

**Sharing and publishing data for public benefit
Response from the Low Incomes Tax Reform Group ('LITRG')**

1 Executive summary

- 1.1 We welcome the opportunity to respond to this consultation paper. Our focus is exclusively on the interests of the low-income unrepresented taxpayer, in particular on what safeguards should be in place to protect this very vulnerable group of taxpayers. We endorse the response by our Chartered Institute of Taxation (CIOT) colleagues which this response is intended to supplement.
- 1.2 Data published externally by departments on their spending on services, functions and overall performance are to be very much welcomed and we also endorse an extension to the sharing of more generic data on costing.
- 1.3 Regarding individual-level data, we are far from convinced from the research conducted or examples given in the consultation document that there is any clear benefit to individuals in relaxing or sharing and publishing data in the manner envisaged. We feel that a better aim would be served by retaining the current legislative structure¹ with a speedier administration process and then allowing the opening up of new gateways where the case for them is proved.
- 1.4 We agree that the volume of personal data in the public domain has increased considerably with the advent of social media. However, individuals do have a choice whether or not to disclose personal information in that way whereas Government has the power to require personal data to be submitted to it, and in some circumstances to release that data wider without the consent or knowledge of the individual.
- 1.5 Data provided to a government department is in most cases supplied 'under coercion' and not optional nor voluntary and therefore the data should be held 'in trust' for the purpose for which it was intended. Any deviation from this basic principle must be made clear to the person providing the

¹ Commissioners for Revenue and Customs Act 2005 (CRCA)

data, as well as how the data may be used, who it will be shared with and to what end. Any use of individual data for purposes outside the HM Revenue & Customs (HMRC) core function should be strictly subject to the consent of the citizen, otherwise confidentiality and trust in the holder of the data will be significantly diminished. This could at worst lead to a withholding of data by otherwise normally compliant citizens.

- 1.6 Data will be made public digitally so already there is an issue in that those who are digitally excluded will be unable to view such data. These citizens are the very people likely to be most affected by an absence of proper and robust safeguards.
- 1.7 We do endorse the sharing of data between Government departments with a view to producing benefits for taxpayers, benefit claimants and the public. The data should not be used and shared just for compliance purposes. We are encouraged by the success of the 'Tell Us Once' project and feel more could be done, such as an expansion to include other life events, but always taking great care not to make confidential or sensitive information any more widely available than that consented to by the citizen.
- 1.8 We set out a range of crucial safeguards which we believe should be in place to protect the citizen from the possibility or the consequences of misuse, deliberate or otherwise of shared data (para 5.1).

2 Introduction

- 2.1 We welcome the opportunity to respond to this consultation paper. Our response does not follow the format of answering the questions posed but rather seeks to make general comment and provide suggestions.
- 2.2 This paper should be read in conjunction with the CIOT response which we fully endorse. Our focus is narrower, in that we concentrate on the interests of the low-income unrepresented taxpayer, in particular what safeguards should be in place to protect that group.
- 2.3 From previous consultation documents, the 'Shakespeare Review' and the 'G8 Open Data Charter' we understand that there is a move to open up Government data and that current restrictions on data sharing operated by HMRC are thought to be hampering the ADT recommendations made late last year. This is so particularly around the wider use of administrative data for research and policy purposes and in order to fulfil the Government's Transparency Agenda. That said any opening up of data must be done within strict guidelines and managed accordingly and always with protection of the citizen in mind.
- 2.4 Data published externally by departments on their spending on services, functions and overall performance are to be welcomed and we would endorse an extension to the sharing of more generic and aggregate data such as costing. However, this consultation is also about the sharing of anonymised individual-level data for the wider public benefit and it is on that aspect of the consultation that this response focuses.

3 About Us

- 3.1 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.
- 3.2 LITRG works extensively with HM Revenue & Customs 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.
- 3.3 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.

4 Data Sharing

- 4.1 We are aware that there is already a considerable amount of data on individuals held in the public domain, indeed social networking sites and forums have increased enormously in the last few years. Citizens do though have a choice as to whether or not to share their data through these media channels and in the main understand the consequences of doing so, whereas Government has the power in certain circumstances to require personal data to be submitted to it, then to release that data wider without the consent of the individual.
- 4.2 Data provided to a government department is in most cases 'under coercion' and not optional and therefore it should be held 'in trust' for the purpose for which it was intended. Any deviation from this must be made clear to person providing the data, as well as how the data will be used, who it will be shared with and to what end. Any use of individual data for purposes outside HMRC's core function should be strictly subject to the consent of the citizen; otherwise, if it is perceived that data could end up in the wrong hands, there is a risk that taxpayers will withhold data even if lawfully required. This could damage trust in HMRC's guardianship of such data, particularly so if the taxpayer is unrepresented.

