Low Incomes Tax Reform Group.

A voice for the unrepresented.

The Tax Administration Framework review – information and data – consultation
Response from the Low Incomes Tax Reform Group (LITRG)

1. Executive Summary

1.1. We think that one of the key priorities for reform of the tax administration framework should be to review the balance of responsibilities between taxpayer and tax authority in the light of the use of pre-population.

1.2. The taxpayer will no longer be the originator for much of the data in their tax return. Rather, the third-party data provider and HMRC will be producing the data and ensuring it is correctly recorded and placed in the correct part of the tax return. Therefore, there is a question over where responsibility lies for ensuring the data is correct, that it is correctly recorded and placed in the correct part of the tax return.

1.3. We believe the taxpayer should have responsibility for checking the data against their records, checking the return has been completed accurately, and challenging or correcting it where there are discrepancies. However, such responsibility being placed on the taxpayer must be accompanied by robust and swift processes through which they can challenge, amend or correct data that is pre-populated on their tax return.

1.4. In order for the taxpayer to be in a position whereby they can be responsible for the data populating their tax return, third parties should also be obliged to provide a copy of the data that they provide to HMRC to the taxpayer, independently. This should assist with transparency and ensures the taxpayer has a record of what the third party is reporting to HMRC. In addition, it must be easy for a taxpayer to be able to see a copy of the data HMRC hold about them and understand what it has been used for.

1.5. There should be an agreed process for the taxpayer to challenge the data that the third party provides to the taxpayer and to HMRC; equally there needs to be a process for the taxpayer to challenge the data if it appears that HMRC are using different data to that which the third party has provided to the taxpayer; there also needs to be a process for the taxpayer to challenge if they think HMRC have misused the data. In due course, the Single Customer Account must allow the taxpayer to view data that a third party has reported to HMRC, so they can compare it to the data in their possession.

CHARTERED INSTITUTE OF TAXATION
30 Monck Street, Westminster, London, SW1P 2AP

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)20 7340 0550
E-mail: litrg@ciot.org.uk

Web: www.litrg.org.uk

UK REPRESENTATIVE BODY ON THE CONFEDERATION FISCALE EUROPEENNE

1.6. A process for resolving challenges or queries about data must include:

- an HMRC-supported escalation route where the taxpayer encounters difficulty, and
- a safeguard for the taxpayer under which HMRC can be asked to suspend collection of a tax liability or put a change of PAYE code on hold pending resolution of the problem.

1.7. In our view, HMRC should collect, use and share taxpayer data in order to help taxpayers get their tax position correct in the first place. This data must be viewed as a means of making the taxpayer experience better.

1.8. In relation to Schedule 36 information requests, HMRC officers dealing with a particular case should be easily contactable – for example by telephone, or via an online channel which reaches the relevant officer directly. In addition, HMRC should explore taking a more flexible approach with regards to these notices, such as discussing different timescales or formats for provision of the requested information.

2. About Us

2.1. 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.

2.2. 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.

2.3. 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.

3. Introduction

3.1. We welcome the opportunity to respond to this consultation on how HMRC's information and data-gathering powers could be updated to enable digital transformation of taxpayer services, improve HMRC's compliance capabilities and reduce administrative burdens. We have previously set out our views on HMRC's use of data and possible improvements in our responses to the Office of Tax

Simplification's (OTS) call for evidence in relation to its third party data reporting review,[1] HMRC's call for evidence in relation to the tax administration framework review[2] and HMRC's consultation on improving the data HMRC collect from their customers.[3] We also set out a number of practical steps for HMRC to follow in order to achieve LITRG's principles for the tax system, in our paper, 'A better deal for the low-income taxpayer'.[4]

3.2. As noted in our previous responses, we are broadly supportive of the recommendations made by the OTS, including that a roadmap setting out the key stages would be helpful. We think that smarter use of data has the potential to improve the taxpayer experience with HMRC and we support the principle of using data collected from customers and third parties to this end. However, we have concerns that HMRC currently gather data that they do not use as best they could.[5] We think that the starting point should be for HMRC to focus on making best use of data they already collect. HMRC should also ensure that sources of data reported to them are also available to taxpayers. We recognise that some of the proposals in this consultation aim to make best use of data, which is welcome.

