

Improving the data HMRC collects from its customers - HMRC consultation

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 We are concerned that gathering this additional data **will place significant extra administrative burdens on employers and businesses, for little or no direct benefit to them**. However, we are mindful that the Government is hoping to target investment and support better in order to grow the economy and deliver improved policy outcomes. The better targeting needs to be evidence based and if the underlying data does not exist, it needs to be collected somehow. We also recognise that there may be situations where the tax system is as sensible a way as any other of collecting this data (particularly where the burden on taxpayers and businesses is proportionate to the work involved in obtaining and providing the data). The problem appears to be how difficult some of the data may be to obtain and why HM Revenue and Customs (HMRC) should be collecting it if most of it is to be used by other parts of Government, particularly given the strain it might place on HMRC's limited resources.
- 1.3 The potential benefit to businesses of spending time and money collating and submitting the data suggested in the consultation document is unclear, particularly for the majority of businesses which are already tax compliant. The additional data would make the preparation of tax returns a more complex process. This appears to be **contrary to the clear stated intention of the Chancellor of the Exchequer**. In his speech¹ in Parliament on 23 September 2022 he stated *'For the tax system to favour growth, it needs to be much simpler... we need to embed tax simplification into the heart of Government. That is why I have... mandated every one of my tax officials to focus on simplifying our tax code. To achieve a simpler system, I will start by removing unnecessary costs for business.'* We are concerned that, if the proposals set out in this consultation were to be implemented, they would cause the tax system (or at least the administration of the tax system) to be more

¹ <https://www.gov.uk/government/speeches/the-growth-plan-2022-speech>

complex and cause additional unnecessary costs for business, not least as some of the information set out in the consultation may be obtained from other sources eg elsewhere in central and local government.

- 1.4 Collecting, analysing and sharing this information **will put further strain on HMRC's limited resources**. We can see there may be potential tax benefits in collecting some of the data as outlined in the consultation document, for example in helping to target HMRC's compliance activity better. But we question whether HMRC have the resources to handle the collection and processing of this amount of additional data and, indeed, whether it is a good use of HMRC's limited resources to handle this data, much of which is intended for use by other government departments. In June 2022 we, along with other professional bodies, wrote a joint letter to HMRC to express our and our members' concerns regarding HMRC's poor service levels². Unless additional resources are going to be made available specifically to cope with the additional data, we would urge HMRC to prioritise improving the delivery of its existing services and compliance activity before taking on further responsibilities. Even if additional resource will be made available, we would suggest it would be better used in bringing service standards back to an acceptable level.
- 1.5 We note and support the aspirations set out in the government's National Data Strategy published in 2020³, particularly noting the mission of transforming government's use of data to drive efficiency and improve public services. It notes that a whole government approach is needed that '*ensures alignment around best practice and standards needed to drive value and insights from data*'. There appears to be much still to do to achieve this objective. HMRC already gather vast amounts of data from taxpayers and elsewhere, for example, through tax returns, data gathering powers, intelligence and exchange of information agreements with other tax jurisdictions, but often it seems that they are not putting it to maximum use. Even when HMRC receive data, they often cannot interrogate it as they would like, as the data on tax reliefs illustrates (see para 4.1 below). Again, this may be a symptom of limited resource, or separated systems (or both), but taxpayers will question why they should be asked to provide more data to HMRC when **existing data appears not to be being used in an effective or efficient manner**.
- 1.6 **Significant legislative changes will be necessary** to implement these data gathering proposals. The collection of this sort of data on a mandatory basis is currently outside of the functions of the Commissioners for HMRC, as contained in section 5 Commissioners for Revenue and Customs Act (CRCA) 2005, since it is not relevant to the collection and management of revenue or tax credits. Additional powers will have to be granted by parliament to HMRC before this additional data can be collected. It also appears that section 17 'use of information acquired by HMRC', section 18 'confidentiality of information', section 19 'wrongful disclosure', section 20 'public interest disclosure' and section 21 'disclosure to prosecuting authority' may need updating as existing legislation appears to preclude the sorts of cross-government sharing of data implied by the consultation document.
- 1.7 Should some of the options in the consultation document be taken forward, **there will also need to be legislative changes to the Taxes Management Act (TMA) 1970** to bring in non-tax matters that will be asked for in the self-assessment tax return. Section 8, for example, will no longer be '*for the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year*' since much of this new data is nothing to do with tax. There would appear to be several other knock-on effects to the tax

² Joint letter to Myrtle Lloyd, Director General Customer Services dated 15 June 2022

https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/5ba926fa-459c-48f6-a89a-d44ce5cfb3e2/220615%20Joint%20professional%20bodies%20letter%20re%20HMRC%20service%20levels_.pdf

³ <https://www.gov.uk/government/publications/uk-national-data-strategy/national-data-strategy>

administration compliance framework that, we would suggest, will need to be consulted on further if it is decided that any of these proposals are to be implemented and the requests for new data made mandatory.

