurisdictions, along with a significantly more complex environment and an enhanced focus on enforcement and transparency. More than ever before, wealthy individuals need to be aware of the options, be prepared and be able to plan ahead. It therefore becomes essential that the competence and breadth of services offered by their professional advisers match their personal needs."

Charles Kowal, Global Personal Tax Services Leader at Ernst & Young

The authorities in the UK have also started to focus on specific professions. In January 2010, HMRC announced a "Tax Health Plan" that would give doctors and dentists the opportunity to give full disclosure of any undisclosed tax liabilities and benefit from a fixed penalty of 10%. Those failing to take advantage of the scheme face the risk of investigations, "naming and shaming" and stiff penalties – rumored to be anything up to 100% of the underpaid tax due. This approach has also been adopted in other countries. For example, the Greek authorities recently published the names of around 60 doctors who were accused of failing to settle their tax bills¹³.

But perhaps the most innovative scheme being operated in the UK is the Liechtenstein Disclosure Facility (LDF). Following an agreement between the authorities in both jurisdictions, financial intermediaries in Liechtenstein must provide HMRC with details of any clients who have a liability to UK tax. In return, HMRC has offered the opportunity for reduced penalties on unpaid tax capped at 10% over the past 10 years. The LDF was launched in September 2009 and will run until March 2015.



The IRS has announced that it will open new offices in Beijing, Sydney and Panama City in order to bolster its efforts at preventing people from hiding assets offshore.

"We have been scouring the vast quantity of data we received from the VDP applicants and from other sources. Although more data mining is still to be done, this information has already proved invaluable in supplementing and corroborating prior leads, as well as developing new leads, involving numerous banks, advisors and promoters from around the world, including Asia and the Middle East. Given its success, we are seriously

considering another special offshore Voluntary Disclosure program. However, there will be some fundamental differences. Taxpayers will not get the same deal as those who came in under the original program. To be fair to those who came in before the deadline, the penalty – and thus the financial cost to participate – will increase."

*Prepared Remarks of IRS Commissioner Doug Shulman
before the 23rd Annual Institute on Current Issues in
International Taxation, Washington, DC – 9 December 2010*

¹³ BBC "Greek 'tax-dodging' doctors named", 14 May 2010, <http://news.bbc.co.uk/2/hi/8682174.stm>



"We have set up a network of experts in our countries to enable us to share experiences and expertise with respect to the tax compliance of high net worth individuals (HNWIs). The network has shared information on trends in dealing with HNWIs strategies implemented to counter aggressive tax planning by HNWIs, organisational responses to deal with tax risks posed by HNWIs, co-operative strategies and voluntary disclosure initiatives regarding past noncompliance by HNWIs. We intend to continue sharing information and welcome the participation of other countries in this initiative."

*OECD Forum on Tax Administration
Istanbul meeting communique
September 2010*

In the US, the IRS introduced a temporary initiative for the voluntary disclosure of offshore accounts that initially ran between March and September 2009 but was later extended to October 2009. In return for full disclosure, taxpayers could benefit from reduced penalties and exemption from criminal prosecution. Following the expiration of the scheme, attention is now turning to legal action against those who failed to come forward during the amnesty, while the government has also said that it will be scrutinizing the amnesty admissions for information about other financial advisors who aided evaders.

The success of voluntary disclosure schemes depends on a number of factors. Some taxpayers may be concerned that a disclosure will give rise to increased scrutiny of their affairs in the future, that it will place them in a high-risk category or that the information disclosed may not be treated confidentially. In addition, the incentives have to be right: if penalties for repatriation are set too high, taxpayers may not be sufficiently incentivized to take advantage of the scheme; but if they are set too low, then the tax administration could give the impression that it is not being sufficiently tough on tax evasion.

Tax amnesty and disclosure schemes

The global economic slowdown of the past two years has turned governments' attention to anemic public income levels. Tax authorities around the world announced a raft of new amnesty and disclosure schemes designed to bolster governments' tax revenues. This is in line with global trends in tax, including greater cross-border information sharing between tax authorities, greater emphasis on alternative ways of resolving disputes, and the use of more carefully targeted penalty regimes.

1. Argentina: in December 2008, the government launched two special regimes to facilitate payments and increase tax collection. A moratorium aimed to regularize unpaid taxes by allowing taxpayers to pay arrears in 120 instalments with low interest. In addition an amnesty law allowed taxpayers to repatriate money from abroad by paying a maximum 8% of the regularized amounts rather than the unpaid 35% income tax, or 21% VAT.

2. Australia: An offshore disclosure initiative (OVDI) for foreign income and capital gains (special programme) ran until 30 June 2010 required the full amount of tax to be paid but offered a reduction in interest to nil up top and including the 2002 tax year, to the base rate for 2003 and 2004 and at the normal rate for 2005 and later. Monetary penalties and imprisonment could still apply. Over AUD \$313 million was collected from tax evaders through the Project Wickenby crackdown that investigated a range of tax avoidance schemes, including the use of offshore tax havens and "phoenix" companies that deliberately go into liquidation to avoid tax and later re-emerge as other corporate entities.

3. Belarus: in March 2010 a five-year tax exemption from income tax on dividend, interest, royalties, and securities or from the sale of real estate was introduced to help simplify and improve tax payment in the state. Applying to both Belarusian citizens and foreign residents the amnesty aims to encourage taxpayers to repatriate income generated from abroad.