3.3. While we are supportive of HMRC using data to improve the customer experience, we note that it is important that there is public education as to what data HMRC hold about them and collect. In addition, where the data is sensitive, there needs to be consideration as to whether taxpayer consent should be required to allow HMRC to collect it and hold it. As HMRC obtain more data, it is essential that their systems are robust enough to keep taxpayers' data secure. It is also essential that systems and processes that are used by third parties to provide data to HMRC are robust enough to prevent data breaches. There are frequent data breaches across business and society generally, and it is essential that HMRC have processes in place to enable them to spot when a breach may be affecting taxpayer information, and also that HMRC are willing to listen to taxpayers who raise concerns about data security.

3.4. We make various recommendations in this response, which are highlighted in bold text.

4. Q. 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

[1] https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call

[2] https://www.litrg.org.uk/latest-news/submissions/210712-tax-administration-framework-review

[3] https://www.litrg.org.uk/latest-news/submissions/221007-improving-data-hmrc-collects

[4] https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer

[5] Section 8 of the LITRG response to the Office of Tax Simplification Third Party Data Reporting Review: https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call

drawbacks or advantages in the international approaches mentioned within the examples that you would like to draw our attention to?

4.1. We do not have any other examples of international approaches.

4.2. With regard to the international approaches mentioned in the consultation, several refer to the significant use of pre-population and the fact that the tax authorities concerned have high levels of taxpayer satisfaction / trust / compliance and / or the fact that it does not take long for taxpayers to comply. We would observe that making increased use of pre-population and some of the other proposals may well improve the taxpayer experience in the UK. However, their implementation will not necessarily mean that the average time taken to complete a tax return reduces to five minutes. The information provided in the consultation document does not include details of the complexity of the tax rules in each country, the level of tax education provided to the general population, the ease for taxpayers of accessing information relevant to checking their tax return, or the proportion of the population that have to complete a tax return – these are also key factors that need to be borne in mind.

4.3. The UK tax system brings a wide mix of people into scope of Self Assessment, including those who might have a low level of understanding of tax and the UK tax system. The cohort of people in the UK Self Assessment system who are there because of the way they are hired also needs to be remembered. This can include groups such as migrant workers and others on low incomes, who have little experience of the tax system. Their work tends to be fragmented and they often fall into Self Assessment due to their working arrangements. They are the ones least able to cope with the complexities of Self Assessment and we understand there are high levels of non-compliance among these kinds of taxpayers.

4.4. We do not know whether there are any international comparators that have a similar labour market structure (as well as tax system structure) that might help identify how pre-population works for the low-income self-employed as described above. We therefore suggest that this is an area HMRC could research further to understand:

- whether such taxpayers simply rely on pre-populated data or if data is routinely challenged;
- if such taxpayers are able to spot when data might be wrong or missing; and
- whether pre-population has helped to improve compliance.

5. Q. 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)? B. What process(es) should be available for challenging and resolving discrepancies in information and data pre-populated in taxpayer return(s)? C. Are there any specific alternative approaches to accountability HMRC should consider?

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

5.1. As mentioned in our previous responses, **we think that one of the key priorities for reform of the tax administration framework should be to review the balance of responsibilities between taxpayer and tax authority in the light of the use of pre-population**. We welcome the discussion in this consultation on this topic.

5.2. Under Self Assessment, the taxpayer is responsible for the data in their tax return being accurate and complete. However, as HMRC move to collecting and using more data from third parties to pre-populate tax returns, rather than relying on the taxpayer to provide the data, we agree it is necessary to establish where responsibility lies. The taxpayer will no longer be the originator for much of the data in their tax return. Instead, the third-party data provider and HMRC will be producing the data and placing it in the tax return. As a result, there is a question over where responsibility lies for ensuring the data is correct, that it is correctly recorded and placed in the correct part of the tax return.