- Section 7 TMA 1970 refers to a ‘notice of liability to income tax and capital gains tax’ which does not appear to include a return of data if there is no tax liability to notify.
- Section 9A TMA 1970 covers the notice of enquiry into a section 8 return, but this will become an enquiry with a far wider remit than just tax if that return is expanded.
- Schedule 36 Finance Act 2008 is entirely about issuing notices to check the tax position.

- 1.8 HMRC note towards the end of the consultation document that the additional data is likely to be classified as mandatory data, meaning that tax returns not containing it would be treated as incomplete and liable to penalties. The consultation states that HMRC would take a reasonable and proportionate approach to the application of penalties as part of implementing the changes. We agree with this, **but we would strongly suggest that there should be a new category of ‘general data’ (ie data which does not relate to the tax liability of the taxpayer) and a separate penalty regime** in relation to that. It should not make a tax return incomplete, as regards the tax parts of it, and all the timings, appeal rights, limitation periods, etc. should not hinge off a ‘technical’ failure. If you fail to complete a SIC code, for example, that should not mean that the whole return is incomplete. Furthermore, penalties should not be tax related (ie based on potential lost revenue), since the information does not affect the tax liability.
- 1.9 The consultation specifies that the purpose of improving data collection is so the government is better able to target support and lead to better policy and operational decisions. However, for this to work effectively, the data must be accurate. If it is not accurate, support may be wrongly targeted. **There must be a way for citizens to be able to correct inaccurate data** about them that may have been supplied to HMRC by their employer.
- 1.10 It should be possible for a business or employer's agent to be able to input the information, see it, challenge it etc. **The role and functionality for agents would need to be addressed** so it is consistent with the HMRC Charter principle of ‘recognising that someone can represent you’⁴.
- 1.11 If any of the proposals are adopted, **consideration should be given as to whether they should be piloted** first, such a pilot to include the process of data collection by HMRC, HMRC’s ability to share it effectively with other government departments, and the beneficial use of that data by those other government departments. This should be undertaken before implementing any widespread requirement to provide the data. This would provide an opportunity to ascertain the potential challenges and administrative and cost burdens, as compared to the benefits of holding that information, and would help inform how and to what extent the changes should be implemented. It is evident from the feedback we have received that most people think that the burdens will outweigh any usefulness or benefit to business of providing the additional data. We would encourage the government to explore whether and how similar information requirements are enforced in other developed countries.
- 1.12 This consultation is being led by HMRC, but the proposals **potentially have a significant impact on the employer-employee relationship and working practices**. HMRC should consider engaging directly with other government departments and trade unions, who might not be aware of these proposals as they derive from HMRC.

⁴ <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

3 Introduction

- 3.1 This consultation document proposes several potential options for improving the range of data HMRC collect, use and share across government. It identifies six areas where HMRC believe its data could be improved, along with specific implementation options. These are:
- the business sector of the self-employed
 - the occupations of employees and the self-employed
 - the location of an employment or a business
 - the hours employees work
 - dividends paid to shareholders in owner managed businesses
 - the start and end dates of self-employment

HMRC say that they want to ensure that the data they hold gives them as accurate and up to date picture of citizens and businesses to help build a trusted, modern tax administration system and improve government policy making.

- 3.2 The CIOT’s stated objectives for the tax system include:
- **A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.** The proposals in the consultation document will require legislative change across the tax administration framework. Before a decision is taken on whether to adopt any of the proposals, we would suggest that further consultation should be undertaken to assess the breadth of legislative change that will be required.
 - **Greater simplicity and clarity, so people can understand how much tax they should be paying and why.** Most of the proposals will not directly affect the amount of tax that people or businesses will pay, so it is questionable whether it should be HMRC’s responsibility to collect this data beyond using

it for their compliance activity. Also the proposals will make the preparation of tax returns more complex, rather than simplifying the system which is the Chancellor's stated objective.

- **Greater certainty, so businesses and individuals can plan ahead with confidence.** Whatever proposals are adopted, it should be made clear what data is required, how often and when, so that businesses and individual can adapt their processes to enable them to be able to provide the additional information on time and without risk of penalty.
- **A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).** It is likely that gathering some of this additional data will be administratively onerous and potentially costly for businesses and employers, for minimal benefit to them, but with the risk of penalties should they not comply with the new obligations. Some will see it as simply creating more 'red tape' and a step too far at a time when businesses and employers are already struggling with increased bureaucracy and a multitude of other changes to the UK tax system, due to such things as Brexit, quarterly updates under Making Tax Digital, changes to business rates, new documentation required for transfer pricing, new reporting rules for digital platforms, Pillar 2, uncertain tax treatments and mandatory disclosure rules.
- **Responsive and competent tax administration, with a minimum of bureaucracy.** Any additional data that is collected from employers and businesses must be used by Government for the purpose intended with clear benefits for the economy. It should not be 'data for data's sake'.