4. Belgium: from 29 December 2008, a change in Belgium law extended the statute of limitations which saw the extra-ordinary assessment period increased from five to seven years being enabling the Tax Authorities to more efficiently combat Income Tax Fraud. On 1 April 2010 a circular was published that clarified the tax amnesty regime and introduced an additional voluntary declaration for individuals.

5. Brazil: in July 2009 the Brazilian Government expanded a program designed to facilitate the payment of back taxes including federal taxes social security. Companies with tax debts were given up to 15 years to pay them off with reductions to penalties and interest rates including zero penalty and interest reduced by 45% for those liquidating their total debt in a single payment. On 14 June 2010 the Official Gazette published Law 12,249 that introduced several changes to the tax law including an additional federal amnesty program for debts owed to Federal Revenue Service and the Federal Tax Attorney's Office.

6. France: in April 2009 resident taxpayers were given the opportunity to regularize their tax position by 31 December 2009 through creation of a new specialized unit within the French Tax Department. The *cellule de regularization* enabled taxpayers to disclose legal, but previously undeclared, foreign funds and assets situated in tax havens thereby avoiding criminal prosecution and potentially benefitting from more lenient penalties.

7. Czech Republic: On 31 March 2010, the Ministry of Finance set out a new Administration of Taxes Code that will enter into force on 1 January 2011. Through the code taxpayers will have an opportunity to pay tax on undeclared funds and order to avoid criminal charges and penalties.

8. Gibraltar: A revised Income Tax Bill was published on 2 September 2010 which, if enacted, it will apply from 1 January 2011. The new law introduces a moratorium and amnesty in order to ensure advance payment of taxes and correct filing of corporate tax returns. New surcharges and penalties will be in effect as well as effective information exchange on the basis of Tax Information Exchange Agreements and effective investigative powers. A moratorium will be in effect until 30 June 2012 before which fines and penalties will not be incurred. The moratorium will not apply to interest on unpaid tax. In addition an amnesty scheme in respect of past non-compliance will be in effect to enable taxpayers to begin the new tax regime with a "clean slate".

9. Greece: on 24 March 2010, a draft tax law was set out by the government proposing a major tax reform. Amongst the many provisions a clause for the repatriation of funds sees a tax amnesty offered for funds held in foreign banks. Within 6 months of the law entering into force, taxpayers who transfer funds from foreign accounts into Greek bank accounts of at least one year can pay a 5% tax on the value of the funds at the time of their transfer back into Greece. If the funds are declared but remain abroad, an 8% tax will apply.

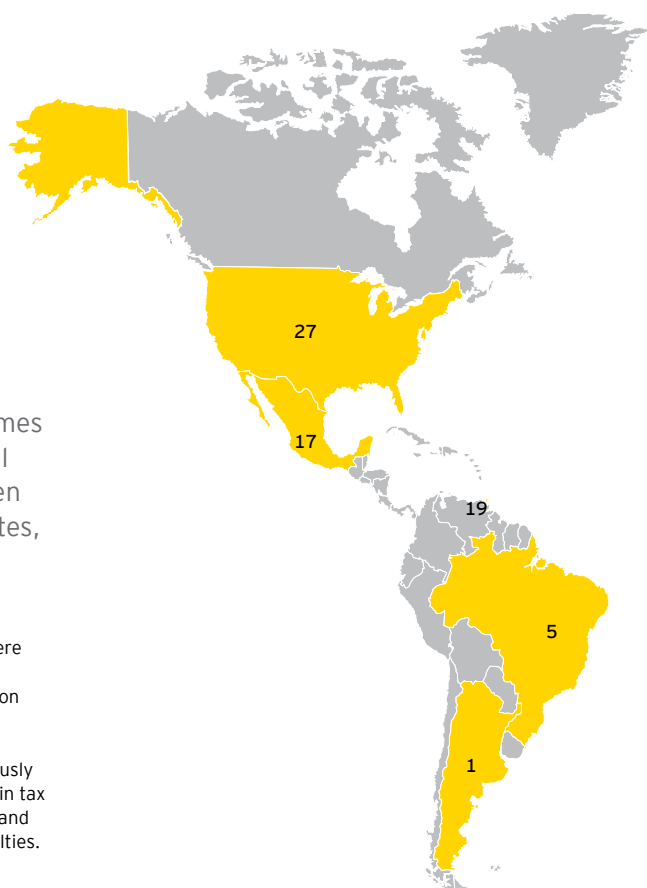
10. Hungary: in March 2009, a tax bill introduced a major amendment to the corporate income tax regime giving a partial amnesty to repatriated income accumulated in controlled foreign companies (CFCs) based anywhere except Andorra, Monaco and Liechtenstein. 75% of the dividends derived from CFCs were exempt if a taxpayer invested at least half of the repatriated income into treasury bonds held for a minimum of two years. The voluntary disclosure also applied to income realized upon the divestment of participation in a CFC. A tax amnesty for individuals was also introduced.