5.3. In terms of taxpayer responsibility, there is a question as to whether the UK should follow a model of 'deemed acceptance', comparable to the models adopted in Ireland, Denmark and Norway, or whether the UK should adopt a model whereby the taxpayer has a legal responsibility to actively check and actively confirm the accuracy of the tax return. We think that at this point, the best approach would be the latter. That is, **the taxpayer should have responsibility for checking the data against their records, checking the return has been completed accurately, and challenging or correcting it where there are discrepancies**.

5.4. However, it is not appropriate for such responsibility to be placed on the taxpayer until there are robust and swift processes in place by which they can challenge, amend or correct data that is pre-populated on their tax return. Current processes are inadequate and, where large volumes of data are being generated, transferred and matched, it is almost inevitable that errors will arise.

5.5. In order for the taxpayer to be in a position whereby they can be responsible for the data populating their tax return, **third parties should also provide a copy of the data that they provide to HMRC to the taxpayer, independently**. This should assist with transparency and ensures the taxpayer has a record of what the third party is reporting to HMRC. In addition, it must be easy for a taxpayer to be able to see a copy of the data HMRC hold about them and understand what it has been used for.

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

5.6. There remains the question of how a taxpayer can challenge or amend the data where they disagree with it. It may be that there are different processes required, depending on the scenario. For example:

- **there should be an agreed process for the taxpayer to challenge the data that the third party provides to the taxpayer and to HMRC**;
- equally **there needs to be a process for the taxpayer to challenge and correct the data if it appears that HMRC are using different data to that which the third party has provided to the taxpayer;**

- **there also needs to be a process for the taxpayer to challenge and correct the position if they think HMRC have misused the data, for example, they have put an amount in the wrong place on a tax return**; and
- in due course, **the Single Customer Account must allow the taxpayer to view data that a third party has reported to HMRC, so they can compare it to the data in their possession**. This will help ensure that data is accurate and has been matched by HMRC with the correct taxpayer.

5.7. In addition, it is important that taxpayers are able to understand where the data is shown in their tax return – otherwise their ability to check the accuracy of their return will be hindered, especially if a figure in the tax return is an amalgamation of more than one figure from more than one data source, for example, interest from more than one bank or building society account.

5.8. Consideration should be given as to whether it should be the responsibility of the data provider to indicate which box on the tax return particular data belongs in, when providing a copy of the data to the taxpayer, or whether it is HMRC's responsibility to ensure that all taxpayers are fully educated about this and to provide the necessary guidance. In addition, should there be some sort of onus on the third party data provider to mark the data they provide to HMRC correctly, such that the data is posted in the correct location in HMRC's systems. There may be a technological solution to this, possibly by using application programming interfaces (APIs). This would have cost and development implications for HMRC. If the mark-up of that data by the third party data provider is incorrect, should there be some kind of sanction? There must also be some responsibility on HMRC to process the data they receive correctly.

5.9. It is important that such challenge / amendment processes take challenges or queries by taxpayers seriously. HMRC's Charter says that HMRC will assume the taxpayer is telling the truth unless there is good reason to think otherwise.[6] It also says that HMRC will work with the taxpayer to get their tax right. Yet, in examples that we have provided in previous responses on this topic,[7] where the taxpayer has queried the accuracy of data provided by third parties to HMRC, HMRC have given the impression that the third party is to be believed, rather than the taxpayer – even where the taxpayer has produced evidence demonstrating the third party data is incorrect.[8]

5.10. In this respect, we are concerned that the approach being adopted in relation to proposed net pay arrangement pension 'top-up' payments[9] perpetuates the idea that the individual needs to resolve data discrepancies with the data originator. We understand that where the individual believes the

---

[6] https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

[7] See section 5 of our response to the OTS call for evidence: https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call

[8] Typically, when a taxpayer challenges RTI data included on a P800, HMRC tell the taxpayer to speak to the employer to query the figures.