3.3 It is disappointing that the consultation is taking place at Stage 2 of the consultation process 'Determining the best option and developing a framework for implementation including detailed policy design', rather than at stage 1 'Setting objectives and identifying options'. Nevertheless, we have been assured by HMRC that this does not mean that a decision has necessarily been made to take forward any of the proposals in the consultation document. We trust that any decisions are taken only after fully taking on board the responses that are received. Further consultation will be required as to the precise scope of the obligations, and the legislation and guidance to support them.

Sectoral Data

4 Overarching question: across all of the options, we would like to understand which would be the most useful and would offer the most benefit for businesses and taxpayers. Do you think the options for collecting additional data we have prioritised here are the right ones, and are there any other areas where collecting more, better or different data would support tax administration and/or broader public service delivery?

4.1 Our general view is that HMRC should not be collecting additional data from employers and businesses unless it is used for the functions which are under HMRC's care and management. Often it appears that HMRC are not able to use the data they currently do collect, as can be evidenced from HMRC's tax relief statistics where cost estimates are not available, even though the data is reported to HMRC⁵. This places burdens on business

⁵ See reason code B within

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046804/structural_cost_estimates_unavailable_december_2021.ods and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046802/non_structural_cost_estimates_unavailable_december_2021.ods

for no benefit to that business or the tax system. HMRC should review what data they collect, why they collect it, and prioritise using the data they collect to improve tax compliance.

- 4.2 The consultation suggests that collecting this data may help HMRC nudge businesses into claiming some tax reliefs or help with targeting compliance interventions. Sectoral data may not be effective for this. Some businesses are entrepreneurial and innovate at short notice. For example, restaurants changing to providing takeaways or recipe/ingredients boxes during the pandemic when government restrictions prevented onsite dining. If HMRC focused on the restaurant sector then this may not accurately show which businesses need relief or compliance interventions.
- 4.3 We would encourage the government to review what sectoral data is already available to it. For example, licenced businesses such as pubs, taxi drivers and scrap metal dealers are already 'known' to the authorities. The government could also consider requesting or requiring trade and professional bodies to provide statistics on their membership, thus collecting data at a macro rather than micro level. Further consultation around this would be welcome.

5 Question 1: Within this option, should HMRC prioritise improving self-employed data as set [out] above, or another customer segment (eg employers, companies, partnerships, businesses registered for VAT)?

- 5.1 HMRC have identified the self-employed sector as having the biggest potential for improvement. We also note that unincorporated small businesses make up a large portion of the tax gap and recognise that improved sectoral data can assist with targeting compliance activity. The self-employed population is also much smaller than (for example) the employed population. We agree, therefore, that it would be appropriate to introduce the requirement for these businesses first and that it will help determine whether it is then appropriate to expand to other business types and employers.
- 5.2 As noted above, making provision of such data compulsory on the income tax self-assessment (ITSA) tax return's self-employment pages will require legislative change.
- 5.3 We see little benefit in asking another customer segment, such as employers, to provide information about the 'nature of a business' when that data can be collected via the ITSA process. Also we see no point in asking businesses which register at Companies House to submit SIC codes to HMRC as they already submit this data to Companies House.

6 Question 2: Are there any areas of the tax system where HMRC's collection of sectoral data could be streamlined or where we could collect this information in a different way? In particular, does your business provide sectoral data to HMRC (or other parts of government) in more than one place (for example, to HMRC through both VAT and Self Assessment; or to HMRC and to Companies House)?

- 6.1 Businesses currently have to file annual corporation tax (CT) or ITSA returns with HMRC. Perhaps one option that could be considered is for HMRC to link the business's PAYE reference number to the CT or ITSA unique tax reference (UTR) identifier and capture any changes to the 'nature of the business' through that process rather than through the PAYE and Real Time Information (RTI) processes.

- 6.2 When a business registers for VAT, it must provide to HMRC a description of its business activity⁶. We also note that businesses that apply to join the VAT flat rate scheme have to tell HMRC, when applying, their main business activity, chosen from a list of around 50 types of business⁷.
- 6.3 As noted in the consultation, much of HMRC's data is collected free form, and does not easily allow statistical analysis. HMRC should seek to reduce this, providing guidance where standard identifiers are required.

7 Question 3 – for taxpayers and their agents: How easy or difficult are SIC codes to use for your business? What would make it easier for your business to find and input your SIC code(s)? What level of SIC would be most appropriate (ie three or four digits)? Do you prefer using the full version from the Office for National Statistics, or the condensed version used by Companies House?