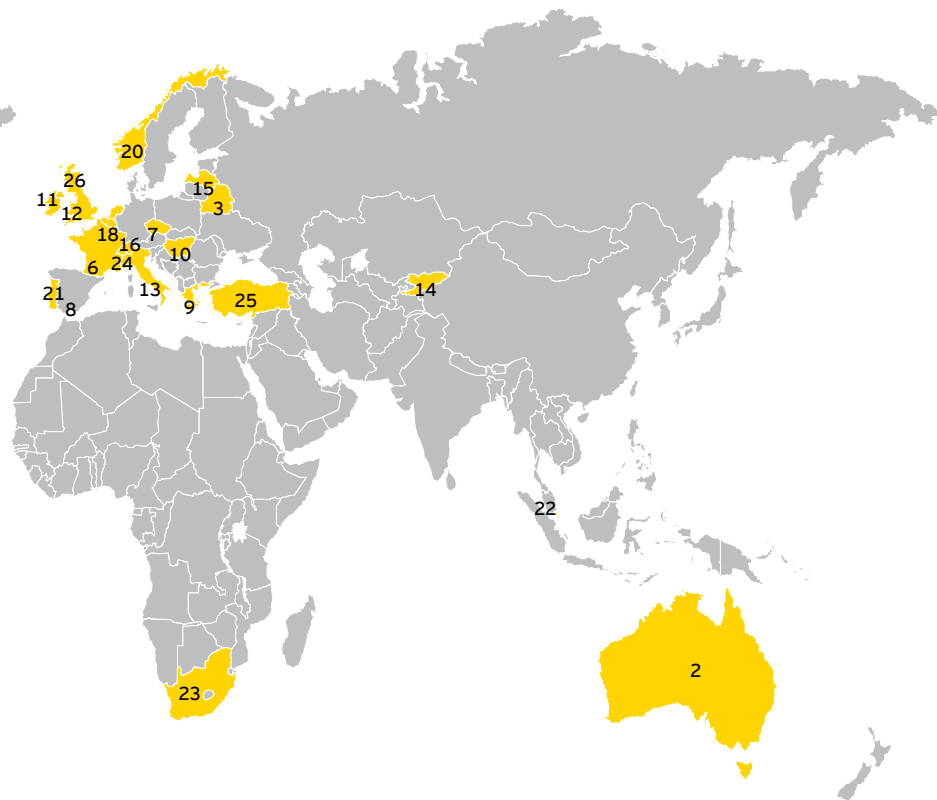
11. Ireland: an investigation into taxpayers who have undeclared tax liabilities in trusts and offshore structures began in September 2009 with the opportunity to make a qualifying disclosure to Revenue. Under the Finance Bill 2010 all Irish citizens who are domiciled in Ireland will be liable to a "domicile levy" of €200,000 if their worldwide income exceeds €1 million, and, they have assets located in Ireland with a value in excess of €5 million on 31 December of the relevant year.

12. Isle of Man: the Budget for 2010-11 introduced a disclosure amnesty to be in effect for three months and sees penalties waived in respect of any relevant voluntary disclosures. Interest charges remain applicable.

13. Italy: in August 2009, the Anti-crisis Decree became Law creating a "tax shield" for individuals and small-and medium-sized businesses. Under the scheme taxpayer could pay a one time 5% penalty on repatriated funds from offshore tax accounts and be pardoned any potential back taxes. The amnesty also introduced a rebuttable presumption for undeclared funds and assets held abroad, doubling the penalties for any failure to report or pay taxes. A new specialized audit team within the Italian Tax Authority has been created to encourage international cooperation and deal with international tax evasion and avoidance.

14. Kyrgyzstan: in June 2009, parliament adopted a Bill on the legalization of property, undeclared tax and customs liabilities. This included an amnesty scheme whereby movable and immovable property of Kyrgyzstani individuals and companies legalized during that period would be exempt from tax, customs, and social security. In addition, certain criminal and administrative liabilities and penalties for violations committed before 31 December 2008 would be waived.





15. Latvia: On 17 June 2010 Latvia introduced a Shadow Economy Reduction Plan with several features designed to support business. These include an initial declaration (zero-declaration), and the ability to legalize undeclared savings by paying a tax amnesty. In addition, late interest and monetary penalties are waived if the outstanding tax due is paid within a certain time frame. The tax authority is granted additional administrative rights, such as access to information, and the penalty system is strengthened so that the application of penalties would be decided on the severity, frequency and regularity of breaches.

16. Liechtenstein: In August 2009 Liechtenstein and the UK agreed a package of measures to improve tax compliance in an attempt to clear up the tax arrears of UK clients of Liechtenstein financial services and ensure that future tax liabilities are properly met. The Liechtenstein Disclosure Facility (LDF) ran from 1 September 2009 to 31 March 2015 and saw penalties on unpaid tax capped at 10% of tax evaded over the last ten years providing the taxpayer disclosed everything to HMRC. Those who failed to make a full disclosure by the end of the programme face their accounts being closed down.

17. Mexico: A Tax Amnesty Repatriation Programme was brought into operation in 2009 applicable on income earned in 2009 and preceding years. Capital returned to Mexico could benefit from the rate on 4% for natural persons and 7% for juridical persons with taxes owing at the moment of voluntary disclosure.

