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The Tax Administration Framework review – information and data

Response from ICAS

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About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to contribute to the consultation, [The Tax Administration Framework review – information and data](#), published on 27 April 2023. We also appreciated the opportunity to discuss the consultation with HMRC at two stakeholder meetings.

Specific questions

Overview of international practice

Question 1: Do you have any other examples of international approaches to data-gathering, information and inspection powers you think it would be helpful for HMRC to explore? Are you aware of any drawbacks or advantages in the international approaches mentioned within the examples that you would like to draw our attention to?

5. We have no detailed comments on any of the international approaches mentioned. However, we do not believe that approaches in other jurisdictions necessarily provide a good model for the UK to follow. An approach designed for one tax system may not work in another.
6. There could be unintended and undesirable consequences from taking powers that work well in the administrative and legislative framework of another jurisdiction and introducing them in the UK.

Third-party information and data-gathering powers and taxpayer safeguards

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)?

7. It is essential that the principle that taxpayers are responsible for the accuracy of their returns is retained. The data belongs to the taxpayer, it is their return, so responsibility should sit with them. However, it is vital that taxpayers check information provided by third parties. Banks and building

societies (which already report data to HMRC) make mistakes. HMRC may also struggle to match data with the right taxpayer or make other mistakes in the process of pre-population.

8. As more third-party data-holders are brought into the bulk-data reporting requirements, there will inevitably be more likelihood of errors, particularly where data-holders do not have any experience of reporting data and will have to develop their systems.
9. HMRC will need to ensure that the presentation of pre-populated data in returns is clear and easy for taxpayers to understand. For example, for interest, taxpayers will need to be able to see the paying institution and partial account details (sufficient to distinguish between accounts held with the same institution). It might be useful to consider whether data-holders should be required to send their customers a copy of the data they submit to HMRC.

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

10. Where there are errors or omissions in pre-populated data provided by third parties, taxpayers (or their agents) must be able to make the corrections themselves, ie they should be able to override the pre-population. It is the taxpayer's return, and they will have to pay any tax due.
11. HMRC needs to make the correction process as easy as possible for taxpayers – the pre-populated returns should have the functionality for taxpayers to type in the correct information and add any omitted data (for example, interest from an account that has not been included). HMRC might also want to give the taxpayer space to explain why they are correcting the pre-populated information. Suitable arrangements should be put in place for the digitally excluded.
12. Agent access needs to be built into the system – taxpayers who have appointed agents will have provided the data to them and will expect the agent to be able to correct the return.
13. The taxpayer should not have to contact third party data-holders or request that they correct the data. Pre-population should make things easier for taxpayers – forcing them to contact third parties to deal with errors or omissions would increase rather than reduce the burdens on taxpayers and would undermine trust and confidence in the system.
14. We understand that third-party data holders would also find a system where taxpayers had to contact them to make corrections too burdensome. It would not be realistic for them to investigate problems and deal with corrections in a timeframe likely to be acceptable to taxpayers and HMRC.
15. If HMRC wished to challenge the accuracy of the taxpayer's corrected return, it would have the ability to open an enquiry, as it does currently.

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

16. As noted in our response to Question 2B, the taxpayer should be able to correct any errors or omissions in third party data. If that approach is not adopted, and the taxpayer is instead required to contact the third-party data holder, there would need to be statutory provisions to ensure that:
 - Data holders are required to correct the data or provide a detailed response to the taxpayer (explaining why the information is correct), within a specified time.
 - There is a right of appeal by the taxpayer against a refusal to correct data.
 - There is a mechanism allowing the taxpayer to postpone finalisation of their return (without giving rise to interest charges), pending resolution of a dispute about the pre-populated data.
17. As set out in our response to Question 2A, it is important that taxpayers retain responsibility for the accuracy of their returns. However, many individuals already assume that HMRC and their

employer will get things right and do not check their coding notices. An expansion of digital pre-population of data is likely to reinforce this assumption, which would cause problems, particularly for taxpayers with more complex affairs.

18. HMRC will need to take action to raise awareness and remind taxpayers that it is their responsibility to ensure the return is correct, and that they should not assume that third party data providers will necessarily get things right.
19. HMRC should use prompts in the online tax return to highlight that pre-populated information should be reviewed and checked – before the taxpayer confirms that the return is correct and complete.

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?