- 7.1 We agree that using SIC codes would be more beneficial than free text data for analysis purposes. A drop-down menu with clear guidance or a simple search function would be necessary. Whilst the Companies House SIC code list is relatively user friendly, the Office for National Statistics (ONS) list is complex and lengthy and may prove too confusing for many self-employed taxpayers.
- 7.2 We would suggest that there should be a review of current SIC codes to bring them up-to-date so as to include trades and other self-employment types that may only have come into existence recently (eg social media influencers) and to ensure that they are appropriate for use by self-employed taxpayers, who may undertake a wider variety of trades than companies.
- 7.3 The consultation document indicates that the SIC list is being revised at an international (UN) level, but HMRC would need to see if this global list is sufficiently flexible to cover the large variety of business undertaken in the UK now and in the future, not least as the pace of change and creation of new business types is swift at present due to technological and other developments. The list must be comprehensive because if taxpayers cannot select an accurate business type the data which HMRC receive will be inaccurate, with a knock-on effect onto the value of the data for analysis purposes. For example, if HMRC were to use the information to identify trends in respect of a business area, eg average profit margins, in order to identify cases for enquiry, then the inaccurate data may skew the analysis and result in incorrect cases being checked, which impacts on the taxpayer and HMRC.
- 7.4 The number of digits of SIC code required needs to be a balance between the additional complexity and administrative burdens, and the intended use of the data by government. We would be surprised if the granularity provided by a five-digit SIC code were required by government, particularly as this could be difficult for a business (or their agent) to determine with accuracy. A three-digit SIC code gives an adequate level of detail without requiring an in-depth consideration of classes and sub-classes, and we would suggest starting at this more manageable level.

8 Question 4 – for software providers: How easy or difficult would it be for you to incorporate SIC codes into your software, in a way that is easy for your customers to use?

⁶ Question 20, form VAT1

⁷ Paragraph 4.3, VAT Notice 733

- 8.1 No comments (CIOT is not a software provider).

Occupation Data

- 9 Overarching question: across all of the options, we would like to understand which would be the most useful and would offer the most benefit for businesses and taxpayers. Do you think the options for collecting additional data we have prioritised here are the right ones, and are there any other areas where collecting more, better or different data would support tax administration and/or broader public service delivery?**
- 9.1 We do not believe that providing occupational data will offer any direct benefits to businesses and taxpayers. Businesses will already be monitoring their labour force and identifying skills and training needs etc. We do not believe that any benefits of a requirement to provide occupation data to HMRC outweigh the costs of doing so. Our comments therefore focus on the impact on tax administration and public service delivery.
- 9.2 There is a risk that collecting occupation data will be unreliable due to the likely level of inaccuracy. There are differences between job titles, job roles, qualifications and occupation. For example, a Chartered Tax Adviser (CTA) (a member of the CIOT) with managerial duties could have various job titles depending on for whom he/she works (see below). Indeed, using a freely available search tool⁸, a ‘charity, tax, manager’ search gives lots of results, including ‘Taxation experts’, ‘Charitable organisation managers and directors’, ‘Public services associate professionals’, and so on.
- 9.3 On the other hand, significantly different roles (particularly regarding seniority) can produce the same outcome. For example, ‘Taxation expert’ is the lead result if the search is ‘tax trainee’ or ‘tax partner’, and it is arguable that a trainee would in any event be too inexperienced to be correctly described as an expert.
- 9.4 Further, roles change over time, often organically and may or may not result in title changes, and this may or may not be reported to the employer’s Human Resources, Personnel or Payroll departments, so what was ‘accurately’ reported initially may very quickly no longer be the relevant occupational identification.
- 9.5 The impact on the employer-employee relationship should also be considered. If there is a requirement to report SOC codes, the only (or most cost-effective) option for the employer might be to change their payroll HR / payroll software so that job titles reflect the SOC code. But as the SOC code ignores seniority, this could disincentivise more experienced / senior staff as it gives the impression that their employer no longer values their greater experience. The broader impact of these proposals needs to be considered.
- 9.6 The consultation suggests that submission of occupation data ‘would help identify the skills needed to support growth industries and local areas...and to identify occupation-specific skills shortages in different areas of the country’. We consider that occupation data illustrates the mix of occupations at a point in time. It does not indicate what new skills may be needed or how many new roles of a particular type may be created over a specific period (eg the next six months). Some geographical areas may lack some skills but this may just reflect the concentration of particular types of businesses in one area of the country (eg financial services in London) rather than illustrating that there is a need to develop those skills in other places.
- 9.7 The consultation also suggests that the data ‘would help employers understand more about what skills and training they need employees to have’ and could ‘help businesses with investment decisions’. As we have illustrated above, the SOC code ‘Taxation expert’ does not reflect their level of skills or experience, and does

⁸ <https://cascotweb.warwick.ac.uk/#/classification/soc2020>

not shed light on their current or future training needs. Further, the skills needed by someone in a small firm of accountants may differ from those needed by a person in a niche team in a large advisory firm.

9.8 Occupation data does not affect a business or employee's tax liability so there appears to be no need for HMRC to hold this data to fulfil its statutory role per s5 CRCA 2005.

10 Question 5: Would you find this information useful, if published in an anonymised form by the government (potentially linked with other datasets, such as salary, qualification or location information)?

10.1 Information based on SOC codes may be of limited use to business. SOC codes (as for SIC codes) are rather out of data and inflexible. They do not cover all occupations in sufficiently granular detail. Consequently, the resulting data may be misleading or too generalised even if combined with other datasets eg salary. Also, in many industries this type of information is already available, such as via recruitment agencies and trade bodies.