18. Netherlands: in April 2009 a voluntary disclosure program enabled taxpayers to declare their money in foreign bank accounts and avoid penalty and criminal prosecution. In July 2009 a new law entered into force which made tax advisors and tax directors as well as the taxpayer liable for penalties, the maximum amount of which is 100% of the tax which has not been paid. In January 2010, it was announced that the proposal to increase the penalty imposed upon the voluntary disclosure of foreign bank accounts from 15% to 30% would come into effect from 1 July 2010. In addition, 2009 saw Dutch amnesty penalties become more severe - increasing from 100% to 300% of the tax owed.

19. Netherlands Antilles: from April-June 2009, the Antillean Tax Administration enabled taxpayers to report without fear of penalty any interest received from an EU Member State in the years 2005 to 2007. In Bonaire, St. Eustatius and Saba a new tax legislation bill also contained a general tax amnesty provision with a penalty reduction to 15% if the taxpayer made a voluntary correction.

20. Norway: a temporary amnesty scheme for High Net Worth Individuals (HNWIs) was introduced to report on hidden wealth abroad without tax penalties. The Tax authorities have initiated an awareness campaign with major media coverage.

21. Portugal: the Exceptional Regime of Tax Regularization of Assets enabled taxpayers to disclose and regularize assets held abroad except in jurisdictions deemed "non co-operative" by the Financial Action Task Force. Individuals and legal persons had until 31 December 2009 to disclosure and were thereby entitled to pay a tax levied at 5% of the value of relevant investments as disclosed in the confidential statement but were not subject to interest payments. Payment had to be made at the same time or within 10 working days of receipt of the statement in order to qualify.

22. Singapore: In March 2009, the IRAS issued the Circular "IRAS Voluntary Disclosure Programme" (VDP), a program designed to encourage taxpayers who have made errors in their tax matters without wilful intent to evade taxes to come forward and voluntarily disclose such any omissions. Provided certain qualifying conditions are satisfied (the disclosure must be timely, accurate, complete and self-initiated by the taxpayer), the IRAS will reduce the penalties on the undercharged tax to 5% per year of delay.

23. South Africa: the Budget for 2010-11 included a Voluntary Disclosure Programme (VDP) to be implemented for a limited period from 1 November 2010 to 31 October 2011. The scheme allows taxpayers the opportunity to disclose their defaults and regularize their tax affairs and receive total relief for monetary penalties. The full amount of tax is still payable, but the relief of interest will be staggered from 100% in cases where no audit is pending or commenced and where investigation has already begun it will be 50%.

24. Switzerland: in 2010 Switzerland introduced an amnesty for income tax and inheritance tax evasion on condition of voluntary, spontaneous disclosure and full cooperation with the authorities. With limited scope the scheme covers only penalties and fines and the principle amount – interests and arrears are still applicable.

25. Turkey: a tax amnesty set to encourage the legitimization of domestic and foreign assets was extended multiple times throughout 2009 and enabled taxpayers to benefit from reduced levels of tax and interest of either 2% or 5% of the tax base.

26. United Kingdom: in 2009 various disclosure schemes were announced including:

- In July the New Disclosure Opportunity (NDO) allowed corporates and individuals with unpaid taxes linked to offshore accounts or assets to settle their tax liabilities at a favourable fixed penalty rate of 10%, subject to certain conditions.
- In August the Tax Chamber of the First-tier Tribunal approved a generic notice under Para 5 Schedule 36 FA 2008, requiring UK banks and building societies to disclose substantial information and documents to HMRC about UK customers who hold offshore accounts.
- In the December Pre-Budget Report several anti-avoidance proposals including the intention of the government to launch a consultation in order to find ways to strengthen the disclosure regime were announced. Proposed measures included enhancing the penalties for failure to disclose a scheme, a requirement for promoters to provide lists of clients to whom they have issued scheme reference numbers, and the introduction of additional "hallmarks".
- In January 2010 HMRC announced a "Tax Health Plan". Doctors and dentists were given the opportunity to give full disclosure of any undisclosed tax liabilities and benefit from a fixed penalty. HMRC is obtaining information from various sources, including NHS trusts, private hospitals and medical insurers, and those failing to take advantage of the scheme stand to face much larger penalties – rumoured to be anything from 30% to 100% of the underpaid tax due.
- HMRC published revised guidance notes on Disclosure of Tax Avoidance Schemes (DOTAS) regime and has revised the thresholds and extends the requirement to disclose tax avoidance schemes involving stamp duty land tax.

27. United States: In 2009 the Voluntary Disclosure Program (VDP) was set up to enable taxpayers to disclosure unreported income from offshore accounts and offshore accounts not previously reported for the years 2003 to 2008. All taxes, interest and penalties were still payable along with any other previously assessed liabilities but criminal prosecution would not be recommended. In October 2009 legislation was introduced in an attempt to prevent US individuals from evading an estimated \$8.5 billion USD in US taxes over the next 10 years. The Foreign Account Tax Compliance Act of 2009 bill increases the disclosure requirements for foreign financial institutions, trusts, and corporations to provide information about their US account holders, grantors, and owners. In addition it imposes new penalties for underpayment and extends the related statutes of limitations.

New organizational responses

As the number of HNWI's around the world continues to grow, tax administrations increasingly recognize that they must do more to focus their attention on this important, and lucrative, segment of society. Tax increases, disclosure schemes and strong rhetoric against the use of tax havens play a key role, but the organizational and administrative aspects are just as important.