[9] Clause 25 Finance (No 2) Bill 2023, introducing a new S193A FA 2004.

top-up payment in respect of net pay pension contributions is incorrect, HMRC may "direct" the individual "to their employer, who they will need to speak to in order to correct any errors in the information provided to HMRC"[10]. This will place the burden on the individual to raise the matter with the employer and try to get them to correct any errors in the information the employer has provided to HMRC. This does not seem appropriate – and indeed might be an impossible task, particularly if the individual no longer works for the employer in question. **If there is a legal obligation on a third party, such as an employer, to provide data to a government department, the onus should be on the government department to enforce that provision and also deal with any inaccuracies by liaising with the third party themselves. Or, at the very least, there needs to be some form of escalation route for such disputes if the taxpayer cannot resolve them directly with the third party.**[11]

5.11. Moreover, it should be recognised that **if HMRC use third party data to generate a calculation that helps determine either a tax liability or a tax relief for an individual, there is a decision by HMRC**. This may be carried out by an automatic system, but nevertheless, by making use of that data, HMRC are making decisions as to the quantum of a payment or entitlement to a payment – **there should be a formal right of challenge or appeal available to the individual as a consequence of that decision**. The individual's primary concern (if there is an issue that relates to a tax payment or tax relief) is with HMRC, not the third party data provider. We understand that there will be no such formal right of challenge or appeal in relation to the net pay pension top-up payment proposals discussed above, which again sets a worrying precedent.

5.12. The PAYE system and people's attitudes towards information provided by HMRC are currently not in step with the approach that taxpayers are fully responsible for their tax returns and the increased use of pre-population. There is fairly low understanding and awareness of the UK tax system, not just amongst PAYE-only taxpayers, but also among those taxpayers who have to complete Self Assessment tax returns.[12] A move to greater use of third-party information and pre-population runs the risk of even less engagement with the tax system and a decrease in taxpayers' abilities to understand and check their tax calculations and liabilities. In addition, many taxpayers assume that figures provided by HMRC are correct and complete. Thus, the automatic assumption is likely to be

[10] Quoted from a letter dated 19 April 2023 written by Andrew Griffith MP to James Murray MP during the Finance Bill debates.

[11] There is some precedent for this in other areas of the tax system – for example, where there is a dispute by a partner over their allocation of partnership profits or losses. See https://www.gov.uk/hmrc-internal-manuals/partnership-manual/pm150000

[12] This is demonstrated by the results of UK wide Tax Education Gap survey in 2019 (https://www2.deloitte.com/uk/en/pages/tax/articles/tax-education-gap.html) and the results of three polls commissioned by the CIOT in 2018, 2019 and 2021 (https://www.tax.org.uk/one-third-ofscots-unaware-of-holyrood-s-tax-changes-as-tax-and-accountancy-bodies-call-for-increasedawareness-of-devolved-taxes-in-new-parliament)

that a pre-populated tax return or calculation is correct and complete.[13] The framework will need to accommodate the behavioural and psychological impacts on taxpayers.[14] This is a difficult question, which again points towards the need to reassess the balance of responsibilities and the need to consider specifically the penalty position in relation to an incorrect tax return based on pre-populated figures provided by third parties. **We would therefore urge HMRC to specifically consult in due course on how the penalty system 'responds' to inaccuracies arising out of third party data and the questions this raises as to whether the taxpayer has taken reasonable care in their dealings with HMRC.**

5.13. Another pre-requisite therefore for the taxpayer being responsible for the accuracy and completeness of their tax return with increased use of pre-population is education and awareness-raising of exactly what the taxpayer is responsible for and how to go about checking the accuracy and completeness of any data that has pre-populated the tax return.

5.14. **A process for resolving challenges or queries about data must include:**

- **an HMRC-supported escalation route where the taxpayer encounters difficulty, and**
- **a safeguard for the taxpayer under which HMRC can be asked to suspend collection of a tax liability or put a change of PAYE code on hold pending resolution of the problem**.