11 Question 6 – for employers/payroll providers: How easy or difficult would you find it to categorise each of your employees by occupation? If you have used SOC codes previously, how easy or difficult to use, and what, if any, challenges do you find with them? Do you have any suggestions as to how we could modify or design this option in a way that minimises costs?

11.1 This will depend on several factors, such as the size and sophistication of the employer, the nature of any HR / payroll software being used and its level of integration, and the existing categorisations applied by the employer.

11.2 For example, a business with a fully integrated HR and payroll system might be able to return full job titles relatively easily, but if there is no integration – or no software at all – it would be a significant administrative burden. While most HR/personnel IT programmes may capture job titles (or the employee's grade and department), payroll software is unlikely to, even if linked to the personnel system, and most employer's systems do not capture occupation. For many there would be a huge burden in completing the extra field in payroll software for occupation (if introduced) even if that is limited to job title rather than SOC standard classifications. There would then be an ongoing burden updating when titles or roles change. Often the payroll department is not informed of changes in title or role or duties, just changes in pay. It is likely that any information on occupation returned would become inaccurate over time.

11.3 We would suggest discussions with employers, large and small, to inform HMRC of how this would need to work in practice. Indeed, we are concerned that HMRC's feedback from this consultation will not capture the full range of views because most employers will be unaware of it. Indeed, we note it is not mentioned in HMRC's Employer Bulletin, and HMRC should consider raising awareness of the proposals, and perhaps undertaking a survey of employers in order to get a more representative response.

11.4 If free text is used, rather than a SOC codes, then HMRC will need to decide whether the replies they receive will be sufficiently precise for their purposes. The SOC code list is also long, unwieldy and out of date.

11.5 A significant concern would be if HMRC were then to impose inaccuracy penalties for RTI returns that included out of date information / SOC codes, especially given that the information has no bearing on whether the

employer has reported their pay and tax / NIC liabilities correctly. Penalties for inaccuracies should only apply to data that is necessary for the correct assessment of tax liabilities.

12 Question 7 – for the self-employed/their agents: How well do SOC codes describe your or your clients' occupation?

12.1 SOC codes, as with SIC codes, are out of date and sometimes do not properly describe occupations so we consider that they would not help HMRC to accurately identify self-employed persons' occupations. For example, some people earn monies as self-employed vloggers, for which there is no code.

13 Question 8: How easy would it be to extract job titles from existing payroll systems into RTI?

13.1 Our understanding is that many payroll systems do not capture job titles. We do not know if it might be possible to write a script to transfer this information to the payroll system from the employer's HR/personnel system. If it is, this may be possible for larger businesses with in-house payroll, but will come at a cost. For the large number of businesses that out-source payroll it is very unlikely that job titles will be recorded in existing payroll systems. Similarly, for many small businesses doing their own payroll, they are unlikely to have a linked personnel and payroll system (and, in fact, are unlikely to have the former in any event). As such they would have to manually add job titles to their payroll system, taking time away from running the business. And job title does not equate to occupation in many cases. Also job titles may not be consistently used across businesses which operate in similar areas. So what use will the data be? Also, once entered it is unlikely to be updated as it is not 'mission critical' data so will over time become worthless data.

Location Data

14 Overarching question: across all of the options, we would like to understand which would be the most useful and would offer the most benefit for businesses and taxpayers. Do you think the options for collecting additional data we have prioritised here are the right ones, and are there any other areas where collecting more, better or different data would support tax administration and/or broader public service.

14.1 Like occupational data, we do not believe that providing location data will offer any direct benefits to businesses and taxpayers. Again, our comments therefore focus on the impact on tax administration and public service delivery.

14.2 It is not clear from the consultation document how the collection of this data might interact with home-to-work commuting; mileage and other expense claims etc, or how HMRC might intend using this data in their compliance activity and investigation work. If they do intend to use it, then we think this should be done very cautiously since there are concerns about how accurate and up to date it might be.

14.3 For the reasons explained below, we are concerned that the data gathered would not be sufficiently accurate to be used as an evidence base for policy decisions, and increased accuracy would only come at a significant cost to business, which we do not support.

15 Question 9: Within location data, is HMRC correct to prioritise improving data on businesses with multiple locations, and on the location of real economic activity?