In its *"Engaging with High Net Worth Individuals on Tax Compliance"* report, the OECD put forward a number of recommendations for tax administrations on best practices for dealing with wealthy individuals. It concluded that, by focusing their resources on the HNWI segment, administrations could gain a better understanding of wealthy individuals and generate significant improvements in compliance.

A common problem for many tax administrations is that the affairs of HNWI's tend to be handled by different divisions. This means that there is no way of gaining a comprehensive understanding of an individual's affairs. As IRS Commissioner Douglas Shulman noted in a speech at the National Conference on Federal Taxation convened by the American Institute of Certified Public Accountants: "Our goal is to better understand the entire economic picture of the enterprise controlled by the wealthy individual and to assess the tax compliance of that overall enterprise. We cannot do this by continuing to approach each tax return in the enterprise as a single and separate entity. We must understand and analyze the entire picture."¹⁴

The OECD recommended that tax administrations set up dedicated units to serve the HNWI population. By focusing resources and expertise in a single department, the idea is that tax administrations can gain a better understanding of the risks posed by the HNWI segment from a compliance perspective. They can also track more easily developments in aggressive tax planning, and ensure that they have the right countermeasures in place as early as possible.

A dedicated HNWI unit also gives tax administrations the opportunity to create specialist teams charged with developing a deep understanding of the needs and expectations of HNWI's. Although they are by no means a homogenous group, many HNWI's share common concerns, such as privacy, wealth preservation and the need to pass on assets to the next generation. Specialist teams with particular expertise can start to understand these motivations and ensure that they develop a relationship that respects these concerns, while still conducting robust examinations when necessary.

When the OECD report was published in 2009, it noted nine countries that had already set up HNWI units – Australia, Canada, France, Ireland, Japan, Mexico, New Zealand, South Africa and the UK. At the time the Netherlands was also reported to have piloted a unit. Non-OECD countries with HNWI units include Argentina, Brazil and Indonesia. As the benefits of this approach come to be better understood, and as best practices get disseminated through forums such as the OECD, it seems highly likely that more units will follow.

The OECD has recommended that tax administrations set up dedicated units to serve HNWI's and several G20 countries have.

¹⁴ Remarks of Douglas H. Shulman, Commissioner of Internal Revenue, before the AICPA National Conference on Federal Taxation, 26 October 2009, <http://www.irs.gov/irs/article/0,,id=215606,00.html>





"HMRC was a contributor to the OECD (2009) study on engaging with high net worth individuals on tax compliance. The ideas from other tax administrations that fed into that report have been used to inform the development of the High Net Worth Unit in the UK. We have also learned from the approach adopted by individual tax administrations both through one to one contacts and subsequent discussions within the OECD's Forum on Tax Administration. In addition the Joint International Tax Shelter Information Centre (JITSIC) arrangement allows HMRC to share best practices, and HNW taxpayer information where appropriate, with fellow participants. At the present time this includes Australia, Canada, China, France, Japan, South Korea, the UK and the US with Germany expected to send delegates in the near future."

Martin Randall
Head of HM Revenue & Customs
(HMRC) High Net Worth Unit

Currently, these units are in their early stages in most jurisdictions, so it may be too early to say precisely what impact they will have on wealthy individuals. If they are resourced properly with knowledgeable and accessible staff, these units could be a very positive development for HNWI's.

The way in which HNWI's are selected for monitoring by a unit will vary from one jurisdiction to another. The OECD notes in its report that there is a range of criteria that could be used, from absolute wealth levels to the overall complexity of individuals' tax affairs. In general, level of wealth will be preferred over income, because wealth tends to be more stable as an indicator while income can vary substantially from year to year.

Although individual units will vary in their approach, it is likely that they will also take into account various risk factors. For example, if a HNWI has complex business affairs, deducts an unusually large amount of money for gifts or donations, or is involved in a sector that is deemed high-risk, such as real estate, this may well influence the decision by the tax administration over whether to assess an individual within the HNWI unit. The HNWI's choice of adviser may also be a factor. If a particular adviser is known to provide aggressive tax planning services, then the authorities may decide to cast the net broadly and focus their attention across its entire client base. In some jurisdictions, however, the law may prevent this approach.

One of the first countries to set up a dedicated HNWI unit was Australia. Since launching its HNWI Taskforce in 1996, the Australian Taxation Office has invested heavily in its development and it now employs around 350 staff. The unit focuses on individuals with investable wealth of A\$30 million or more and, over time, it has become more sophisticated in its approach to dealing with this population. There is a relatively strict privacy policy in place, with information regarding HNWI's only accessible to selected ATO officers. The taskforce has also developed a good understanding of the issues facing HNWI's.

“The overall strategy of our tax administration is to build a model of voluntary compliance, and all the measures we adopt in our compliance strategy are geared towards reaching this goal. We want to do this by positively influencing taxpayer behavior. One of the tools in our “toolbox” is the “horizontal monitoring” process, within which we work openly with the taxpayer through the course of the year in order to make sure there are no surprises when the

tax return is filed. Up to now we have seen horizontal monitoring process in operation primarily with large businesses, as well as with Small and Medium Sized businesses and their intermediaries. In short, and in common with many other tax administrations, we want to build enhanced relationships with our taxpayers and so we are currently looking at a pilot project which would extend the horizontal monitoring concept to include high net

worth individuals. We think it will provide them with more and improved contact with us, provide certainty in advance about the tax consequences of their actions and, hopefully, prevent long-lasting tax disputes and potential litigation which neither party is keen to experience.”

