

**Tackling the hidden economy: Extension of data-gathering powers
Response by the Low Incomes Tax Reform Group**

1 About the Low Incomes Tax Reform Group

- 1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 1.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 1.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

2 Introduction

- 2.1 The proposals set out in the consultation document to extend the reach of third party data-holder notices potentially provides the state with access to a large swathe of information about individuals and their personal daily lives. The consultation states at paragraph 30 that

HMRC do not intend to scrutinise transactions between friends or the nature of transactions conducted by individuals, but where HMRC are supplied with details of personal transactions as part of a data-gathering exercise, the consultation provides limited information (paragraph 30 confirms any analysis would be restricted to information on the receiver of payments only) as to what safeguards would be introduced to prevent the use of such data by HMRC.

2.2 Paragraph 14 of the consultation document states that the “use of the data [received by HMRC] will be restricted to identifying businesses who are not complying with their tax obligations, and not the transactions of individual consumers.” We are interested to hear about what framework will be put in place to differentiate between transactions which may relate to a trade or business and those which, say, involve the sale by an individual of goods only for his/her personal use. Any incorrect categorisation of activity as a business activity based on such data and pursuit of an individual on this basis may be hugely distressing for the person concerned and any changes in the law should clearly address this concern by introducing adequate safeguards to prevent HMRC enquiring into non-business-related transactions.

2.3 If the proposals set out in the consultation are followed through, data-holder notices will be imposed upon a whole new category/categories of taxpayer. For low income taxpayers affected by an extension, data-holder notices are likely to present a particular burden, and we have identified some difficulties that may be particularly relevant for this group below.

2.4 ***Time burden***

2.4.1 Those on low incomes who run owner managed businesses are more likely to be carrying out the day-to-day activities of their business personally and may find it difficult to allocate time to deal with a data request within the time limit (which we consider to be extremely short in the circumstances).

2.4.2 When encountering such a notice for the first time the taxpayer may find it difficult to ascertain exactly what information HMRC are requesting and whether such a request is lawful. Low income taxpayers may only deal with HMRC annually in filing a single tax return and in such circumstances the extension of data holder notices, for many affected, would add a new level of dealing with HMRC.

2.5 ***Financial cost***

2.5.1 Small businesses generally have lower levels of resource to navigate an increasingly complex tax system and any additional out-of-pocket costs associated with responding to these notices may represent a larger proportion of their turnover than would be the case with other parties. A lower resourced taxpayer may not be able to afford professional assistance in dealing with such notices and this may increase the risk of fines or where a professional is instructed would create an additional cost to running the business.

2.5.2 If HMRC’s data-gathering powers are extended, the government can only meet its aim stated in paragraph 22 that “the administrative burden placed on data-holders when preparing and

providing data must be proportionate” if the exercise of such powers is lawful only if the compliance burden can be shown to be reasonable in terms of the party’s resources of cost and time.

3 The questions

3.1 We answer only those questions in the consultation document that fall within our area of expertise.

3.2 ***Question 2: Do you have any views on how frequently HMRC should request data from these data-holders?***

3.2.1 The consultation document states that the "administrative burden placed on data-holders must be proportionate" (para 35). The threat of penalties for non-compliance and costs of meeting the additional administrative burden of dealing with such requests dictate that requests by HMRC under these powers should be expressly limited in frequency and the scope of such requests should be drawn as narrowly as possible in each case.

3.3 ***Question 3: Are there any other types of payment providers that should be included in the scope of the legislation?***

3.3.1 Our view is that any new legislation should limit HMRC’s powers for requesting information of a third party only to those parties acting or holding such information in the course of a trade or business.

3.4 ***Question 5: HMRC would welcome your views on:***

a. Expanding or better defining the “register” provisions; or

b. Introducing a definition of intermediaries to ensure legislation covers these as data-holders.

3.4.1 Our view is that any extension in the category of persons or nature of data that can be requested should be targeted and proportionate. To provide clarity as to how HMRC can use their powers any extension should specifically identify in the narrowest terms who is covered by the term 'data holder' and in any secondary legislation the data that can be required.

3.4.2 We are concerned that the consultation document expresses a wish that the legislation should be "future-proofed" (para 26) which indicates a wish to draw up powers in the widest possible terms which could provide an unnecessary burden on low resourced parties if such requests are then used by HMRC in a speculative manner.

3.5 ***Question 6: How can HMRC minimise any costs to business in complying with these new requirements?***

3.5.1 The failure by a taxpayer to do what a data-holder notice requires can result in a penalty of £300 and further penalties of £60 per day. If a data-holder provides inaccurate information

the penalty can be increased to up to £3,000. The proposed change in the law on this matter may move significant numbers into the scope of data-holder notices and a penalty regime intended for large companies, such as companies facilitating card transactions, involved in established modes of transaction. The requirement under the current data request regime for the party subject to the notice to produce the information demanded within 30 days under threats of instant penalties may be particularly demanding for lower resourced parties.

- 3.5.2 HMRC have the power under their fixed penalty regime to decide what penalty they consider fair and a tribunal does not have power to dispute HMRC's analysis as to what is fair. We note that the "enhanced fees response and consultation on further fees proposal" suggests that taxpayers who challenge a decision will be required to pay out at least £50 for a case to reach the first tier tribunal. The fees escalate should the case proceed to a hearing. The proposed extension to the category of data-holder may result in unfair demands on low income taxpayers, particularly if the right of appeal carries cost.

3.6 ***Question 7: Do you have any views on the approach HMRC should take to data-holders who may have no or only limited presence in the UK?***

- 3.6.1 We have concerns generally as to how this extension of powers may be used, which are addressed in other responses here.

3.7 ***Question 8: Do you agree that the existing safeguards are sufficient?***

- 3.7.1 We are concerned that HMRC may use the new powers as a trawling exercise rather than proportionately with sufficient regard to the third party's resources and business. We believe that there should be no obligation requiring a taxpayer to produce data in a particular format in case the third party does not have access to the particular technological format prescribed. We believe that the regime for penalties for non-compliance should be reviewed in the light of any extension to HMRC's powers to consider the resources of parties that may now potentially become subject to these notices. In order to protect taxpayer's rights and to ease the administrative burden on parties subject to these notices we believe that there should be no costs for any party for seeking to challenge a data-holder notice and that the deadline for responding to a notice should be extended to at least 60 days.

LITRG

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