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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

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 This draft legislation[1] follows a consultation last year which proposed several potential options for improving the range of data HMRC collect, use and share across government. The consultation identified six areas where HMRC believed that their data could be improved, along with specific implementation options. The CIOT had significant concerns with the proposals, as highlighted in the executive summary of our response to the consultation document[2].

1.3 In short, we were concerned that gathering this additional data and providing it to HMRC would place significant extra administrative burdens on employers and businesses, for little or no direct benefit to them, and that it would make the preparation of tax returns a more complex process. In addition we considered that collecting, analysing and sharing this information would put further strain on HMRC's limited resources and that taxpayers would question why they should be asked to provide more data to HMRC when existing data collected appears not to be being used in an effective or efficient manner.

[1] Draft Finance Bill 2023-24 Clause 1 'Additional information to be contained in returns'
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1171508/Change_to_data_HMRC_collects_from_customers_draft_legislation.pdf

[2] Improving the data HMRC collects from its customers - HMRC consultation – CIOT response 11 October 2022
https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/e6e8b6ba-7c64-4c75-a468-bae3520054c7/221011%20Improving%20the%20data%20HMRC%20collects%20from%20its%20customers%20-%20CIOT%20response.pdf

1.4 We were therefore pleased to see that following the consultation, HMRC have decided, for now, to take forward only three of the proposed options for additional data collection. Whilst this helps address our concerns, particular around increased administrative burdens and complexity, we note however that:

a. The estimated one-off impact on transitional businesses costs (£44m) and continuing impact on administrative burdens (£9.6m), as calculated by HMRC are not insignificant[3], but in any event seem hugely underestimated, particularly in relation to the impact on businesses of providing data on employee hours worked, as we will explore below.

b. The draft legislation 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. We are concerned that this would appear 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 draft legislation, without proper Parliamentary scrutiny.

1.5 It is difficult to provide any meaningful comment on the data collection measures themselves when the detail will be in regulations, as yet unpublished. We would urge HMRC to publish draft regulations before the enabling legislation has been enacted. Although the amendments will not have effect until the tax year 2025-26, this does not provide much time 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.

1.6 We provide some specific comments on the draft legislation below. Our principal concern is whether the legislation will work as intended, which we think will depend on what HMRC intend to use the additional data for, which is currently unclear.

1.7 The original consultation document[4] suggested that the data would be collected so it could be used for sharing across government departments (eg for the purposes of the Government's levelling up strategy), which did not seem to have much, if anything, to do with tax. The Explanatory Note[5] to the draft Finance Bill clause refers to the data providing an up to date picture of citizens and businesses to help build a trusted, modern tax administration system and improve policy across government, but there is no specific reference to sharing the data across government departments nor is it mentioned in HMRC's Policy Paper[6] published at the same time as the draft clause. Hence it is not at all clear what data HMRC will share with other parts of government, or whether they will use it only for their own compliance purposes, or both.

1.8 We would ask HMRC to clarify their intentions in relation to what the data will be used for and whether their intentions have changed since the original consultation. If HMRC are intending to share the data with other

[3] HMRC Policy Paper 'Changes to HMRC data collection' - Summary of Impacts 18 July 2023 https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers/changes-to-hmrc-data-collection

[4] Improving the data HMRC collects from its customers – consultation document - 20 July 2022 (note title incorrectly describes the document as 'consultation outcome') https://www.gov.uk/government/consultations/improving-the-data-hmrc-collects-from-its-customers/improving-the-data-hmrc-collects-from-its-customers

[5] Explanatory Note linked from the following page: https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers

[6] HMRC Policy Paper 'Changes to HMRC data collection' - https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers/changes-to-hmrc-data-collection

government departments, it may be necessary to introduce regulations under Commissioners for Revenue and Customs Act (CRCA) 2005 to permit HMRC to do so or make it clear under which part of the legislation the data will be shared.

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 clause introduces amendments to the information which HMRC can collect through existing 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.

3.2 The draft regulations themselves have not yet been published, but HMRC's policy paper published at the same time as the draft legislation indicates that the Government will require businesses to provide the following additional information to HMRC:

- Employers will be required to provide more detailed information on employee hours worked using Real Time Information (RTI) PAYE reporting
- 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

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

3.3 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[7].

3.4 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

4 Comments on the draft legislation – proposed revisions to Taxes Management Act 1970

4.1 The draft legislation inserts an additional sub-clause into sections 8, 8A and 12AA of TMA 1970 to allow HMRC to collect the additional data in SA tax returns despite it not being necessary '*for the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment and the amount payable by him by way of income tax for that year*'[8].