5.15. In respect of the first bullet point above, we observe that occasionally mix-ups or fraudulent activity result in erroneous entries on individuals' tax records. For example, their record may include PAYE income that they have not earned because of a mix-up of National Insurance numbers or because of fraudulent activity by a third party. In such cases, it would clearly be insufficient to direct the affected individuals to their employer or data provider. They would require extra support and intervention by HMRC. The use of unique identifiers could perhaps eradicate some of these problems – see our comments below in section 8 on unique identifiers.

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

5.16. We think one option to consider is whether the taxpayer should have the ultimate right of veto over third party data where it affects their income tax liability. Currently, where the income tax liability is being quantified at a tax year end – via the P800 process – the only method of veto is to register for

[13] See section 3 of our response to the OTS Third Party Data Reporting Review: https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call

[14] See research published by the Tax Administration Research Centre and carried out by Miguel Fonseca and Shaun Grimshaw: https://tarc.exeter.ac.uk/media/universityofexeter/businessschool/documents/centres/tarc/publications/discussionpapers/Fonseca_&_Grimshaw_Sept15.pdf and https://tarc.exeter.ac.uk/media/universityofexeter/businessschool/documents/centres/tarc/research/TARC_21_-_Behavioural_Impact_of_Pre-populating_Self-assessment_Forms.pdf

Self Assessment, file a tax return and – if HMRC disagree with the tax calculation – to appeal to a Tribunal.[15]

5.17. There is also an issue with tax agents submitting tax returns on behalf of people containing questionable claims for refunds that the individuals have not seen, understood or approved. This calls into question the whole concept of whether taxpayers are responsible for entries on their tax returns, pre-populated or otherwise, if they haven't seen them. But it also raises specific issues around what data HMRC already have and how it is used. For example, these tax returns may contain claims for disproportionately high employment expenses and specialist reliefs where no corroborating data was held.[16] We know that HMRC carry out security checks on certain claims, but in some of these cases, it appears that no checks were carried out (or they were but they passed the relevant checks). **Greater risking of tax returns, on the basis of data already held (for example average amount of employment expenses or typical income levels for Enterprise Investment Scheme relief), should be considered as part of this work.**

6. Q. 3: In considering potential reforms by HMRC 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? 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? D. Would it be beneficial to taxpayers for HMRC's current, and/or reformed powers to be consolidated into a single piece of legislation?

6.1. Whichever approach is adopted, it is important that when HMRC compare third party data with that provided by taxpayers they do not automatically prefer the third-party data above the taxpayer data in terms of quality and accuracy. In addition, it is essential that HMRC's systems accurately match the data collected with the correct taxpayer (see our comments on unique identifiers in section 8 below).

---

[15] We note that earlier in the PAYE process, it is possible for the taxpayer to appeal their PAYE coding notice, which is issued before or during the tax year. However, there is no statutory right to appeal a P800 tax calculation.

[16] For example, the Enterprise Investment Scheme (EIS) provides tax relief to investors who invest in smaller, unquoted, trading companies – income tax relief is given at 30 per cent on the cost of new EIS share investments. There are a number of requirements to be met before a company can use the scheme, including that they must provide HMRC with a compliance statement: https://www.gov.uk/guidance/venture-capital-schemes-apply-for-the-enterprise-investment-scheme. The company should also provide the taxpayer with a certificate to certify that certain conditions of the scheme are satisfied: https://www.gov.uk/government/publications/enterprise-investment-scheme-income-tax-relief-hs341-self-assessment-helpsheet/hs341-enterprise-investment-scheme-income-tax-relief-2021

6.2. Consolidation of the legislation is unlikely to affect the majority of taxpayers directly. Most taxpayers do not look at the underlying legislation. Their first port of call is guidance rather than legislation. Consolidation of the legislation may be beneficial to tax agents and the tax charities.