20. We can see some potential merit to making limited adjustments to the Sch 23 Bulk Data powers, so that the legislation does not have to be updated every time another data holder is added. However, in general we believe it is important that the rules, particularly Sch 36, are prescriptive, with independent oversight and appropriate safeguards built into the legislation.
21. Taxpayer safeguards were seriously eroded with the introduction of Financial Institution Notices (FINs), which do not require any independent approval. Before the introduction of FINs, HMRC indicated that the safeguard was being removed because FINs would be used in non-domestic cases to allow the UK to meet international standards on exchange of information. However, the first HMRC report on the use of FINs, published this year, indicated that only 39.7% were issued for international requests. A vital safeguard has therefore been removed in domestic cases.
22. We would not support a more 'flexible' approach that included any further erosion of taxpayer safeguards.

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

24. See our response to Question 3A above.

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

25. See our response to Question 3A above.

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. We have called for the tax management and administration provisions to be brought together in one place and updated to take account of technological developments. We would prefer HMRC's powers in this area to be part of a wider consolidation.
24. However, if a more general consolidation is not possible, in principle we would support this more limited approach which would make it easier for taxpayers and agents to find and understand the relevant provisions. However, as set out in our response to Question 3A, this should not include any further weakening or removal of safeguards.

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?

25. This sounds like a reasonable proposal – but should be subject to proper consultation with data-holders.

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?

26. Accurate information and data-matching would be essential to fuller pre-population of returns. We agree that National Insurance Numbers (NINOs) would not be appropriate for use as a unique taxpayer identifier. As the consultation document notes, not every taxpayer has a NINO. NINOs also have an important non-tax role in pensions etc – sharing NINOs with large numbers of third-party data-holders would give rise to significant security concerns. It would be preferable to have an identifier specifically for tax purposes.
27. Many taxpayers will already have a Unique Taxpayer Reference Number (UTR) for dealing with HMRC. Consideration could be given to ensuring all taxpayers had a UTR and using the UTR as the unique taxpayer identifier. However, it would be essential to ensure that third party data-holders kept the data secure. Otherwise there would be scope for abuse and criminal activity.
28. Security would be a significant concern if the range of data-holders required to report to HMRC continues to expand. Banks and building societies have robust security and data protection systems in place, but other entities might be less likely to do so. If other entities are only collecting the data for tax reporting purposes, how will security be monitored and enforced?
29. The requirement to obtain and store unique identifiers securely, in order to report information to HMRC, would present a significant challenge for many smaller organisations outside the financial sector. This should be taken into account when considering the expansion of bulk reporting requirements to other entities.
30. The Office of Tax Simplification report on third party data identified challenges that would arise for charities and gift aid payments; the OTS concluded that mandatory automated reporting would not be feasible because of variation in the sector, complexity, and lower taxpayer trust in the sector (compared with financial services). Similar issues are likely to arise for other data-holders.
31. If there were any breaches of security and resulting problems for taxpayers from inappropriate access to data stored for the purpose of tax reporting, it could seriously undermine trust in the tax system, with a potentially adverse effect on compliance.

B. Similar approaches used by partner OECD countries?

32. See our response to Question 5A. We agree that a unique taxpayer identifier would be essential to allow accurate data-matching.

C. Alternative unique identifier(s), or data-matching mechanisms which could be utilised to improve tax administration, including fuller pre-population of taxpayer returns?

33. See our response to Questions 5A and 5B. A unique taxpayer identifier, specifically for tax purposes, would be the best approach but robust security would need to be enforced.

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?

34. We have no detailed comments on this question, but in general we support a standardised approach, like the OECD model, as it should reduce administrative burdens and costs. As noted in the consultation, there could be initial costs for businesses, but taking a longer-term view, it seems like a sensible approach. Businesses would need adequate time to amend existing systems and should be consulted on the details.

Simplifying the current information and data-holder 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?

35. We agree that improving the efficiency of the notice regime through replacing annual notices with standing reporting obligations for some third parties could potentially be beneficial for HMRC and data-holders. However, it would be essential for any new regime to include proper safeguards for taxpayers and the data-holders. Detailed proposals should be developed and subject to a full consultation process.

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?

