



THE TAX ADMINISTRATION FRAMEWORK REVIEW - INFORMATION AND DATA

Issued 12 July 2023

ICAEW welcomes the opportunity to comment on The Tax Administration Framework Review - Information and Data published by HMRC on 12 July 2023, a copy of which is available from this [link](#).

For questions on this response please contact ICAEW Tax Faculty at taxfac@icaew.com quoting ICAEW REP 68/23.

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KEY POINTS

1. We support the increasing use of third-party data to pre-populate tax returns. However, there must be sufficient facilities for taxpayers to check whether the information pre-populated in their returns is correct and for HMRC to hold to account those parties that provide incorrect data. Without these, the principle that a taxpayer should be responsible for the accuracy of their return is weakened. HMRC should co-operate with overseas tax authorities to explore how such sanctions can be applied cross-border.
2. We support the modernisation of the tax compliance regime, including taking inspiration from overseas regimes which include a more flexible and less prescriptive approach to HMRC's powers. However, we believe that parliamentary scrutiny over HMRC's powers should be maintained so that taxpayer safeguards can be protected.
3. We believe that digitalisation should be at the heart of all new initiatives to modernise HMRC's information and data gathering powers.
4. The fact that National Insurance Numbers (NINOs) are not available to all income tax payers means that, in our view, it is not suitable as a unique tax identifier to be used for all communication between taxpayers and HMRC.
5. We believe that a new tax identifier number should be used instead, which would apply to all forms of taxpaying natural persons and entities.
6. We believe that standing, repeating third party information notices would be suitable in cases where the requirement to report corresponds to the frequency and timing of tax filings (eg annual reporting of bank interest).
7. We believe that HMRC should consider its use and application of Schedule 36 before considering altering its scope. In particular, we believe that it should be reserved for those situations where taxpayers are dragging their heels in enquiry cases as a way to force them to provide the information requested. Aside from this, HMRC should provide more time for taxpayers and agents to provide information.
8. Overall, we would like to see HMRC take a more collaborative approach to enquiries. This could create the outcome that HMRC is seeking around obtaining the information it needs to progress enquiry cases.
9. We believe that there is already too much complexity in the penalties regime and scope for HMRC discretion, so would not support further measures based around taxpayer behaviour that would add further complexity.
10. We do not support the proposal to issue information notices that cover multiple taxpayers, except in very limited circumstances eg a company and its sole shareholder.

ANSWERS TO SPECIFIC QUESTIONS

11. We set out below responses to the questions raised in the consultation document to which we can contribute, based on feedback from our volunteers.

THIRD-PARTY INFORMATION AND DATA-GATHERING POWERS AND TAXPAYER SAFEGUARDS

Accountability

Question 2: UK taxpayers are responsible for overall accuracy of their return(s), including supporting information and data. This reflects practice in OECD partner countries, which pre-populate taxpayer return(s):

A. What are your views on retaining the principle that taxpayers are responsible for accuracy of their return(s)?

12. We believe that the UK should retain the principle that taxpayers are responsible for the accuracy of their returns and that they should check whether any information already populated by third parties in those returns is correct. It is therefore also essential that HMRC raises awareness of the figures included in pre-populated returns, so taxpayers are alerted to check them and do not just assume all is well.
13. There is a further issue that HMRC will need to address in relation to individuals who do not file a tax return eg those in simple assessment. Whose responsibility would it be to ensure that any tax-related information received from third parties in relation to those individuals is correct?

B. What process(es) should be available for challenging and resolving discrepancies in information and data pre-populated in taxpayer return(s)?

14. Taxpayers should be able to over-write the prepopulated figures so that they can submit a correct return. The process needs to be simple so that taxpayers are not delayed if they are completing their return close to the submission deadline. It could prove difficult in some cases for taxpayers to obtain the information required to check pre-populated figures and make any necessary amendments. Therefore, access should be given to these figures as early as possible so that taxpayers or their agents have plenty of time to check this data, compare it to that provided by third parties and, where necessary, update the return.
15. HMRC currently issues nudge letters when PAYE earnings data reported under RTI does not match the figures on the employment page. When an employee is tax-equalised the employee is legally entitled to receive the net amount overpaid or the employer is required to pay any additional tax due. This is a common outcome when employees are on secondment to the UK. This procedure should be built into any new system that automatically reviews any over written data.