4.2 New sub-clause (1I) in section 8 specifies that a person may be required to include in their return any information that is specified or described in regulations (whether or not the information is relevant for the purpose mentioned above). The regulations have not yet been published. It is disappointing and frustrating that they have not been published at the same time as the draft legislation. Without the regulations we are not able to see the details of the information HMRC will require to be provided and assess how burdensome the new reporting obligations might, or might not, be for businesses.

4.3 Sub-clause (1J) specifies that the Commissioners may only specify or describe information in regulations if they consider it is relevant for the purpose of the collection and management of any of the taxes listed in section 1 (namely income tax, capital gains tax (CGT) and corporation tax (CT)).

[7] 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

[8] S8(1) TMA 1970 (personal return). Similar provisions in s8A(1) (trustee's return) and s12AA(1) (partnership return).

a. The reference to section 1 TMA 1970 appears to acknowledge that the information does not meet the current criteria in section 8(1) and therefore is not needed for the same purpose as information normally requested in the personal tax return.
b. However new sub-clause (1J) states that it does still have to be relevant for the collection and management of income tax, CGT or CT.
c. This would appear to limit the use to which the data can be put and preclude it being used for any other purposes, including sharing across other government departments.
d. The draft sub-clauses seem to be contradictory, because the first (1I) is effectively saying 'HMRC can make regulations whether or not they are relevant to the amount of income tax payable' only for the second (1J) to say 'but HMRC cannot ask for anything that is not relevant to the collection and management of income tax, CGT and CT'. This would appear to prevent much of what HMRC seem to want to do under the first paragraph. It would be helpful for HMRC to provide some examples of how they will use the data when they publish the draft regulations so we can understand how the draft legislation is meant to work in practice.

4.4 Sub-clause (1K) imposes a fixed penalty of £60 on a person who fails to comply with the requirement to report the additional information in their return.

a. We support a separate fixed penalty on the grounds that it will be simple for taxpayers to understand. It also seems right that the £60 penalty is lower than the initial £100 late filing penalty. However, HMRC are introducing a points-based penalty regime for Income Tax Self Assessment (ITSA) soon so we are not sure that this fixed penalty sits well with that new system.
b. It seems reasonable to impose a separate fixed penalty in these circumstances considering that the data is not critical to the calculation of a person's tax liability and a failure to provide such non-tax related data will not render the whole return incomplete or affect the calculation of the taxpayer's liability.
c. Guidance explaining the penalty must be communicated clearly and be easily accessible so all taxpayers are aware of it before submitting their returns.
d. In order to levy the penalty, HMRC will need to identify that the required data has not been provided (or, presumably, is not correct) and then issue the penalty and deal with any 'reasonable excuse' appeal arising. We would question whether the penalty is worth the cost of administering it, and therefore whether the data gathering regime will have the desired effect.
e. HMRC may want to update their Compliance Handbook manual to confirm that for the avoidance of doubt that there is no overlap between the proposed £60 penalty and existing error penalties under Para 1 Sch 24 FA 2007 (which cover omissions of data too).

4.5 Similar provisions are being introduced into section 8A and section 12AA TMA 1970.

4.6 In our response to last year's consultation we also queried that there might be other knock-on effects to the tax administration compliance framework beyond needing to amend section 8, for example:

- 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 wider remit than just tax if that return is expanded.
- Schedule 36 Finance Act 2008 is entirely about issuing notices to check a taxpayer's tax position.

They are not mentioned in HMRC's policy paper or in the consultation outcome[9] and we remain unclear whether legislative change is required or not.

4.7 Existing legislation in CRCA 2005 appears to preclude the sorts of cross-government sharing of data implied by last year's consultation document. CRCA 2005 contains detailed provisions about what information HMRC can share with others and when in sections 18 – 21. Section 20, for example, lists when HMRC can share data. None of the information being sought by this measure appears to fit into the criteria in section 20. Consequently we do not think HMRC can share any of it with other parts of government. If they do want to share it then it appears that they need to make new regulations under section 20(1)(b)(ii) or amend CRCA 2005.

5 Comments on the draft legislation – proposed revisions to Chapter 6 of Part 11 of ITEPA 2003

5.1 A new clause 707A is inserted into Chapter 6 of Part 11 of ITEPA 2003 in respect of the additional information that will be required relating to PAYE reporting. These draft clauses are similar to those being inserted into TMA 1970 in respect of the collection of additional data on SA tax returns. The regulations to which they refer have not yet been published.