36. It seems unlikely that the same reporting frequency would be appropriate for all types of data. There is no obvious reason why some data, for example, bank or building society interest should be reported more frequently than annually.
37. However, the forthcoming introduction of Making Tax Digital might mean that more frequent reporting of some types of data could be helpful, to enable some pre-population of quarterly returns. As we noted in our response to the consultation on Reporting Rules for Digital Platforms, once Making Tax Digital is introduced, it would be helpful for digital platform operators to report data to sellers quarterly. However, the government decided that only annual reporting to sellers would be required "to minimise costs and burdens on platforms". Similar issues arise here; more frequent reporting would impose additional costs and administrative burdens, which would need to be set against any potential benefits.
38. As set out in our response to Question 7, detailed proposals would need to be developed and subject to a full consultation process.

Information and data powers and taxpayer safeguards: challenges

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. We agree that the challenges identified in the consultation document are important. However, we believe that some of the challenges arise from HMRC's approach to Sch 36 and to enquiries more generally, rather than the legislation itself.

40. The consultation notes that responses to the 2021 TA FR call for evidence reported that some stakeholders 'see an imbalance between HMRC's ability to request information and data within a set timeframe from a recipient, who must then wait for extended periods for HMRC to process the information and data provided and respond.' We agree that this is an issue.
41. HMRC's Enquiry Manual sets out ([EM1580](#)) how caseworkers should initially seek information informally – and states that a formal information notice under Sch36 should not be issued unless the taxpayer has refused to cooperate with an informal request for information, or has failed to produce information within the time shown in the informal request. EM1580 explains that a time limit for a response should be agreed (normally 30 days as a minimum) but a flexible approach should be shown where warranted. Specific examples where more than 30 days should be allowed are given - and it is explicitly stated that HMRC has agreed to allow a longer time where requests are made to an agent in December or January.
42. HMRC's Compliance Handbook ([CH229300](#)) also discusses time limits that should be set in information notices and indicates that the specified period must be reasonable and "take account of the nature of the information or documents required and how easy it will be for the person to provide or produce them." It goes on to say that whilst a standard requirement will allow 30 days, a longer period should be considered in various circumstances, including business's seasonal peaks, where a large amount of information is requested, or HMRC has reason to believe that the information is not readily available (for example, where documents need to be retrieved from archive storage).
43. In practice we understand that 30 days appears to be the default time limit set by HMRC in many cases (regardless of whether that might be reasonable or not) and that the guidance in EM1580/CH229300 is not being followed. The taxpayer and their agent are trying to cooperate and provide the information, but the deadline (which may in practice be shorter than 30 days due to delays in the letter reaching the taxpayer) is unrealistic.
44. We understand that problems also sometimes arise where correspondence is sent directly to the taxpayer by letter, without a copy being sent to the agent. This is particularly problematic where the taxpayer is a seafarer or other offshore worker, who may be out of the UK for three months at a time or longer. Even where the agent in these cases has the correspondence, it is likely that more than 30 days will be required to liaise with the taxpayer and retrieve the data.
45. HMRC needs to ensure that its approach to setting time limits for informal requests and information notices is reasonable – and that the guidance in the manuals is adhered to in practice.

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?

46. We do not support this proposal. It is difficult to see how it would simplify the process – introducing differentiated powers would clearly be more complex. The consultation suggests that HMRC could deploy greater flexibility in timescales, scope etc – but as set out in our response to Question 9, in practice HMRC does not appear to be adopting the flexible approach to setting deadlines already set out in its own guidance.
47. We would not support bypassing the internal review process – this would appear to be in breach of the HMRC Charter. The penalty regime already allows for lack of cooperation and deliberate behaviour to be taken into account, so it is unclear what HMRC has in mind, or how adding more penalties would assist. One of the principles set out in the 2015 discussion paper on penalties stated that they should be designed primarily to encourage compliance and prevent non-compliance (and should not be applied with the objective of raising revenue). The penalty regime is already complex; it is difficult to see how adding another different set of penalties would

encourage compliance - taxpayers need to be aware of (and understand) penalties, if they are to act as an incentive to comply.

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?

48. We have no detailed comments on this question – but it is essential that taxpayer safeguards are not eroded. As set out in our response to Question 3B, an important taxpayer safeguard was removed when FINs were introduced. We would not support any further erosion of safeguards.

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)?

49. See our response to Question 11.

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?

50. We agree that legislation has not kept up with technological and other developments. As set out in our response to Question 3D, we have called for the consolidation of all tax management and administration provisions, including updating them to take account of technological developments and increasing digitalisation.

51. In principle, we therefore support updating Section 114. However, updating one piece of legislation in isolation would not be ideal – this is a wider problem with the existing tax administration legislation. Any proposed changes should be published in draft and subject to a proper consultation process.



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