C. Are there any specific alternative approaches to accountability HMRC should consider?

16. HMRC should also consider to what extent it is able to hold third parties to account for inaccurate data they provide. It should also consider introducing penalty regimes along the lines of that to be applied to digital platform reporting obligations, including provisions to allow for appeals when innocent errors have been made.
17. HMRC cannot enforce standards on overseas entities. There should be clear guidance regarding when a third party is within the rules and when it falls outside due to territorial limitations. HMRC should explore the possibilities that could come from liaison with the tax authorities in overseas jurisdictions (eg reciprocal arrangements) in enforcing these.

Different legislative approaches**Question 3: In considering potential reforms by HMRC's of its information and data-gathering powers, and applicable safeguards:****A. What are your views on the prescriptive framing of HMRC's current information and data powers?**

18. We are supportive of a transition to a less prescriptive form of framing, particularly regarding Schedule 23 notices. We recognise that it is difficult to keep updating the legislation to encompass all forms of information that HMRC wishes to obtain and the circumstances in which that might take place. Having a more flexible approach would make it easier to reflect

the current-day practices of businesses and individuals in the regime and keep the rules as simple as possible.

19. Having said that, maintaining a prescriptive framing for the most stringent of HMRC powers eg Schedule 36 notices is advisable to ensure that there is adequate parliamentary oversight of HMRC's activities and that taxpayer safeguards are enshrined in law.
20. We are also mindful that any reframing of HMRC's powers should leave it only with those necessary to meet its responsibilities. We note the introduction of Financial Institution Notices which, it was stressed by HMRC, would be used only to fulfil its requirements under exchange of information and double taxation agreements but now appear to be used in cases which do not relate to its cross-border obligations. We therefore request that any new legislation is thoroughly consulted on before being introduced.

B. What are your views on HMRC adopting a flexible approach to its powers, such as that used by Australia and Estonia?

C. What are your views on alternative approaches, such as the Slovenian approach set out above?

21. Although we have no specific experience of the regimes mentioned above, we would be supportive of the UK adopting the following features mentioned in the consultation document:
 - “The Act is drafted in a flexible manner to ensure the simple provision of information and data... while setting out clear taxpayer/data-holder safeguards.”
 - “it takes a taxpayer only five minutes to fill out a tax return”.
 - The ATO has a broad set of information, data and inspection powers”.
 - “Chapter VII specifies record keeping and reporting obligations for all parties in the tax system, rather than the UK's method of requiring separate updates to legislation each time a new party must be added”.
22. We would also support HMRC making greater use of the developing taxpayers' single customer account as a way of informing them of pre-gathered information for them to check.

D. Would it be beneficial to taxpayers for HMRC's current, and/or reformed powers to be consolidated into a single piece of legislation?

23. Yes, having the legislation in one place would be helpful. However, the government should take that as an opportunity to step back and think about all the information that HMRC wants to bring into its systems and what processes are required to facilitate that, rather than just re-writing the law as it currently stands.
24. Ideally, we recommend that the Taxes Management Act 1970 is rewritten, and other tax administration provisions are consolidated into it to support a digital tax administration fit for the 21st Century. We believe that this should have been completed as a precursor to digitalising the tax system. This point was also made in our [response](#) to the TAFR consultation earlier this year on modernising HMRC's income tax services.
25. As part of this process, it would be useful if HMRC reflected on whether it truly needs and make use of the information it has the power to request from third parties. Is the motivation to make taxpayers' lives easier by prepopulating tax returns or is it to gather more data on which to base one-to-many nudge campaigns?

Standardisation of regulations governing data-holders

Question 4: What are your views on aligning data-holder requirements and considering a mandatory requirement for data-holders to collect and provide HMRC with common information and data fields to support better matching?

26. We agree that it would be useful to standardise information and data fields so that for the future information and data collection requirements can be developed in a holistic rather than a piecemeal fashion.
27. However, HMRC does need to improve its specifications. Currently it tends to focus on the data format and not so much on when the data should be provided. There needs to be more detail about when the information needs to be provided and the exact circumstances.

Unique Identifiers

Question 5: What are your views on:

A. The advantages, disadvantages, or any specific considerations of HMRC introducing unique taxpayer identifier(s) to enable more accurate information and data-matching to improve tax administration, including fuller pre-population of taxpayer returns?

