

TAXREP 91/08

The OECD's project on High Net Worth Individuals

Text of a letter submitted in December 2008 by the Global Accounting Alliance, of which ICAEW is a member, to the OECD setting out an initial, high level, response to a project and discussion paper on High Net Worth Individuals.

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OECD'S PROJECT ON HIGH NET WORTH INDIVIDUALS

The following letter was submitted to the OECD in December 2008 by the Chief Executive Officer of the Global Accounting Alliance of which ICAEW is a member.

Mr A Nasirova
OECD
2, rue André Pascal
F-75775 Paris Cedex 16
France

By email: aziza.nasirova@oecd.org

Dear Mr Nasirova,

Forum on Tax Administration (FTA) – High Net Worth Individuals' Project

Introduction

1. The Global Accounting Alliance (GAA) welcomes the opportunity to comment on the FTA project on High Net Worth Individuals (HNWI).
2. The GAA was formed in November 2005 and is an alliance of leading professional accountancy bodies in significant capital markets. It was created to promote quality services, share information and collaborate on important international issues. The Alliance works with national regulators, governments and stakeholders, through member body collaboration, articulation of consensus views, and working in collaboration where possible with other international bodies, especially IFAC (the International Federation of Accountants).
3. The Alliance facilitates a cooperation between ten of the world's leading professional accounting organisations:

The American Institute of Certified Public Accountants (AICPA)
Canadian Institute of Chartered Accountants (CICA)
Hong Kong Institute of Certified Public Accountants (HKICPA)
Institute of Chartered Accountants in Australia (ICAA)
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants in Ireland (ICAI)
Institute of Chartered Accountants in Scotland (ICAS)
The Japanese Institute of Certified Public Accountants (JICPA)¹
New Zealand Institute of Chartered Accountants (NZICA)
South African Institute of Chartered Accountants (SAICA)

These organisations represent over 700,000 professional accountants from 140 countries.

GAA input into the current consultation

¹ JICPA joins GAA with effect from 1 January 2009

4. We have set out below some general observations on the current OECD discussion paper.
5. Representatives from some of our member organisations will be attending the Public Consultation meeting in Paris on 9 February 2009 and we intend to make more detailed comments at that meeting. We then propose to follow up with a further written response which will deal with the specific questions raised in the discussion paper.
6. The present letter also sets out the background to the earlier OECD report into Tax Intermediaries from which the present discussion paper is derived. The original Tax Intermediaries consultation began with an aggressive stance towards tax intermediaries but ended recommending a much more conciliatory and collaborative approach to developing good working relationships with the major stakeholders within tax systems.

GAA initial comments

7. The present discussion paper seeks to continue this more collaborative approach in the context of HNWIs and build on the the experiences of various fiscal authorities, including Ireland, of **co-operative compliance**.
8. From discussions at the meeting in London on 4 December 2008 organised by the UK and Irish revenue authorities it is clear that there are a number of issues that revenue authorities will have to deal with for a co-operative compliance regime to be put in place successfully.

Skills	It will be a challenge to ensure that the revenue officials involved have suitable skills.
Complexity	Authorities will need to recognise that the tax affairs of individual HNWI's are often extremely complex.
Information	There is a considerable amount of information about individuals which is freely available and revenue authorities will have to be able to handle all this information and make sense of it.
Holistic approach	Authorities need to look at individuals' affairs in the round.

9. In general terms in addition to co-operative compliance there are a number of other C's which are important to HNWIs. These are:

Complexity	Both of compliance and of the tax system itself
Certainty	HNWIs want to be certain of taxation outcomes
Confidentiality	HNWIs are concerned not only about maintaining their business affairs as confidential

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but also more personal details which they may not want infant children to be aware or they may be concerned, in certain parts of the world, about the risk of kidnapping.

