



## Additional information to be contained in returns under TMA 1970 etc

### Clause 35

#### Executive Summary

Clause 35 is enabling legislation to allow HMRC to introduce regulations which will specify additional information to be collected from businesses and self-employed people via tax returns.

We are concerned that the cost to business of providing information on employee hours has been underestimated.

We need to understand why HMRC are collecting the data and what they are going to use it for before we can say whether the legislation will work as intended and whether the additional burden on businesses is proportionate. HMRC should publish draft regulations for consultation as soon as possible.

HMRC must provide sufficient guidance for taxpayers to understand what is required of them, so that the risk of non-compliance (and incurring a penalty) is minimised.

The legislation appears to leave open the possibility that HMRC may in future decide to widen the data they collect by making further regulations. Any increase in HMRC's data collection powers under this enabling legislation should be consulted on before being introduced, giving particular consideration to the financial impact on businesses and other taxpayers as well as the need for the data itself.

#### Overview

- 1.1. This clause introduces amendments to the information which HMRC can collect through existing tax returns. It makes amendments to the Taxes Management Act (TMA) 1970 and to Chapter 6 of Part 11 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 which will enable HMRC to create regulations specifying additional information that the Commissioners consider relevant for the collection and management of tax with effect from the tax year 2025/26 onwards.
- 1.2. The regulations themselves have not yet been published (it is expected that they will be published in draft in early 2024), but HMRC's policy paper indicates that the Government will require businesses to provide the following additional information to HMRC:
  - 1.2.1. Employers will be required to provide more detailed information on employee hours worked using Real Time Information (RTI) Pay-As-You-Earn (PAYE) reporting (note that

it was announced at Autumn Statement that this would be changed to ‘employee hours paid’<sup>1</sup> but it will only be confirmed when the draft regulations are published).

1.2.2. Shareholders in owner managed businesses will need to provide the following additional information on their Self-Assessment (SA) tax return:

- the amount of dividend income received from their own companies separately to other dividend income
- the percentage of share capital that they hold in their own companies

1.2.3. Self-employed taxpayers will need to provide information on the start and end dates of their self-employment on their SA tax return.

1.3. As noted in HMRC’s policy paper, the objective of the measure is “to improve the quality of data collected by HMRC to provide better outcomes for taxpayers and businesses, as well as improving compliance, resulting in a more resilient tax system”. It follows a consultation in 2022 which proposed a number of potential options for increasing the range of data HMRC collect from taxpayers. Following the consultation, the Government has decided to take forward the three proposals noted above<sup>2</sup>.

### **CIOT comments<sup>3</sup>**

#### **2. Costs to Business**

2.1. We are pleased to see that, following consultation, HMRC have decided, for now, to take forward only three of the proposed options. This helps address some of our concerns, particularly around increased administrative burdens and complexity. We note however that:

2.1.1. The estimated one-off impact, ie transitional costs for businesses (£44m) and continuing administrative costs (£9.6m), as calculated by HMRC, while not insignificant<sup>4</sup>, still seem to us likely to be an underestimate. (This would have been even more the case had the original proposal of requiring businesses to provide data on actual (rather than contractual) employee hours worked been implemented.) It seems unrealistic that the average transitional costs to business of providing the data on employee hours will be just £18.42 on average<sup>5</sup>, with ‘negligible’ ongoing costs. We expect the real-life costs to be significantly higher. We welcome that HMRC are engaging with payroll professionals to review these costings.

2.1.2. As noted above, it appears that HMRC have now changed the data employers will be required to provide from ‘employee hours worked’ to ‘employee hours paid’ (that is,

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<sup>1</sup> See updated HMRC Policy Paper of 22 November 2023

<https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers/changes-to-hmrc-data-collection>

<sup>2</sup> Improving the data HMRC collects from its customers – Consultation outcome 27 April 2023

<https://www.gov.uk/government/consultations/improving-the-data-hmrc-collects-from-its-customers/improving-the-data-hmrc-collects-from-its-customers>

<sup>3</sup> Please note, there is more detail on some of these comments in our response to the draft Finance Bill legislation - Draft Finance Bill 2023-24 Changes to data HMRC collect from customers - Additional information to be contained in returns Response by the Chartered Institute of Taxation, 12 September 2023

<https://www.tax.org.uk/ref1197>

<sup>4</sup> HMRC Policy Paper “Changes to HMRC data collection” - Summary of Impacts updated 22 November 2023

<https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers/changes-to-hmrc-data-collection>

<sup>5</sup> £35m one-off impact, across 1.9 million PAYE-registered businesses including civil society organisations.

the hours an employee is contracted to work). It is important to understand whether / how this change affects the estimated financial one-off and ongoing impacts on businesses, and whether the original costings will be revised as a result.