28. We believe that the following factors need to be borne in mind in considering whether to introduce a new unique taxpayer identifier number (TIN) to apply to all UK taxpayers:
 - a) Any change should contribute to, rather than disrupt, simplification. Ideally, HMRC should consider whether any existing identification numbers can be used before introducing a new one. If a new system is introduced, consideration should be given to winding down existing systems.
 - b) As we have noted in previous consultation responses, the national insurance number (NINO) is not a suitable universal taxpayer identifier because it is not available to non-UK residents, can take a long time for those migrating to the UK to obtain and some taxpayers are never liable to NIC and consequently have no right to a NINO. Additionally there are duplicate NINOs and fraudulent NINOs. Our conclusion is that the NINO should not be used as the identifier.
 - c) We understand that HMRC has concerns that using UTRs as a data matching identifier could increase the amount of attempted fraud. Clearly HMRC should consider any weaknesses in using existing unique taxpayer references (UTRs). If it has any concerns over the data security associated with using UTRs, it should ensure that any new TIN is secure, and procedures are in place to prevent identity theft.
29. We suggest that HMRC introduces an identifier that can only be used for limited, low risk purposes (eg, not for repayments) when a taxpayer first needs to register and that some other method of issuing these is introduced instead. This would minimise the chances of fraud.
30. Ideally, the identifier should be easy to obtain and could be used to facilitate the tracking of hard copy I post, rather than using correspondence reference numbers which taxpayers and agents sometimes lose. This could be similar to the system used to track on-line retail orders, for example.
31. We know that some commentators are of the view that adding another identifier adds to complexity. We accept this but believe that none of the current identifiers are suitable and the extra complexity is more than outweighed by minimising fraud.

Standardisation of information and data provision

Question 6: What are your views on the advantages and disadvantages of adopting a set of 'schema' like the OECD model, to standardise information and data reporting from third

parties? If HMRC were to explore this further, how should any new obligations in this area be structured?

32. Any standardised schema should be as aligned as closely as possible with those used by other tax authorities, ideally based on the OECD model. This should make it easier and cheaper for data providers to provide information requested by multiple tax authorities as they wouldn't need to use different systems for different authorities.
33. Any ad hoc data requests from HMRC should be under Schedule 36 FA 2008 instead of the bulk data powers.

Simplifying the current information and data-holder notice regime**Question 7: What are your views on adopting a different approach for submitting information and data on a regular basis to HMRC, including alternatives to the current notice regime?**

34. We agree that standing, repeated reporting obligations, multi-period and indefinite data-holder notices would help to reduce administrative costs for HMRC and make it clearer to data-holders when and what data is required.
35. However, care would need to be taken to ensure that data requests are not unnecessarily open-ended and that there is a reason for information to be provided on a periodic basis.
36. For example, where there is a statutory requirement for income to be reported on a periodic basis in a set format annually or more frequently, a repeated reporting obligation could work well. In these cases, reporting requirements are known well in advance (such as bank interest, where the reporting would be improved by use of a unique tax identifier).
37. In other cases, where information and data are only provided on an ad hoc basis in respect of a taxpayer as and when income arises, this would not be suitable for a repeated reporting obligation.

Question 8: What are your views on the frequency with which information and data should be reported to HMRC, particularly with a view towards the increasingly real-time nature of tax reporting, and other taxpayer services?

38. We believe that information should only be provided to HMRC when it is required for a particular tax or NIC purpose. For example, Real Time Information (RTI) under PAYE is appropriate because tax needs to be withheld from employees' salaries and wages each week or month. However, the same requirement would not be appropriate for monthly bank interest, for example, because this is paid gross and only needs to be declared once a year on an individual's self-assessment tax return. HMRC needs to improve the RTI system so that it operates in real time rather than in near real time. The lag in processing causes confusion. In addition, the admirable aim of simplifying tax return completion will not be achieved unless HMRC fixes the issue of erroneous duplicate employments being generated by the flaws in the RTI design.