*Theo Poolen
Member of the management
board of the Dutch Tax and
Customs Administration*

In the UK, HMRC established a HNW unit in April 2009, which initially focused on the tax affairs of around 5,000 of the country's wealthiest individuals. In broad terms, HNWs fall under the remit of the unit if they have investable assets of £20 million or more. Wealthy individuals participating in the scheme are allocated to a network of Customer Relationship Managers (CRMs) in one of HMRC's eight high net worth offices around the country.

HMRC admits, however, that establishing a cut-off point for those that will fall under the scheme can be challenging. Objective measures of overall wealth are unreliable, so the £20 million figure is meant as a rough guideline. Because of these challenges, HMRC expects that the base of individuals that fall under the responsibility of the unit will be somewhat fluid, and that further HNWs will be identified following further research and recommendations from agents.

In October 2009, the IRS established a Global High Wealth Group in the United States, which is part of the newly restructured Large Business and International division. The unit aims to centralize compliance and enforcement efforts for HNWs and will take a holistic approach to examining the entities controlled by a wealthy individual, including real estate investments, offshore structures, income sources and tax residency. It is expected that more than 300 employees will work in the unit.

Although the Group has only been in existence for little over a year, it has already embarked on audits of a number of HNWs. “We currently have a number of high wealth individuals and several of their related entities under examination,” explains Donna Hansberry, Director of Global High Wealth Large Business and International Division at the Internal Revenue Service. “Others are under consideration and in the pipeline. Information document requests have been issued in a number of cases; opening conferences are being held.”

One key challenge facing tax administrations that plan to establish HNW units is to ensure that they are adequately staffed and resourced. Members of the unit must be able to identify tax risks in complex structures and arrangements, be able to build relationships with HNWs and their advisers, and respond to queries from wealthy individuals in a clear, timely and consistent manner. Perhaps most importantly, they must demonstrate what the OECD calls “commercial awareness” – a thorough knowledge and understanding of how HNWs structure their business and personal affairs across multiple international jurisdictions and structures.

"Global High Wealth was formed for a number of reasons. Where there is increased complexity, there is often increased risk. Placing additional focus on a segment of the population where there is increased risk just makes good business sense. In addition, while other parts of the Service have and continue to address the high income and high wealth population, there arose a need for a concentrated, holistic approach to those taxpayers in the population

with highly complex financial structures. The Global High Wealth industry institutionalizes that approach. In the past, the income tax return of a high wealth individual might be under examination in one part of the IRS, while a related trust or partnership might be under examination in another part of the Service. Our new approach brings together the individual and related entities for a closer look at the entire enterprise. We are not the only

ones that have recognized the need for an organized approach to high income and high wealth taxpayers. Other tax agencies around the world have similarly recognized the need to centralize and focus compliance expertise on this population."

*Donna Hansberry, Director
Global High Wealth, Large Business
and International Division
Internal Revenue Service*

Representatives of high net worth units see the ability to combine a thorough approach to examinations with the capacity to respond quickly to taxpayer issues as an important attribute. "While we are taking a more comprehensive, holistic approach to examining high income and high wealth individuals and their enterprises, we are committed to working our examinations on a timely basis," says Ms Hansberry. "We will resolve issues that can be resolved. And we expect that, with proper case development, we will be well positioned for any cases heading to litigation."

Currently, these units are in their early stages of development in many jurisdictions, so it may be too early to say precisely what impact they will have on wealthy individuals. If they are resourced properly with knowledgeable and accessible staff, these units could be a very positive development for HNWI's. The notion of a highly experienced professional – a single, dedicated point of contact – with whom taxpayers or their advisers can discuss issues and raise concerns could be seen as a valuable asset, particularly at a time when legislation is moving

so quickly. The unit can also provide a forum through which feedback about legislation can be passed back to the legislator, while staff specializing in HNWI issues could also, over time, be involved in the development of improved tax legislation based on their knowledge and understanding of taxpayers' concerns.

"In 2004 we established our Large Business Centre, which enabled us to get a more holistic view when administering the tax affairs of large taxpayers. Our research showed that when a group was being serviced by a particular office, other parts of that group weren't necessarily serviced by the same office which created opportunities for arbitrage, as we do not have group tax provisions, resulting in a one-sided view when considering particular transactions. It was exactly the same with HNWI's. HNWI's often have a number of connected entities through which tax planning structures are implemented and it was difficult to get a holistic picture because we never had all the associated taxpayers being looked at as a collective, in one place. Now, we administer all the tax affairs of a HNWI's connected persons in one place so that we can see the full picture. This also means it's more efficient when we interact, for both us and the taxpayer, and results in speedier resolution of issues.

Overall, I think it's a much smoother engagement."

*Joseph Rock, Group Executive
Large Business Centre leader, South African Revenue Service*

Launching the enhanced relationship model

The establishment of HNWI units creates a direct channel of communication between the administration on the one side and HNWIs and their advisers on the other. With some units providing a “single point of contact” for HNWIs, the opportunity arises to build a more trusting, open relationship that may lead to what the OECD calls “co-operative compliance.”