5.2 Draft clause 707A(1) specifies that an employer may be required to provide any information that is specified or described in PAYE regulations made by the Commissioners (whether or not that information is also relevant to the assessment, charge, collection and recovery of income tax in respect of PAYE income).

5.3 Draft clause 707A(2) specifies that the Commissioners may only specify or describe information in regulations if they consider it is relevant for the purpose of the collection and management of any of the taxes listed in section 1 TMA 1970 (namely income tax, CGT and CT).

5.4 Looked at as a whole, the draft s707A (like the draft sub-clauses amending section 8 TMA 1970) seems to be contradictory, because the first paragraph is effectively saying 'HMRC can make regulations whether or not they are relevant to the collection etc of income tax in respect of PAYE income' only for the second paragraph to say 'but HMRC cannot ask for anything that is not relevant to the collection and management of income tax, CGT and CT'. This would appear to prevent much of what HMRC seem to want to do under the first paragraph. As noted above, it would be helpful for HMRC to provide some examples of how they will use the data when they publish the draft regulations so we can understand how the draft legislation is meant to work in practice.

5.5 The original consultation referred to the National Minimum Wage (NMW) and facilitating better analysis of labour market trends. This does not seem to be income tax, CGT or CT related so it is unclear how the draft legislation will enable HMRC to collect data on employee hours worked for use in analysing labour market trends. Hours worked do not necessarily drive income level and so may not have any bearing at all on tax.

5.6 Hours worked can have some impact for tax purposes. eg for the statutory residence test; historically for retirement relief for CGT; and possibly some other contexts. Therefore, we can see that collection of this data

[9] 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/public-feedback/improving-the-data-hmrc-collects-from-its-customers-summary-of-responses

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 if this is the purpose, or one of the purposes, behind collecting this data.

5.7 The changes proposed to TMA 1970 include a £60 penalty for a failure to comply (see above). However, there is no such clause for the change to the PAYE regulations. It is not clear why individuals/trustees/partnerships should be treated differently to employers who fail to provide the additional information.

6 Employee Hours Worked

6.1 We noted in our response to the consultation document last year that employers may or may not be already capturing employee hours worked on their payroll systems[10]. Those that currently do not will have to set up new systems to capture the information. We note that HMRC's policy paper states '*The additional data HMRC will collect is in areas where taxpayers already hold the data*…', but we will only know whether this is correct when HMRC publish the regulations to specify which information is required. For example, an employee on a salaried contract for 35 hours per week may, in practice, work additional hours if and when the job requires it. But the employer may not gather data on actual hours worked, and at present the employer will only indicate on the RTI return that the employee 'normally' works '30 or more' hours per week. So, if the Regulations require actual hours worked, rather than 'normal' hours, for many employments this will not represent data already held.

6.2 Further, employers' HR systems, which capture data on contractual hours etc, might operate separately from their payroll systems, and so even if the requisite information already exists, it may not be in a format that can be easily transmitted to HMRC via the RTI return.

6.3 In the absence of regulations specifying the precise information requirements, and in the light of the potentially onerous nature of capturing and providing this additional data, we are mystified how HMRC have calculated the average transitional costs to business as just £18.42 on average[11], and 'negligible' ongoing costs. We would welcome sight of these calculations, as we expect the real-life costs to be significantly higher.

6.4 The expectation during the consultation was that the data would be provided to HMRC in real time, which places a significant administrative burden on employers to check for changes in hours worked of non-hourly paid employees. For many salaried employees, the employer does not track actual hours worked beyond normal management of an employee's workload, attendance, etc. If there is a requirement to report actual hours worked rather than contractual hours it is unlikely that 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 return even though all the data on tax is correct.

6.5 HMRCs response to the consultation implies that there would not be as much of a burden for more accurate recording of hours because employers are already doing this for NMW compliance purposes. However, there is nothing within the draft legislation or the policy paper which suggests there will be any update to NMW legislation. It is not clear therefore how much weight HMRC will put on the accuracy of the RTI submissions to establish NMW compliance, particularly since additional records held within businesses may still meet the requirements of NMW legislation and evidence NMW compliance, even if the RTI data shows different hours.