6.3. The Slovenian approach seems extremely vague and broad. This sort of power could allow HMRC to require all sorts of records from businesses and agents. We think that a more prescriptive power set out in legislation has the advantage of allowing Parliament proper scrutiny, rather than allowing HMRC a free rein.

6.4. The consultation states in relation to the rules in Ireland that "The tax authority encourages trust and transparency by publishing a list of exactly what information/data is collected from which third parties in its Annual Report." **We think that it would be very helpful if HMRC published a list of the data they collect.** Currently, the general public will have little idea as to what data HMRC possess – as noted in the consultation, such publication would engender trust and probably also improve attitudes towards compliance.

7. Q. 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?

7.1. It would seem sensible to align requirements, given the likely benefits both for data-holders and HMRC. If HMRC are going to make greater use of pre-population, it is essential that the systems and the way in which data is provided make it easy for HMRC to match data with the correct taxpayer. So, to the extent that data providers are sending HMRC similar types of core information, such as name, address, date of birth, National Insurance number, it would make sense to have common data fields.

7.2. In deciding what common information and data fields are required, it is important that HMRC seek only to request data and information that is necessary either to identify and match the correct taxpayer or determine the tax liability. In addition, HMRC should only be seeking such information from data holders or third parties where there is a clear and identifiable reason why they should provide data to HMRC for tax purposes.

8. Q. 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? B. Similar approaches used by partner OECD countries? C. Alternative unique identifier(s), or data-matching mechanisms which could be utilised to improve tax administration, including fuller pre-population of taxpayer returns?

8.1. A fundamental part of administering taxes is taxpayer identification, as it underpins key administrative processes associated with filing, payment, assessment and collection. Good identification procedures should hopefully help reduce fraudulent attacks on the system.

8.2. One of the key challenges is that there are no clear, current legislative provisions relating to the identification of taxpayers. Indeed, one could consider that there are currently at least two forms of identifier used for income tax – the National Insurance number (NINO) and the Unique Taxpayer Reference (UTR); in addition, there is arguably a third if you include the username that a taxpayer uses to access their Personal Tax Account or Government Gateway account. It is not entirely clear why all three are necessary.

8.3. It would make sense to have one unique taxpayer identifier. This would make more sense to the individual taxpayer and might reduce the opportunity for mismatching of data. Indeed, there should perhaps be one unique identifier for individuals in the UK – this would not only be their one unique taxpayer identifier, it could also be their one unique identifier for all government purposes.

8.4. The problem with the identifiers referred to above is that none of them are universal. In addition, the UTR application process seems to involve no front-end identity checks – this has led to delays in repayments, for example, because of security concerns. There are identity checks when signing up to use HMRC's online services; but not everyone applies for a Personal Tax Account, and indeed, the security checks can effectively exclude some people from obtaining an account, especially those without a current valid UK passport or driving licence.

8.5. However, introducing an entirely new reference number just because the existing candidates are not perfect would add another layer of complexity. **It would therefore seem to make sense to use an existing identifier, like the NINO (which is perhaps the most well-known of the options), as the starting point for developing a unique taxpayer identifier.** If using the NINO, the issuance of them could be expanded to include those who currently do not have one and any issues of duplication (noted in the consultation document as a potential problem) could perhaps be investigated and overcome.

8.6. We note that the consultation refers to HMRC's transformation programme, the Unique Customer Record (UCR). While we welcome what the programme aims to achieve, we are concerned by the name and the acronym. If the aim is to make the UCR available to the individual, we think there needs to be recognition that many taxpayers do not consider themselves 'customers' of HMRC – so this terminology could be confusing to them. Moreover, for individuals who also have a UTR, the two acronyms sound and look similar. Again, this is likely to prove confusing to the average individual.

9. Q. 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?

9.1. The adoption of a set of schema would probably be advantageous to HMRC in terms of matching data from third parties with the correct taxpayer on HMRC systems. As such, it is likely to reduce the risk that taxpayers will have to challenge or amend pre-populated information. This should improve the taxpayer experience.