- 15.1 Clearly the issue here is businesses or employees operating from multiple locations. They correctly identify a key challenge which is where an employee works in multiple locations – this would, these days, increasingly include home and hybrid-working too.
- 15.2 HMRC say their preferred option is to ask employers, via RTI, to give ‘the office location or normal workplace of their employees’. They add that where there are multiple locations then ‘a list of where each employee is based would provide a good proxy for locations with real economic activity and that the number of employees at each location would provide a reasonable proxy for the split of activity between a business’s locations’. We understand HMRC to mean that an extra field would be added to RTI returns with this information on it for each employee.
- 15.3 While many workers have a fixed location, many do not. The current era of working from home and hybrid working plus travelling to temporary workplaces for projects or meetings (which may mean being somewhere other than the normal workplace for varying lengths of time) means that identifying ‘location’ is not as straightforward as it might have been in the past. For example, how do you report the office location or normal workplace for an employee who works two days at home, two days at their employer’s premises and one day a week at a client’s premises? If one were to record the employer’s premises as the normal workplace, what use is that data as it gives no real indication of the employee’s actual location.
- 15.4 It is also quite likely that an employer does not capture the employee’s actual working location where this is different from the contractual or ‘notional’ working location. For example, an employee who works at home may choose to work periodically at a coffee shop, or a family member’s home. None of this data is currently captured, and it would be a significant upheaval for employers to collect that data; not to mention a perceived invasion of privacy felt by employees.
- 15.5 Some employees may be working outside the UK. Whilst many systems can, for example, capture postcodes as a ‘working location’, few will allow entry of overseas addresses. The consultation document indicates that one of HMRC’s main concerns is whether businesses are operating outside the UK, but we note that the consultation does not propose specific or targeted data collection focussed on this risk.
- 15.6 The underlying premise of the consultation is that the number of employees at each location is a proxy for ‘real economic activity’. However, on its own this sort of data may give a misleading impression. A business which sells goods which it holds in a warehouse, could have staff in the warehouse plus staff in a head office in which the team designing the business’s warehouse is located. The head office may also be the location for a HR person and an in-house accountant. The sales team may work from home or visit customers predominantly. The number of staff at each location may not correlate to the value of economic activity at each location and it is unclear how value would be attributed to ‘back office’ type functions such as HR. Consequently, an analysis of economic activity based on employees’ location may produce misleading results. Consideration may therefore need to be given to item 14 of the checklist produced by the UK Statistics Authority in its document ‘Ethical Considerations in the use of Geospatial Data for Research and Statistics’⁹ (‘Double-check any strange results’). Also the example of Kitty indicates the difficulty of identifying where ‘real

⁹ <https://uksa.statisticsauthority.gov.uk/publication/ethical-considerations-in-the-use-of-geospatial-data-for-research-and-statistics/pages/7/>

activity' takes place if you consider that where the owner / manager is located could trump where most employees work. Much will depend on precisely what the information is to be used for.

15.7 Assuming the data gathered is to be used to provide targeted support in a crisis, consideration would need to be given as to whether the data accurately reflects the level of need. For example, a business might be based in a deprived location, but all the employees commute from an affluent location. The data might incorrectly suggest that the business, or its employees, are worthy of support.

16 Question 10: Are there any areas of the tax system where HMRC's collection of location data could be streamlined or where we could collect this information in a different way? In particular, does your business provide detailed location data (eg covering multiple branches of your business) to HMRC (or other parts of government) in more than one place? Which avenue do you find the least burdensome?

16.1 Local authorities hold location data for businesses via the business rates system. HMRC have recently consulted on Digitalising Business Rates¹⁰. HMRC should consider liaising with local authorities and the Valuation Office Agency if those proposals are taken forward in order to avoid duplication of the collection of data. We acknowledge that this data will not provide HMRC with overseas addresses through which a business trades but tax returns (eg ITSA/CT) could be amended to require submission of addresses within them.

16.2 Local authorities should also hold location data for businesses who are required to apply to them for licences to operate (eg alcohol licences) and for businesses affected by the new tax check process (s125 and Sch 33 Finance Act 2021).

17 Question 11: How easy or difficult would it be for your business [or, for agents, your customers] to provide work location information for each employee through RTI?

17.1 There would be a burden on businesses adding location data for each employee to their payroll systems. Once done, absent this requirement, it may not be regularly updated for changes in circumstances. So, an employee going from working at the office to working from home may not have that change of location updated in payroll, even if it is reflected in the HR systems. Similarly, an employee temporarily seconded to a client or another location for six months may not have their 'normal' workplace location data changed as they will revert to working at the employer's premises at some point (albeit with serial secondments they could be almost never at the 'normal' workplace). Ultimately, much of the data HMRC will receive may be inaccurate, as it will not show the true locations of work for many employees.

17.2 As noted, we understand that software can be modified to add the extra field but there would be a significant burden in adding that location data and in then keeping it accurate. Will inaccuracy penalties be charged if the location recorded is no longer correct?

17.3 If this data is to be required, in what format will it be requested? We note that the consultation on digitalising business rates (at para 3.18) preferences Unique Property Reference Numbers (UPRNs) which can be found via the 'find my address' tool provided by GeoPlace. It is important that the format is consistent in government

¹⁰ Digitalising Business Rates: connecting business rates and tax data: HMRC consultation - <https://www.gov.uk/government/consultations/digitalising-business-rates-connecting-business-rates-and-tax-data/digitalising-business-rates-connecting-business-rates-and-tax-data>.

systems if the data is to be joined with existing data and/or used for analysis, however obtaining UPRNs for each employee could be onerous for large businesses.

- 17.4 In the consultation HMRC say they considered other options, such as requiring the location data to go through CT returns, VAT returns or ITSA returns, which would require businesses to split sales or profits by location. HMRC have decided not to pursue this option. We agree with their decision, as this would be very onerous for businesses to comply with.