In the corporate world, a number of tax administrations have already introduced similar programs based around an “enhanced relationship” with the taxpayer. Participating companies are expected to be open and disclose all potential issues so that risks can be mitigated. In return, the tax authority undertakes to provide timely advice on significant reporting positions and sign off on low-risk matters.

Corporate programs that can be broadly described as “enhanced relationship” in nature have been established, for example, in Australia, the Netherlands, Ireland, the United Kingdom and the United States. Other countries are watching this trend carefully, and it seems likely that similar schemes will be introduced in more jurisdictions over the next few years.

Many of these schemes are still at a pilot stage, but there are already signs that this approach could soon cross over into the HNWI universe. In August 2009, the Australian Taxation Administration announced that it would extend its annual compliance arrangement scheme – a form of “enhanced relationship” that has been in place in the corporate world since 2008 – to HNWIs.

In the Netherlands, there has been an enhanced relationship program called “horizontal monitoring” in place since 2005. Originally piloted with a small number of large corporates, it has since been extended to smaller and medium-sized businesses, non-profits and, more recently, wealthy individuals. Often, the participation of HNWIs grows out of existing corporate relationships – so a chief executive of a company that already uses the scheme may extend it to encompass his personal tax affairs.

The OECD suggests that an enhanced relationship between administration and HNWI could take the form of a voluntary program that would include at least one pre-filing meeting. The HNWI (or adviser) would be responsible for disclosing any material change in financial affairs or any areas for which there may be an uncertain tax treatment or particular cause for concern. In return, HNWIs would expect certainty over these issues and a commitment that, once agreed in the pre-filing process, they would not be challenged during subsequent examinations.

But, as the OECD admits, there are significant differences between corporations and HNWIs. Companies are attracted to an enhanced relationship approach because it gives them certainty over their cash flow and enables them to provide more accurate financial information to their investors. HNWIs do not have the same external pressures – indeed, privacy is often their number one concern.

For HNWIs, the opportunity arises to build a more trusting, open relationship that may lead to what the OECD calls “co-operative compliance.”





"In terms of targeting our ATO activities, we look at the issue's likelihood and consequence. Where there is a high likelihood and consequence of a tax risk, we want to identify them and help people comply with those risks. Our job is to increase levels of compliance in those high likelihood, high consequence instances."

*Greg Williams, Assistant Deputy Commissioner
Australian Tax Office*

Moreover, it seems that the number of tax administrations that provide a mechanism for HNWI's to hold pre-filing discussions across their whole range of compliance obligations is very small – the Netherlands being a notable exception. In many cases, the relationship is still focused on the compliance and enforcement stages, rather than using the opportunity to look at opportunities and risks associated with planning.

Ideally, an HNWI (or adviser) should be able to discuss a particular approach or transaction at an early stage in order to obtain a ruling in advance of filing the return. If HNWI's can hold open discussions with tax administrations about areas of concern and obtain certainty earlier than would otherwise have been possible, they will feel more incentivized to participate in the scheme. This is particularly true in an environment where fast-moving legislation has increased the risk of controversy.

It is therefore critical that HNWI units have the authority and discretionary power to provide these rulings and interpretations. Only then can the relationship truly be described as "enhanced" and lead to genuine benefits for both taxpayer and tax administration.



Conclusion

The time to act is now

What is clear from the twin focal points of tax policy and tax administration during the course of the last two years is that HNWIs are clearly under a bright spotlight, and it is highly likely that they will continue to be so for the foreseeable future. It is the world's wealthiest individuals who are seen as a lucrative target for tax increases and ensuring that HNWIs pay their 'fair share' of tax has a number of advantages for governments seeking to increase overall revenues. First, the wealthiest members of society already pay a relatively large proportion of the income tax that governments collect. Second, clamping down on the wealthy may be the most politically expedient way of increasing overall revenue from income taxes. Third, HNWIs generally have more complex financial affairs than other sections of society and so require more attention.

Within the space of two short years, the global environment for tax administration has been transformed. Both offshore and onshore financial centers have committed to international

standards on transparency; jurisdictions that were once described as uncooperative tax havens have opened their doors to external scrutiny and have received the blessing of the OECD as a result. And governments have applied increasingly stringent measures on banks to disclose information about accounts that are held offshore. As Angel Gurría, Secretary-General of the OECD, remarked in a June 2009 statement, "the era of banking secrecy is over."

Regardless of whether or not an HNWI engages in tax planning that may be perceived as aggressive, these are uncertain times. Legislation is moving with unprecedented speed, and governments are becoming increasingly stringent in their application and enforcement of new rules. Structures that may have been tolerated five years ago may now be unacceptable, and action in that regard requires a sense of urgency on the part of the taxpayer. The risks of non-compliance – and of ensuing penalties, investigations or legal action – have never been greater.

Yet at the same time, HNWIs who take compliance seriously have much to gain from the new environment. Dedicated units to serve a country's wealthiest individuals offer the opportunity to build a more constructive relationship with tax administrations that facilitates effective and compliant planning. Emerging trends such as joint audits and enhanced relationships may sound unappealing to many HNWIs, but they could lead to a more streamlined and efficient examination process. But perhaps most importantly, this increased focus on HNWIs will inevitably lead to greater understanding among tax administrations of the needs, expectations and concerns of the wealthiest members of society.

