

## Draft legislation: Improving the data HMRC collects from its customers

### Comments 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 20,000 members, and extensive volunteer network, in providing our response.

1.2 **Employee hours worked** – we remain unclear why HMRC are collecting this information and what they are going to use it for. That makes it hard for us to comment on whether the draft regulations will work as intended. We also remain concerned that gathering this additional data and providing it to HMRC will place significant extra administrative burdens on some employers. The figures in HMRC's revised impact assessment still look significantly underestimated to us.

1.3 **Dividends** – we are pleased that the draft regulations limit the information gathering exercise to directors of close companies. We think the term 'the percentage of the person's shareholding' requires further explanation, ideally in the regulations themselves.

We would also suggest that HMRC should produce some guidance (with examples) to help taxpayers work out what percentage they will need to put on their return. We also recommend that the term 'director' should be defined in the regulations.

1.4 **Start and end dates of self-employment** – HMRC should provide appropriate guidance in the tax return accompanying notes and on GOV.UK to help taxpayers identify the dates their business started and ended, as these may not always be clear cut. Not all self-employed taxpayers will need to provide this information so the tax return will need to be designed to avoid validation errors when taxpayers try to file the return without answering the mandatory start and end date questions. The rules will also need to cater for taxpayers who may not have needed to report the start date of a trade (eg if their income is under the £1,000 trading allowance in its early years). Guidance may be necessary to assist taxpayers. Finally, it is not clear if the regulations apply to activities that are only treated as trades by virtue of a deeming provision.

## 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 Finance Act 2024 introduced new powers to enable HMRC to collect data from taxpayers through both Income Tax Self Assessment and Pay As You Earn (PAYE) Real Time Information (RTI) returns. On 14 March 2024 two Statutory Instruments were published<sup>1</sup> for technical consultation which specify the type of information to be collected. In summary, these are employee hours paid, dividends and the start and end dates of self-employment.
- 3.2 The CIOT’s stated objectives for the tax system, which are all relevant to this consultation, 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.

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<sup>1</sup> [https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers?utm\\_medium=email&utm\\_campaign=govuk-notifications-topic&utm\\_source=45f98036-fe73-428e-b942-5fbd56388dc6&utm\\_content=daily](https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=45f98036-fe73-428e-b942-5fbd56388dc6&utm_content=daily)

#### 4 The Income Tax (Pay As You Earn) (Amendment) (No. \*) Regulations 2024

- 4.1 From April 2025, employers will be required to report the total number of worked hours paid for each employee in a numerical format per pay period for which an individual RTI return is made. This figure for employee hours will depend on whether the employee is paid an hourly rate of pay, or via a contract which specifies a number of hours or a combination of the two in some cases<sup>2</sup>. Where that information is not held, employers will be required to provide the reason with reference to a specific description set out in the regulations.
- 4.2 It is difficult to comment on whether the regulations will work as intended because it still not clear to us what HMRC are going to use this data for. This is something we raised when commenting on the draft Finance Bill clauses last year<sup>3</sup>. In the explanatory note to the draft regulations HMRC say that receiving this information on how many hours each employee has been paid for within an RTI period will allow them more easily to identify 'underreported earnings'. The earnings already need to be reported via RTI so it is not clear how listing the hours is going to add to this information to identify underreported earnings.
- 4.3 HMRC may be intending to use the additional information for National Minimum Wage (NMW) enforcement, although they have not said if this is what they are collecting it for. If it is, they will need actual hours worked because there are strict definitions on what counts as time worked for the NMW. However, this does not seem to be what the Statutory Instrument is asking for. For example, the regulations ask for contracted hours but if the individual works for longer than the contracted hours, the information would be meaningless if it is being collected for NMW purposes.
- 4.4 The estimated one-off impact on transitional businesses costs and continuing impact on administrative burdens have been revised upwards since this measure was announced last year. At that time<sup>4</sup> the estimated one-off impact on transitional businesses costs were £35m and the continuing impact on administrative burdens was 'negligible'. The figures have been revised upwards to £58m and £10m respectively<sup>5</sup>. This translates into an average transitional cost to business as just £29.00 on average and ongoing costs of £5.00 on average<sup>6</sup>. We do not know how HMRC have arrived at these figures but they still seem significantly underestimated to us because our sense is that gathering this additional data and providing it to HMRC will place significant extra administrative burdens on some employers.
- 4.5 In the draft regulations (reg 21), HMRC address determining hours worked (a) in relation to hourly paid workers, (b) those paid by reference to a period of time and (c) other situations for which hours worked are to be taken as nil. For (a) and (b) the way hours worked are to be determined is prescribed and the regulations seem to achieve what HMRC want. For (c) it appears that this is dealing with payments where there are no