18 Question 12 – for payroll providers: How easy or difficult would it be for you to modify your software/your service to allow for the provision of work location information for each employee?

- 18.1 No comments (CIOT is not a payroll provider).

Employee hours worked

19 Overarching question: across all of the options, we would like to understand which would be the most useful and would offer the most benefit for businesses and taxpayers. Do you think the options for collecting additional data we have prioritised here are the right ones, and are there any other areas where collecting more, better or different data would support tax administration and/or broader public service.

- 19.1 Like occupational and location data, we do not believe that providing data about employee hours worked will offer any direct benefits to businesses and taxpayers. Again, our comments therefore focus on the impact on tax administration and public service delivery.
- 19.2 Hours worked does have some impact for tax purposes. eg for the statutory residence test; historically for retirement relief for Capital Gains Tax; and possibly some other contexts. Therefore, we can see that collection of this data may be useful for HMRC, so long as the parameters to determine the hours worked are streamlined with the statutory rules – but it is not clear from the consultation document if this is the purpose, or one of the purposes, behind collecting this data.

20 Question 13: How easy or difficult would it be to provide information on specific hours worked and/or actual hours worked?

- 20.1 For salaried employees, the payroll system may not capture contractual hours, even if recorded in the HR system. If it does, or the employer goes through the burden of adding contractual hours to their payroll system, then it would be relatively easy to report contractual hours. Some employers do not have systems to capture detailed records of hours worked as they have no commercial need or benefit to do so, given the terms of employees' contracts (specifying hours to be worked per week/month) where the remuneration is sufficiently in excess of National Minimum Wage levels, so they would need to set up new systems if this proposed data obligation was introduced.
- 20.2 Reporting specific hours and/or actual hours worked is much more challenging. Many employees work additional hours, but those extra hours worked are not captured, with the result that the data HMRC will receive will be inaccurate (because it will have to be based on contractual hours). Where paid overtime is

worked then this can be added to the contractual hours, but it is questionable how useful the data would be where, for example, an employee is paid monthly and for a few days worked significant overtime – adding contractual hours and overtime for the month gives no picture of when those hours were worked. So while the data may provide a picture of hours worked for weekly paid employees, it is likely to be of little value for monthly paid. It is also likely to be quite burdensome to identify and report these additional hours.

- 20.3 The only time providing specific or actual hours worked would be accurate is where the employee is paid hourly for their actual hours. In such cases the payroll system could capture that information and return it via the RTI return. In any other circumstance the data provided is unlikely to provide the whole picture of actual hours worked.
- 20.4 Our understanding is that often once initially entered into payroll or HR software, many employers do not update them for changes in hours worked; also, that they are used to capture normal contractual hours rather than actually worked hours, including overtime. We understand that, sometimes, employers ignore the current categories of hours, or do not update them to changes in an employee's working arrangements – with the change only being made if it is picked up on a compliance review. We doubt that requiring actual hours will see employers change their practice of entering initially contracted hours and then not updating that information.
- 20.5 The consultation says that currently HMRC do not collect data on workers on zero hours contracts. It would seem relatively straightforward to add a field to the RTI return asking if the employee is employed on a zero hours contract.
- 20.6 Again, the wider impact on the employer-employee relationship needs considering. If actual hours need to be captured, this will require the introduction of timesheets or other forms of time recording where they do not currently exist. This may require employers to have to introduce or formalise TOIL or overtime arrangements, or at least recognise that their employees are now acutely aware of the 'unpaid' time they are working. Many employers allow flexible working, and allow employees to adapt their hours to suit their needs / preferences, often working on trust that the requisite hours are worked. Again, the requirement to record actual hours worked could undermine the relationship of trust between the employer and the employee.

21 Question 14: How predictable are the hours of your employees? How often do you use category e) hours worked ('no regular pattern'), and what for? For example, pension payments or irregular working patterns (and if so what type of irregular pattern)?

- 21.1 No comments (though see above).

Dividends paid to shareholders in owner-managed businesses

22 Overarching question: across all of the options, we would like to understand which would be the most useful and would offer the most benefit for businesses and taxpayers. Do you think the options for collecting additional data we have prioritised here are the right ones, and are there any other areas where collecting more, better or different data would support tax administration and/or broader public service.

- 22.1 This proposal would require company owner-managers to declare separately the amount of dividends they receive from their own companies from other UK dividends received on their ITSA tax returns. At present, only

a total figure is required for dividend income, so we agree that requiring the income to be split in this way would help HMRC in the ways suggested in the consultation document, including targeting their compliance activity better. As noted below, we do not think splitting dividends would be a particularly onerous task.

23 Question 15: Do you agree that building on the pre-existing definition of a close company is the best approach? Are there any other approaches you would prefer?

23.1 Yes, we agree with this approach, although there are some situations that we are aware of where it can often be difficult to tell whether something is a close company or not, for example in some private equity situations because of needing to trace through lots of partnership structures above it. We need a simple definition generally, perhaps something that HMRC may wish to consult on as a separate exercise.