[10] Regulation 22 of Schedule A1 to the Income Tax (PAYE) Regulations 2003 (SI 2003/2682) provides for '*An indication of which of the following bands the number of normal hours worked each week by the employee falls into – (a) up to 15.99, (b) 16 to 23.99, (ba) 24 to 29.99, (c) 30 or more, or an indication that none of the bands is applicable*'.

[11] £35m one-off impact, across 1.9 million PAYE-registered businesses including civil society organisations.

Furthermore, for many salaried employees NMW is not an issue so there is no real need for the employer to record actual hours. Some clarification around this point would be welcome.

7 Dividends paid to shareholders in owner-managed businesses

7.1 The proposal is for HMRC to collect data from shareholders on the amount of dividend income received from their own companies separately to other dividend income, and the percentage share they hold in their own companies via their SA tax return.

7.2 It will first be necessary to define an 'owner managed business' (OMB). As the regulations have not yet been published, we are unable to comment further but clearly the challenge will be in drafting clear and succinct legislation.

7.3 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. For example, in the context of the Off-Payroll Working (OPW) rules there is a proposal[12] that when HMRC agree a compliance settlement with an end client the dividend taxes paid by the individual worker can be set off against the PAYE due, so requiring dividends from a Personal Service Company (PSC) to be returned separately on the individual's SA return may help the HMRC compliance teams dealing with these cases to identify how much tax was paid on the individual's dividends from their PSC. We suggest, if HMRC are not already doing so, that liaison with the team responsible for delivering the proposed OPW set off legislation might be helpful, to ensure that it is as easy as possible in the future to identify taxes paid on PSC dividends. We do not think splitting dividends would be a particularly onerous task.

7.4 However there is the potential for complexity on percentage of share ownership, based on the experience of the changes to Entrepreneur's Relief (Business Asset Disposal Relief) a few years ago. The percentage could change regularly, so we would suggest that the figure would need to be an annual snapshot. HMRC will also need to provide some guidance so taxpayers understand how precise the percentage will need to be, for example a person's percentage ownership might vary by a few percent because of other people exercising share options. Alternatively, HMRC could consider asking whether a person's percentage ownership is simply higher or lower than a certain percentage (ie 50%, 5% etc). Ultimately, the level of precision required will depend on what HMRC are intending to use the information for.

7.5 A single box on the return asking for the percentage shareholding will not necessarily be sufficient, for example some entities have different classes of shares or different rights to income compared to capital, and some shares may be held jointly, for example with a spouse or other family members. The return will need to cope with the different scenarios that could arise.

7.6 We note that last year's consultation also contained a proposal to make the company director and close company fields on the employment page of the ITSA return mandatory (they are currently voluntary), but this is not mentioned in HMRC's policy paper published on 18 July 2023 so it is unclear if this proposal is still being considered by HMRC or if it has been dropped.

[12] Off-payroll working: calculation of PAYE liability in cases of non-compliance - GOV.UK (www.gov.uk)

8 Start and end dates of self-employment

8.1 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 to help taxpayers identify the dates their business started and ended should be provided by HMRC in the tax return accompanying notes and on GOV.UK. Currently, the notes to the relevant boxes on the self-employment pages of the SA tax return[13] (and links[14] to the pages on gov.uk which are provided in the notes) do not provide any guidance on this topic. There appears to be some existing limited guidance[15] on GOV.UK but more detailed HMRC guidance will be required, and perhaps an interactive tool similar to the Check Employment Status for Tax (CEST) tool.

8.2 Guidance should be provided for taxpayers who have 'ad hoc' self-employment, particularly common nowadays in the 'gig' economy. Will HMRC require the start and end dates for each job, or will it be sufficient to note that the person is in business on an ad hoc basis?

8.3 We are doubtful how the information will give the Government '*more accurate information on trading activity, this information would improve our understanding of the characteristics of the trading population during the crucial make-or-break first year*' and '*help design and evaluation policy interventions in HMRC and elsewhere*'[16]. Unless this data is provided 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 we cannot see how MTD data will help target support for new businesses.

9 Acknowledgement of submission

9.1 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

12 September 2023

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

[14] 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.

[15] https://www.gov.uk/working-for-yourself#:%7E:text=If%20you%20start%20working%20for,Revenue%20and%20Customs%20(%20HMRC%20)

[16] See comments under heading 'Self-employed start and end dates', sub-heading 'Why better data is needed' – Improving the data HMRC collects from its customers – consultation response 20 April 2023 https://www.gov.uk/government/consultations/improving-the-data-hmrc-collects-from-its-customers/improving-the-data-hmrc-collects-from-its-customers