9.2. Important considerations would be existing schema used by affected businesses and the cost of implementation for affected businesses. We note for example that the pensions dashboard project

is aiming for standardisation of systems and data for reporting into the dashboard. This is imposing a significant burden of time and cost on smaller pension schemes.

10. Q. 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?

10.1. It appears that it would be more efficient if HMRC did not have to send a notice requesting data to third parties on an annual basis. As the consultation notes, standing reporting obligations already exist in some cases. It would make sense for certain third parties (for example, banks and building societies) that hold information pertinent to taxpayers' annual tax liabilities to be under a standing reporting obligation, if HMRC are to move towards greater use of pre-population.

10.2. However, we are concerned that imposing new obligations on a wide range of third parties will lead to customers facing increased bills as those third parties try to recoup the costs of providing such data. Such costs and concerns strengthen the argument in favour of narrower data information powers as against wider provisions. In addition, and as mentioned earlier in this response, appropriate safeguards and processes would need to be in place for taxpayers to enable them to challenge data they disagree with.

11. Q. 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?

11.1. In our view, HMRC should collect, use and share taxpayer data in order to help taxpayers get their tax position correct in the first place. This data must be viewed as a means of making the taxpayer experience better – making it more efficient, simpler and enabling taxpayers to benefit from the exemptions, reliefs, allowances and deductions to which they are entitled. HMRC should use the data they collect in a timely manner. Just as with the types of data they request being pertinent to a taxpayer's tax position, we think it is important that HMRC only collect data according to the frequency to which they will make use of it to minimise burdens on those who have to collate and report it. So, if HMRC are only going to make use of bank interest data, for example, once a year to update a taxpayer's record, then they should only require it on an annual basis.

12. Q. 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?

12.1. The main concern with Schedule 36 is the way in which HMRC use it in practice and whether HMRC officers apply them in such a way as to respect the provisions that concern taxpayer safeguards. There appears to be an assumption that the taxpayer does not wish to comply – however, this is often not the case.

12.2. One of the key safeguards within Schedule 36 is that the taxpayer does not have to provide data or documents that are not in their possession or power. We understand from the tax charity TaxAid that a number of unrepresented taxpayers have received Schedule 36 information notices in relation to tax avoidance schemes – normally related to disguised remuneration. HMRC use the notices to request the employment contracts and loan agreements. However, we understand that the taxpayers often do not have these documents, because the promoters concerned set up the arrangements with minimal paperwork, or perhaps made the documents available to the taxpayer via an online portal. These online portals often have complicated sign-in processes and subsequently become inaccessible to the taxpayer. Aside from the fact that in many of these cases HMRC should arguably be pursuing the promoter, rather than the taxpayer, these information notices fail to acknowledge the reality of the situation that these taxpayers do not have the requested documents in their possession or power.

12.3. For example, we have recently heard of a migrant agency worker who found himself unknowingly being paid through a Disguised Remuneration (DR) umbrella company. HMRC now seem to accept that this is a possibility for some workers[17]. The worker received the first letter from HMRC dated 1 December 2022 about working with the umbrella company with a reply deadline of 16 December 2022. He then received a formal Schedule 36 Information Notice dated 17 January 2023 with a reply deadline of 16 February 2023. Both letters contained a long list of information that the taxpayer did not understand and was overwhelmed by, but there was no explanation of what to do if he was unable to provide it. Things can get very serious very quickly for taxpayers who do not respond or do not respond correctly. HMRC must do more to ensure they are joined up internally with regards to trends/activities – for example, around umbrella workers in DR not always receiving much paperwork (as highlighted in Spotlight 60), and they should look carefully at their approach to these letters where it is clear that the taxpayer is low paid and/or unrepresented (which HMRC may be able to ascertain from RTI and 64-8 data respectively).