Consultation HNWI and advisers acting for them need to feel confident that the tax system will only change after appropriate consultation with those who will be affected by the change

Customer service HNWI expect good service in all aspects of their affairs, not least their interaction with the tax system

10. We believe that the advisers of HNWIs are only going to recommend to their clients participation in such co-operative compliance if both can see clear benefits from doing so.
11. There will also need to have a sufficient degree of trust in the ability of the particular revenue authority to honour its commitments. Trust takes a considerable amount of time to build up and can be destroyed very quickly as a result of inappropriate actions.
12. We also believe, as we have said in paragraph 9 above, that HNWIs are very concerned about the confidential nature of their personal and financial affairs and would want to be sure that data is secure within the hands of the revenue authority. In this respect we note a number of worrying instances of data loss in the UK over the past 12 months or so which undermines trust in the system.

Context for the current discussion paper

13. The current study of HNWIs has resulted from the work of OECD looking at Tax Intermediaries and the recognition in the report adopted in January 2008 in Cape Town that there had not been time to deal appropriately with the role HNWIs play in tax systems around the world.
14. However there was in the Executive Summary of the January 2008 report a recognition that HNWIs could have a negative impact on tax systems and the public finances:

‘HNWIs are the second principal market for aggressive tax planning [and that] further work should be undertaken to consider whether the enhanced relationship or other strategies are needed for addressing the risks posed by aggressive tax planning by these taxpayers.’

The background to the earlier OECD study on Tax Intermediaries

15. The original study was set up following the third meeting of the FTA in September 2006 in Seoul. The original brief was considered to be rather aggressive. The Seoul Declaration set up the study:

‘to examine the role of tax intermediaries (i.e. law and accounting firms, other tax advisers and financial institutions) in relation to non-compliance and the promotion of unacceptable tax minimization arrangements’

16. By contrast the Cape Town Communiqué, which accompanied the publication of the tax intermediaries report, indicates that in practice the study evolved by broadening its focus into a wider review of the tripartite relationship between revenue bodies, taxpayers and tax intermediaries.

17. The change in the perception of the role of tax intermediaries is clearly indicated by the first of the main conclusions of the report:

‘tax intermediaries play a vital role in all our tax systems by helping taxpayers understand and comply with their tax obligations in an increasingly complex world.’

18. However, the report also comments as follows on how taxpayers and tax intermediaries interact as regards aggressive tax planning.

‘Tax intermediaries may supply aggressive tax planning options to their clients but taxpayers set their own strategies for tax risk management and determine their own appetites for tax risk. Taxpayers are the ones who decide whether to adopt particular planning opportunities and there is significant scope to influence the demand by taxpayers for aggressive tax planning – at least in relation to large corporate taxpayers, which is the main focus of this report.’

19. The report recommends that revenue bodies should apply risk management techniques to ensure that limited resources are applied to the highest priority areas. This requires current, relevant and reliable information for which the best source is the taxpayer. So the report explores how a relationship between revenue bodies and taxpayers could be developed which can be based on early disclosure of potential tax issues and transparency.

20. The report also recognises that for an improved relationship to develop the revenue bodies will need to make certain behavioural changes based on the following attributes:

- understanding based on commercial awareness;
- impartiality;
- proportionality;
- openness; and
- responsiveness.

21. If revenue bodies do adopt these five attributes and have effective risk management processes in place then taxpayers will be more likely to engage in a relationship with revenue bodies based on co-operation and trust: what is described in the report as an ‘enhanced relationship’.

Conclusion

22. At this stage we have restricted ourselves to comments of a general nature but we hope that these observations will be of assistance at this stage of your study.
23. We intend to make more detailed observations at the Public Consultation meeting in Paris on 9 February 2009 and we then propose to present a written report summarising our views and answering the detailed questions set out in the October 2008 discussion paper.

Yours sincerely,

Stephen Harrison AO FCA FAICD
Chief Executive Officer
Global Accounting Alliance

cc Mr Sean Moriarty, Head, CTPA Tax Administration and Consumption Taxes
Division

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ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 132,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see <http://www.icaew.co.uk/index.cfm?route=128518>.