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<sup>2</sup> <https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers/draft-explanatory-memorandum-to-the-income-tax-pay-as-you-earn-amendment-no-regulations-2024#policy-context>

<sup>3</sup> See paras 1.7 and 1.8 of our comments on the draft Finance Bill clauses - <https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/6909091d-0b9d-45fc-b5e7-7a7921b1ae12/230912%20Change%20to%20data%20HMRC%20collects%20from%20customers%20-%20CIOT%20comments.pdf>

<sup>4</sup> HMRC's Summary of Impacts 22 November 2023: <https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers/changes-to-hmrc-data-collection#summary-of-impacts>

<sup>5</sup> HMRC's Summary of Impacts 14 March 2024 - <https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers/draft-statutory-instruments-impacts-improving-the-data-hmrc-collects-from-its-customers#summary-of-impacts>

<sup>6</sup> 1 £58m one-off impact and £10m ongoing impact, across 2 million PAYE-registered businesses including civil society organisations.

particular hours worked, eg termination payments, and so if our understanding is correct we can see why the corresponding hours are to be determined as nil.

- 4.6 The draft regulations (reg 21(5)) also deal with payments comprising one/more of (a), (b) and (c). Hours worked are then to be determined as the sum total of hours worked, ie were hours worked to be determined separately for each constituent element. But it is not clear to us how this would operate in the following situation:

A monthly paid employee, on an annual salary, is paid overtime (18 hrs in March 2026) and also (in March 2026) receives a bonus covering the calendar year 2025. Do HMRC want a single figure for hours worked based on (i) working hours in March, (ii) the 18 hours of overtime worked in March and (iii) for the bonus, the employee's annual working hours in 2025? If so, we are not sure what they will do with this single figure of hours worked if they do not also have the split of hours/pay across (i), (ii) and (iii).

- 4.7 Regulation 21A(1) requires a description be added where the hours worked have been determined as nil and the payment falls within a designated reporting category in reg 21A(3). The list is not comprehensive, eg it does not include pension / other retirement payments, payments for restrictive covenants, taxable travel and subsistence payments etc. It is unclear what information HMRC are looking to collect here, and whether they have purposefully limited themselves to the designated categories.

## 5 The Income Tax (Additional Information to be included in Returns) Regulations 2024 <sup>7</sup>

### Dividends

- 5.1 From April 2025, company owner managers must declare separately from other UK dividends received the amounts of dividends they receive from their own companies. The existing question on the Income Tax Self Assessment (ITSA) return asking whether the individual is a company director of a close company will be made mandatory. New mandatory questions will also be added requiring the name and registered number of the close company, the value of dividends received from the close company and the person's highest percentage shareholding in the company.
- 5.2 We welcome the fact that the regulations make it clear that only directors of close companies will be required to report their dividends information, rather than all limited company shareholders (which would have been administratively and technically challenging).
- 5.3 The term 'the percentage of the person's shareholding' (reg 5 (1)(c)) is not defined. If there is only one class of share, the percentage should be reasonably straightforward to work out, but there will be situations where the percentage is not clear, for example where there is one more class of share. In that situation, it is not clear what percentage HMRC are looking for (would it be the overall percentage or just the percentage of ordinary shares)? Ideally the statutory instrument needs to directly address this sort of issue. The second best option is to address it in guidance.
- 5.4 Reg 5(1)(c) says that if the percentage has changed in the year the figure to be included is 'the highest such percentage'. This could produce some odd outcomes, for example cases where one spouse might record