12.4. Furthermore, if the Schedule 36 notice requests several items, there seems little room for manoeuvre as the notice appears to be an 'all or nothing' request. If one item causes the taxpayer difficulty, they might not provide the information that they do have, because they are awaiting one final piece of information. **HMRC officers issuing initial information requests and subsequent Schedule 36 notices therefore need to be easily contactable – for example by telephone, or via an online channel which reaches the relevant officer directly.** This would allow a taxpayer to contact the officer and explain what part of the information notice they are struggling with. A telephone conversation (or straightforward 'webchat' style exchange) might also establish that either the information requested is unnecessary (or not in the taxpayer's possession or power) or that a different form of data than that requested would be acceptable. It would also enable the taxpayer to provide the information they do have, meaning the officer may be able to proceed with their work while awaiting the remaining information.

[17] https://www.gov.uk/guidance/warning-for-agency-workers-and-contractors-employed-by-umbrella-companies-spotlight-60

13. Q. 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?

13.1. **HMRC should explore taking a more flexible approach with regards to Schedule 36 notices.** This might in some cases (and as discussed in answer to question 9 above) be a simple case of providing a telephone number or email address to the taxpayer to allow them to contact the HMRC officer about the Schedule 36 notice, or signposting to one of the frontline tax charities.[18] There could then be the offer of flexibility to negotiate timescales for different elements of the notice and the possibility of alternative forms of data to those requested. LITRG would be pleased to help HMRC draft letters and notices for wording/structure/tone etc.

13.2. When issuing Schedule 36 notices to taxpayers, HMRC need to consider whether it would help to share the data that they already hold about taxpayers with them. We acknowledge that in suspected fraud cases HMRC would be reluctant to do so. However, in the majority of cases, HMRC should be applying the Charter standard 'Treating you fairly', under which HMRC undertake to treat taxpayers as truthful, unless they have good reason to think they are not. This will increase transparency and help to build trust.

14. Q. 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 and third parties? What challenges could this present and how could taxpayer safeguards mitigate these challenges?

14.1. We think the points and questions listed below would need to be addressed before considering this matter further.

14.2. Presumably the physical information notices would refer to the class of taxpayer and the recipient taxpayer – they could not refer to all taxpayers on each notice, as this would raise data protection issues. It would be necessary to issue each affected taxpayer with their own physical notice that clearly identified them, as otherwise it would presumably not be valid.

14.3. It is not clear how this proposal allows HMRC to follow the Charter standard of 'Being aware of your personal situation.'[19] Different recipients of the notice within a particular class may have specific circumstances that mean HMRC should impose a different deadline from the outset, for example, if HMRC are aware that a particular recipient is very ill.

14.4. In terms of obtaining consent from the First-tier Tribunal for notices for which this is required, in theory this approach could save time, but within each class, there will be several affected taxpayers,

[18] TaxAid and TaxHelp for Older People

[19] https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

businesses or third parties. While it might be thought that a notice should apply to the class as a whole, there might be a valid reason for the First-tier Tribunal to refuse consent for a notice in respect of one of the parties that make up the class. It is not clear how that would affect the consent process. If consent was withheld in respect of one party, would that affect the ability to issue the information notice in respect of the rest of the remaining members of the class?

14.5. Similarly, assuming a blanket notice (for which there is a right of appeal) had been sent to a number of individual taxpayers, given the notice is in respect of a group or class, how would that affect the ability of the individual taxpayer to appeal the notice as it affects them? How would an appeal (and its outcome) brought by one taxpayer affect the ability of HMRC to pursue the information request in respect of the other taxpayers?

14.6. It is not entirely clear how the proposal would operate in respect of the example provided in the consultation document of a blanket notice to cover the promoter, users and beneficiaries of a particular avoidance arrangement. Presumably HMRC would require different information from the users than they require from the promoter, so it is also not clear that a single notice could cover different types of recipient. Moreover, the notice to the promoter, as a third party, would require Tribunal approval, but the notices to individual taxpayers do not require Tribunal approval, so it is not clear that there would be a time and cost saving for the Tribunal.

15. Q. 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)?

15.1. We have no comments.

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

16.1. We have no comments.

LITRG
19/07/2023