23.2 HMRC say they would like more consistent data to tell them the extent of the company owner manager population, so we agree with the proposal to make the company director and close company fields on the employment page of the ITSA return mandatory (it is currently voluntary) and to add a new mandatory field asking for the percentage shareholding in the company. This should not be too onerous so long as appropriate guidance is provided in the accompanying notes and on gov.uk. However, our comments at para 1.6 above regarding the need for legislative change to bring in non-tax matters asked for in the self-assessment tax return are relevant here since this information is not required to calculate the tax liability.

24 Question 16: How great would the administrative burden be for you or your customers in splitting out dividend income from controlled companies and/or determining the percentage of shareholding in that company?

24.1 We do not anticipate that this would be a particularly burdensome process.

Self-employed start and end dates

25 Overarching question: across all of the options, we would like to understand which would be the most useful and would offer the most benefit for businesses and taxpayers. Do you think the options for collecting additional data we have prioritised here are the right ones, and are there any other areas where collecting more, better or different data would support tax administration and/or broader public service.

25.1 As noted below, we do not consider this proposal to be too onerous, albeit there may be some difficulties identifying the precise start and end dates for some businesses. Appropriate guidance should be provided in the tax return accompanying notes and on gov.uk. This information is important in any case for calculating the correct tax liability.

25.2 We are doubtful how the information will help HMRC target support unless the data is provided on a real time basis.

26 Question 17: How easy or difficult would it be for you/your clients to identify the dates that your business/your client's business started and ended trading within a tax year?

- 26.1 In most cases, we would think that it should not be too difficult to identify the dates a business started and ended trading within a tax year. We would also expect that many businesses will already complete these boxes on the self-employment pages of their tax returns in any event. Entering the correct date the business ceases to trade will be important for calculating reliefs due on cessation of a business, such as overlap relief and terminal loss relief.
- 26.2 However, determining if a person is trading is not always easy in borderline cases, as the significant amount of well-established case law testifies to. Each case must be decided on its own facts and circumstances and often it will be necessary to do that by reference to the so-called 'badges of trade'. This can be a complicated area and an ordinary taxpayer may not be competent to determine the correct status of their activity in a borderline case. There appears to be some limited guidance on GOV.UK¹¹ but this may be an area where more detailed HMRC guidance is required, or an interactive tool similar to the Check Employment Status for Tax (CEST) tool.
- 26.3 We would suggest that, if completion of these boxes on the self-employment pages (Boxes 6 and 7) is made compulsory, guidance to help taxpayers identify the dates their business started and ended is provided in the accompanying notes, or by a link in the notes to a page on gov.uk which contains the relevant guidance. Currently, the notes¹² to the boxes (and links¹³ to the pages on gov.uk which are provided in the notes) do not provide any guidance on this topic.
- 26.4 Unless this data is required on a real time basis, for example via Making Tax Digital (MTD) quarterly updates, we are not clear how it will help HMRC and Government target support better to the self-employed, since ITSA returns are not filed until sometime after the date a business starts or ends trading. Indeed, new businesses are not required to join MTD until at least a year after their commencement date, so MTD data will not help target support.

27 Chapter 3: Obligations, safeguards and legislative framework

- 27.1 Our main concern is inaccuracy penalties for non-tax critical data. We consider that it would be unfair to impose penalties for inaccuracies in data that is not critical to the tax system. The additional data HMRC are proposing to request does not appear to be required to ensure that employers pay the correct amounts of tax and NIC under the PAYE system, and much of it is not required to ensure that businesses pay the correct amount of income tax via their ITSA tax returns.
- 27.2 Given that there will be a significant burden in collecting this additional data, let alone keeping it accurate and up to date, it would be wholly unjust to impose penalties on businesses for returning inaccurate, or failing to return accurate information. However, as the existing penalty regime is often based upon potential lost revenue (PLR) then maybe this is self-policing as if the data is unrelated to tax then the PLR is zero.

¹¹ [https://www.GOV.UK/working-for-yourself#:~:text=If%20you%20start%20working%20for,Revenue%20and%20Customs%20\(%20HMRC%20\)](https://www.GOV.UK/working-for-yourself#:~:text=If%20you%20start%20working%20for,Revenue%20and%20Customs%20(%20HMRC%20)).

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063748/sa103f-notes-2022.pdf

¹³ <https://www.gov.uk/register-for-self-assessment/self-employed> and <https://www.gov.uk/stop-being-self-employed> which provide information about how to register for self assessment as a self employed person and how to tell HMRC if you have stopped trading.

27.3 The expectation that the data will update in real time by businesses and employers places a significant administrative burden on employers to check for changes in, for example, hours worked, location of work, change in job titles, etc. In reality, it is unlikely that businesses and employers will have the time to keep on top of all the changes in this data. The concern is that HMRC will then seek penalties for an incorrect RTI or ITSA return even though all the data on tax is correct.

28 Acknowledgement of submission

28.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

11 October 2022