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<sup>7</sup> [https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers#:~:text=The%20government%20is%20legislating%20to,RTI\)%20returns%20completed%20by%20employers](https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers#:~:text=The%20government%20is%20legislating%20to,RTI)%20returns%20completed%20by%20employers)

100% and the other 50% (if there has been an in-year transfer of shares between the spouses) so we are not sure how helpful that information would be to HMRC.

- 5.5 Percentages may also be tricky to interpret, especially if there have been share transfers towards the end of the tax year (as percentages would then be different to percentages if dividends were received earlier in the tax year).
- 5.6 The regulations define 'close company' but do not refer to a definition of 'director' so it would be helpful if that could be made clear in the regulations ie is it the same as the close company definition of a director in s452 CTA 2010?
- 5.7 The information is only needed for those required to complete an SA tax return. There might be directors who receive dividends below the SA reporting requirement (£10,000) so presumably they are not caught by these regulations.

## **6 The Income Tax (Additional Information to be included in Returns) Regulations 2024**

### **Start and end dates of self-employment**

- 6.1 From April 2025 questions currently included in the ITSA tax return about when a business started and ceased during the tax year will be made compulsory (they are currently voluntary). All self-employed persons will be required to tell HMRC whether their business started and/or ceased trading within that tax reporting year and if so, provide the relevant dates.
- 6.2 Alongside this change, HMRC will need to provide appropriate guidance in the tax return accompanying notes and on GOV.UK to help taxpayers identify the dates their business started and ended, as these may not always be clear cut. Currently, the notes to the relevant boxes on the self-employment pages of the SA tax return<sup>8</sup> (and links<sup>9</sup> 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<sup>10</sup> 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.
- 6.3 The explanatory notes indicate that the questions will be made mandatory. Not all self-employed taxpayers will need to provide this information so the questions / boxes will need to be designed to avoid validation errors when taxpayers try to file the return without answering those questions / completing those boxes.
- 6.4 A trade can start and not need to be reported in a tax return (eg if the income is under the £1,000 trading allowance for a year or two) which means it would then look odd if the SA return needed the Self-Employment pages for say year 2 or 3 of the trade, but no start date needs to be provided for that tax year (because it started in an earlier tax year but did not need to be reported). The tax return will need to be designed to accommodate this type of scenario. HMRC guidance would need to address this sort of issue.

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<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1063748/sa103f-notes-2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063748/sa103f-notes-2022.pdf)

<sup>9</sup> <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.

<sup>10</sup> [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))

- 6.5 It is not clear if the regulations apply to activities that are only treated as trades by virtue of a deeming provision. Examples would include Disguised Investment Management Fees (DIMF), Income Based Carried Interest (IBCI), transactions in UK land and income of foreign entertainers and sportspeople. These sources are not from a trade, but they do give rise to profits chargeable under Chapter 2 of Part 2 of ITTOIA. It would make sense to tighten the definition in the regulations to make clear that it does not apply to income that is not from a trade but is deemed to be for income tax purposes. Otherwise HMRC could receive some odd data, for example a transaction in UK land commencing and ceasing on the same day (for a one-off transaction), which would look even odder if another one-off transaction occurs in the following year.
- 6.6 Related to the above point, if there were a box on the self-employment pages to indicate that it is a deemed trade, it would be clear which are real businesses and which are not (eg if the Government needed to do the equivalent of SEISS again).

## **7 Acknowledgement of submission**

- 7.1 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

3 May 2024