INFORMATION AND DATA POWERS AND TAXPAYER SAFEGUARDS**Question 9: Do you agree that these are the main challenges with the information notice process as set out in Schedule 36 Finance Act 2008? In your view, are there any additional challenges HMRC should consider?**

39. The problem is mostly around HMRC's implementation of Schedule 36 than its formulation.
40. In addition to the challenges listed in the consultation document, the following are also of concern:

41. HMRC usually specifies a 30-day turnaround for compliance with Schedule 36 notices. Letters often take two weeks to arrive, so the recipient only has two weeks to obtain the information, write the response and send it in. HMRC should set more realistic, achievable deadlines that are modified for events such as Christmas and where large volumes of information are requested.
42. Requesting what appears to be irrelevant information or setting unrealistic deadlines can undermine the taxpayer's perception of HMRC and the tax system and increase the chances of the taxpayer challenging HMRC's decisions later in the compliance check.
43. Often information requests early in compliance checks are very broad. Sometimes (eg in domicile or cross-tax business enquiries) it appears that standard requests are issued without modification for the taxpayer's situation. It takes time and costs money to reply to HMRC so it would be helpful if HMRC defined the tax risks it is worried about and be more targeted in its requests.
44. Sometimes enquiries continue without appreciable narrowing of scope, without issues being closed off (the correspondence train ends without any clear conclusion) and without regard to the tax at stake. HMRC's Litigation and Settlement Strategy sets out that a collaborative approach should be used with related risks set out at the earliest opportunity. Doing so helps focus everyone's time and should help HMRC work efficiently and allocate resources according to perceived risk.
45. Schedule 36 specifies that the information and documents requested should be reasonably required to check the taxpayer's position. Sometimes initial, informal requests are set too broad – HMRC should focus on information it is statutorily permitted to ask for.
46. HMRC sometimes asks for evidence which is relevant to questions of culpability before a tax liability is established. At this point it is not reasonably required. Requesting this makes it seem that HMRC has a predetermined view of the tax matters under enquiry, and this can also undermine collaborative working.
47. It would be most effective if Schedule 36 notices were reserved for situations where multiple requests have already been made for the information required. A 30-day turnaround would then appear to be more appropriate and such notices could be used to force the hand of taxpayers and agents dragging their feet over earlier requests.
48. HMRC should send Schedule 36 notices by e-mail. This would help to reduce delays caused by dealing with paper correspondence and give taxpayers more time to respond.

Alternative approaches

Question 10: What are your views on HMRC exploring the introduction of a more graded information and data power to reduce administrative burdens and delays for taxpayers and HMRC? Do you have any suggested alternative approaches that could help to improve the process for taxpayers and HMRC?

49. While we see the argument for treating the least co-operative taxpayers in a way that encourages more compliant behaviour, we can envisage significant challenges and risks from adopting different practices with different taxpayer populations.
50. Delays are not always indicative of a lack of collaboration – sometimes the taxpayer is ill, sometimes they need information from third parties who are slow to respond and sometimes they need to take professional advice or obtain a second opinion. HMRC can already work collaboratively within the framework of the Litigation and Settlement Strategy using informal and formal information requests. The legislation does not need to be changed to achieve this.

51. A better way to encourage timely resolution of enquiries would be to enter into investigations in the spirit of collaboration. Meetings are often a better way to progress matters than written correspondence and should be encouraged. Post COVID it appears HMRC case workers have a reluctance to agree to meetings.
52. Where information requests are extensive, the first step could be for the case worker to suggest meeting with the agent to discuss HMRC's concerns, the information requested and realistically when a response may be possible. The meeting should help the agent to understand the issues identified by HMRC and may mean they can suggest more effective ways to answer the questions. Progress meetings would also be helpful to enable the agent to let HMRC know how things are progressing and provide markers to help the agent maintain momentum on their work with their client.
53. Sometimes HMRC asks for information which is not reasonably required or relevant. Pushing back on these requests should not result in a taxpayer being viewed as uncollaborative. HMRC's Charter confirms that HMRC will "work within the law to make sure everyone pays the right amount of tax." The consultation document suggests HMRC may modify the scope of data requested if a person is collaborative – given HMRC is only able to request what is reasonably required, this suggestion appears inappropriate.
54. Some taxpayers are vulnerable and HMRC's extra support team quite rightly offers to modify deadlines where needed in such cases. This should continue.
55. Taxpayers make mistakes and should be encouraged to learn from them. While a taxpayer might have been non-compliant for a previous notice, that doesn't mean they will not comply in future. The suggestion of restricting appeal rights or applying different penalties based on past behaviour is inappropriate and we do not believe that it would encourage taxpayers to improve their collaboration. There is already variation in penalties based on whether the error concerned was careless or deliberate and whether subsequent disclosure was prompted or unprompted. Adding an additional layer of complexity would run contrary to HMRC's commitment to tax simplification.
56. While the penalties for not complying with information notices are not always large, HMRC can charge larger penalties for errors and the penalty situation should be considered 'in the round' so that it does not become disproportionate. HM Treasury also has the power to modify penalty levels – see para 41 Sch 36 FA 2008. They can be increased if HMRC believes penalties are insufficient.
57. There is nothing in the suggestions set out in the consultation document that would address the power imbalance between taxpayers being given deadlines to provide information and HMRC having no deadline in which to review that information. We believe it would help to foster a feeling of collaboration if HMRC acknowledged taxpayer and agent replies and advise when it hopes to respond. It will take time if the enquiries are complex. It is better for the caseworker to get input from colleagues as needed and respond with a comprehensive, considered reply than rushing to an artificial deadline.