### **3. Purpose of collecting the data**

- 3.1. In order to assess whether the legislation will work as intended we need to know why HMRC are collecting the data and what they intend to use it for.
- 3.2. It is also important to understand whether Clause 35 gives HMRC the power to require provision of that data, given that it appears to limit the information that can be required to that which is relevant for the purpose of the collection and management of income tax, capital gains tax and corporation tax<sup>6</sup>. It appears to us that this information is relevant in that it may be used by HMRC in their compliance activities regarding those taxes, but would not be relevant to, for example, National Minimum Wage compliance, for targeting COVID-type reliefs or for the purposes of the Government's levelling up strategy<sup>7</sup> (these are other purposes which we have noted have been suggested by HMRC over the course of the consultation period, but which do not have as their purpose the collection and management of the above taxes).
- 3.3. In addition, if HMRC are intending to share the data with other government departments, it may be necessary to introduce regulations under Commissioners for Revenue and Customs Act 2005 to permit HMRC to do so or make it clear under which part of the existing legislation the data will be shared.
- 3.4. In summary it would be helpful if the minister could clarify both the purposes to which the data collected may be put and that the government is confident that the legislation provides appropriate authorisation for this.

### **4. Penalty for failure to comply**

- 4.1. New section 1 (1K) imposes a fixed penalty of £60 on a person who fails to comply with the requirement to report the additional information in their SA tax return. Guidance explaining the penalty must be communicated clearly and be easily accessible so all taxpayers are aware of it before submitting their returns. Help in the form of nudges and prompts should be utilised to help those submitting their return online.
- 4.2. In short, it will be important that the SA return form (whether paper or online) makes it clear who needs to provide this additional data, and when and where exactly it needs to be reported so that the risk of non-compliance (and incurring a possible penalty) is minimised.

### **5. Timescales for implementation**

- 5.1. Although the changes will not have effect until the tax year 2025-26, this is still quite a tight timescale for businesses and employers to budget for, investigate, develop and implement any software upgrades and new internal data collection processes that may be needed to comply with their new data collection and submission obligations.
- 5.2. Updates will also be required to HMRC's systems and the relevant tax returns to accommodate the changes.

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<sup>6</sup> Clause 35 (1) - new s8 (1J) TMA 1970

<sup>7</sup> The original consultation document<sup>7</sup> suggested that the data would be collected so it could be used for sharing across government departments (e.g. for the purposes of the Government's levelling up strategy), which did not seem to have much, if anything, to do with tax.

- 5.3. Until the regulations are published, it is not clear exactly what information will be asked for, so – to ensure the best chance of a successful implementation - we urge HMRC to publish draft regulations for consultation as soon as possible and before the enabling legislation has been enacted.

## **6. Scope of the primary legislation**

- 6.1. Clause 35 includes powers to enable HMRC Commissioners to make regulations to specify the information they consider relevant to be collected via returns. The details of what information is to be collected are not contained in the primary legislation.
- 6.2. We are concerned that this appears to leave open the possibility that HMRC may in future decide to widen the data they collect beyond the three options they have decided to take forward at this stage by making further regulations under the powers granted to the Commissioners by this legislation, without the proper parliamentary scrutiny that primary legislation enables.
- 6.3. Any increase in HMRC’s data collection powers under this enabling legislation should be consulted on before being introduced, giving particular consideration to the potential financial impact to businesses and taxpayers of implementing and complying with the measures. The government must also provide for an appropriate implementation period for any future changes.
- 6.4. It would be helpful if the minister could say whether it is the government’s intention that any future expansion of the data collection requirements introduced by this clause would be by (a) primary or (b) secondary legislation. In any event can he provide an assurance that no expansion of these powers would be introduced without thorough consultation?

## **7. The Chartered Institute of Taxation**

8. The CIOT is the leading professional body in the United Kingdom concerned solely with taxation. 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. 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.
9. 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. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
10. The CIOT’s 19,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

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For further information, please contact:  
George Crozier, CIOT Head of External Relations  
[gcrozier@tax.org.uk](mailto:gcrozier@tax.org.uk) 020 7340 0569

The Chartered Institute of Taxation  
2 January 2023