What we are seeing around the world

An increasing tax burden

With the global economy showing tentative albeit patchy signs of recovery, attention is now turning to ways of reducing government debt levels. Consumption and personal income taxes have played a significant role in addressing fiscal deficits from a taxation perspective, with corporate income taxes actually falling in many countries as governments strive to remain competitive. Increasingly, it is the world's wealthiest individuals who are seen as the most attractive and lucrative target for tax rises.

Enhanced relationship opportunities

There are better opportunities than ever for wealthy taxpayers to develop improved relationships with their key taxing authorities. As an example, a multi-country tax audit carried out by more than one tax administration could greatly streamline and accelerate the examination process, which may lead to lower compliance costs, higher levels of certainty and a more open, transparent relationship with tax administrations. For the vast majority of HNWIs who want to do the right thing with their tax affairs, this new

environment of transparency and disclosure across borders could be of significant benefit, resulting in saving the most valuable commodity time.

The interdependent relationship between revenue bodies, taxpayers and tax advisors can be key to taking advantage of enhanced relationship opportunities. The role tax advisors play helping their clients understand complex tax legislation, navigate through existing tax rules and helping them comply with the requirements of the shifting tax landscape cannot be underestimated.





Of course HNWIs are always free to determine their own appetite for risk. But as they navigate this complex environment and comply with global tax laws, close collaboration with subject matter professionals, many of whom are often former tax inspectors, can be a significant factor in helping to building improved relations with revenue bodies. In return, it will assist the revenue body to understand the issues affecting the HNWI, ensure they develop an appropriate risk rating, deploy the appropriate resources and reach the right tax conclusions in turn helping to meet the needs both of economic policy and of taxpayers.

A dramatic increase in information exchange

The rapid and sudden growth of taxpayer information exchange among tax administrations has dramatic implications for HNWIs. First and

foremost, it has highlighted that full compliance has now become more essential than ever. With jurisdictions now sharing information with their treaty partners, and conducting joint examinations on a bilateral or multilateral basis, it has become abundantly clear that HNWIs must be equally consistent and transparent in their tax compliance and must disclose fully all business and personal interests.

Opportunities to disclose

Many countries are giving their taxpayers a short-term, limited opportunity to disclose undeclared assets in return for reduced penalties or an exemption from legal action. By encouraging the repatriation of funds and applying a tax to them, these schemes also have the added benefit of bolstering the public finances while making sure that the individuals involved are compliant in future years.

Tax administration service improvements

As the number and wealth of HNWIs around the world continues to grow, tax administrations increasingly recognize that the nature and strength of their relationships with HNWIs are equally important. The OECD has recommended that tax administrations set up dedicated units to serve the HNWI population. By focusing resources and expertise in a single department, the idea is that tax administrations can gain a better understanding of the risks posed by the HNWI segment from a compliance perspective and can track more effectively the structures held by the individuals and any new developments in aggressive tax planning, ensuring that they have the right countermeasures in place as early as possible.

Change requires action

Global tax administration is changing quickly to match the pace of the globalization in financial markets and the expansion of cross-border investment opportunities and also to close the potential "tax gaps" that can arise in the increasingly borderless world economy.

With corporate tax rate increases viewed as anti-competitive by most countries, a key focus for raising tax revenue has shifted onto HNWIs through increased information reporting and information exchange, more aggressive enforcement and legislative changes, including tax rate increases, new penalty regimes and "loophole" closing.

HNWIs need to adjust to this rapidly changing tax administrative environment.

Critical action steps HNWIs must consider include:

- ▶ Conduct a tax compliance and risk assessment for your current world-wide tax situation

- ▶ Develop or assess your "tax philosophy" to make sure that the tax positions taken with respect to tax uncertainties are consistent with your level of risk tolerance
- ▶ Stay abreast of potential tax legislative and policy changes in the countries in which you reside, conduct business or make investments and maintain the flexibility to adjust to the changing tax environment in those locales
- ▶ Evaluate your overall global tax position both from a personal and business perspective so that your global tax obligations are reduced as appropriate and situations which may give rise to double taxation are avoided
- ▶ Develop a team of advisors with the competence, breadth of capabilities, geographic reach and knowledge of tax administration focus areas to match your personal, business, investment planning and tax compliance and reporting needs



Stay up to date with the shifting tax landscape

Tax administration without borders

Globalization is accelerating at an unprecedented pace, economies are in flux, businesses continue to fight for survival and market share at the same time, and governments are addressing this new environment by trying to protect revenues and co-operate as never before. What does this mean for businesses that are trying to achieve certainty and reduce the risk of controversy? Tax administration without borders looks at the unfolding trends in global tax administration and sets out a number of leading practices for businesses to consider when protecting themselves against future tax controversy.

Download at <http://www.ey.com/taxadministrationwithoutborders>

Tax Policy and Controversy Quarterly Briefing

Ernst & Young's TPC Quarterly Briefing reflects the continuing heightened volume of change in the tax policy and administration environment. The October 2010 issue includes an interview with Jeffrey Owens, chairman of the OECD's Centre for Tax Policy and Administration, as well as coverage of a range of other issues including transfer pricing, employment taxes, research incentives and alternative dispute resolution processes.

Download at <http://www.ey.com/tpc>

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