A COORDINATED APPROACH TO NOTICES

Question 11: Are there cases where a more coordinated approach to issuing information notices (for example, issuing one notice to a class of taxpayer and/or to a third-party about a class of taxpayers) could improve the experience for taxpayers and third parties? What challenges could this present and how could taxpayer safeguards mitigate these challenges?

58. We have concerns around HMRC issuing a single notice to a class or group of taxpayers. If HMRC intends to send multiple notices using identical wording (such as in the example given

in the consultation document involving multiple users of the same tax avoidance arrangement) this should be acceptable but individual taxpayers need to have the power to decide how to respond to the notice and be able to take different approaches to each other.

59. If HMRC is concerned about the cost of administration involved in issuing notices, it might look to phase out some of the more routine notices it issues. For example, notices to file a self-assessment tax return could be replaced with digital prompts included in the individual's personal tax account.

EFFECTIVE AND APPROPRIATE SAFEGUARDS FOR INFORMATION NOTICES

Question 12: What are your views on creating a category of information notice that covers connected persons or third parties (this could cover the 'person with significant control', in the case of a company)?

60. We can envisage some benefits to this approach, for example, where multiple taxpayers are involved in the same commercial arrangement (eg a company and its shareholders). This would help HMRC to resolve such cases in a more co-ordinated fashion.
61. However, we also envisage some risks in relation to fairness and confidentiality. It is important to remember that each individual taxpayer (entity or natural person) is responsible for their own tax affairs and so one taxpayer agreeing a tax position that covers other taxpayers would not be appropriate, unless there was a way of those other taxpayers to provide their express consent.
62. There may also be problems where different parties to the arrangement are advised by different agents. It is, of course, useful for agents to liaise and share information, but where they need to come to a common position, this needs to be arrived at independently and outside of the enquiry process. They may also be confidentiality and data protection issues arising.
63. Adopting this approach would also require definitions to be agreed, such as the meaning of connected parties or control etc. While there is a myriad of definitions of these terms already within the UK tax legislation, applying them to another set of rules risks creating more complication and a time when HMRC and HM Treasury has committed to embedding tax simplification at the heart of its approach to existing and new tax law.
64. On balance, therefore, we do not agree with the proposals, unless they were very limited to a very prescribed set of circumstances eg a company and its sole shareholder.
65. We question whether HMRC could make greater use of the powers it already has under paragraph 5 Schedule 36 FA 2008 to issue a notice to a person if information or a document is reasonably required for the checking the tax position of a person or a class of persons whose identity is unknown to officer. This power is of course subject to the Tribunal approval.

UPDATING SECTION 114 FINANCE ACT 2008: COMPUTER RECORDS

Question 13: What are your views on updating Section 114 Finance Act 2008 to take into account the issues set out above?

66. We believe that, as a general principle, tax law and HMRC's information powers should focus on the reasons why a business stores data (eg to carry on its day-to-day activities), rather than the format in which it is stored. This may require a significant overhaul of the powers legislation but that would help it to become future-proofed and not based on the technology that exists at the time it was written.

APPENDIX 1

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

The tax system should be:

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

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).