- 4.3 Data will be made public digitally so already there is an issue in that those who are digitally excluded will be unable to view such data and often these are the very people likely to be most affected by an absence of proper safeguards².
- 4.4 That said, in our previous response to a consultation in February 2008 on 'Data Sharing Review: The use and sharing of personal information in the public and private sectors'³ we endorsed the sharing of data between Government departments with a view to producing benefits for taxpayers and benefit claimants. For example, we are encouraged by the success of the 'Tell us once' project and have received some positive feedback from people who have used this when at a particularly difficult phase in their life. This is an area of data sharing between departments that we endorse and could be expanded to include other life events, while taking great care not to make confidential or sensitive information any more widely available than consented to by the citizen.
- 4.5 Sharing of data between HMRC and other specific departments and organisations such as the Department for Work and Pensions (especially now with the emergence of Real Time Information and Universal Credit), Student Loans Company and Child Maintenance Enforcement Commissioners is already provided for in legislation and can and should be used as much for the benefit of the taxpayer as for compliance purposes.
- 4.6 Data and statistics taken out of context are inimical to forming opinions, making decisions and taking action. Providing such data to other government departments, research companies and the general public must therefore be done within strict guidelines and safeguards in place and clearly composed caveats.
- 4.7 The field of tax credits compliance provides an excellent example of how the possible misuse of shared data can sometimes compromise the financial well-being of individuals. Data taken from Credit Reference Agencies (CRA) can on occasion indicate whether another person is associated financially with an individual. HMRC have access to such data when conducting compliance checks into tax credit claims and routinely use it to determine whether a single claimant has an undisclosed partner with whom they should be claiming jointly. However, they often fail to take into account other evidence which might point the other way; for example, former spouses or partners often show up on CRA credit checks, but the evidence of bank accounts, utility bills, etc. will show that the claimant is now genuinely single. The result is that undue reliance is placed on the CRA data, the claimant's single claim is stopped, a recoverable overpayment ensues and the claimant is told if he/she wishes to claim tax credits he/she must claim jointly with an ex-partner from whom he/she has been separated for some years, probably acrimoniously. While this consultation focuses on anonymised data, this cautionary tale about the misuse of shared data still serves as a warning since

² See <http://www.litrg.org.uk/reports/2012/dig-excl>

³ http://www.litrg.org.uk/Resources/LITRG/1_497_20080215_Data_Sharing_LITRG_Response_Final.pdf

individual-level data, even when anonymised, can sometimes be narrowed down to trace the individual in question.

5 Protection and safeguards for the individual

- 5.1 There should be strictly no sharing of data where the identity of taxpayer can be inferred from anonymised case details, or by comparing datasets. HMRC must retain control and be under no obligation to release data: this should enable them to identify and withhold information where comparison with other information, or the nature of the case, is likely to lead to the identification of an individual.
 - 5.1.1 The bona fides of the body requesting information is a prerequisite – ideally it should be within government or quasi-governmental.
 - 5.1.2 The body requesting information should be required to undertake to use it only for the specific purposes disclosed in its application, and this undertaking must be backed up by the same sanctions as an HMRC officer would face for unauthorised disclosure of the same data.
 - 5.1.3 There should be an absolute prohibition on disposing of individual-level data for profit or economic gain. HMRC must be clear how this prohibition will be policed once the data is released, the sanctions for any breach and on the process for effective recourse.
 - 5.1.4 Responsibility for the proper handling of the data should rest at a suitably high level within the receiving organisation.
 - 5.1.5 The purposes for which the data is shared must have demonstrable public benefit principles which could be framed so that they are consistent with those set out in art 8(2) of the European Convention on Human Rights. These should be published and easily accessible.
 - 5.1.6 The same legal safeguards must be observed within the receiving department or organisation as in the department releasing the information, especially as regards confidentiality, and the same sanctions should apply for any breach.
 - 5.1.7 Most importantly, any individual who believes they have been disadvantaged by unauthorised use of data concerning them must have swift recourse to suitable remedies, preferably a tribunal or a departmental adjudicator with power to award compensation.

6 Benefits

- 6.1 We are far from convinced from the research conducted or examples given in the Consultation document that there is any clear benefit to an individual in a relaxing of sharing and publishing data in this manner. Neither are we sure that there will be any clear cost savings to an individual nor

evidence that it will promote economic growth. We would welcome some clearer definition and benefit enhancements on how these aspects will be achieved

- 6.2 In particular there is scope for shared data to be used by all government departments in ways that would benefit the taxpayer directly and not just the exchequer/department in question. Example might include:
- 6.2.1 Use of returns filed by banks and building societies to identify and proactively approach those who are due a repayment of tax paid at source on savings interest (pensioners and students for example).
 - 6.2.2 Matching individual taxpayer data with the registers of blind persons held by local authorities so that those entitled to the notoriously under-claimed blind person's allowance can be identified and approached.
 - 6.2.3 Identifying in real time employers and pension providers who are not operating PAYE correctly and proactively approaching them to guide and ensure compliance (using the new Real Time Information systems).

7 Other observations

- 7.1 We feel that a better aim would be served by retaining the current legislative structure but speeding up the processes for opening up new gateways where the case for them is proved.
- 7.2 We are encouraged to read of the process around current data sharing by means of the 'Datalab' and would encourage HMRC to retain such a model if the sharing becomes wider for all requests as it clearly offers the assurance and security that this subject warrants and that a citizen is entitled to.
- 7.3 If the data provided is to another government department then the process should be solely funded by the government. Under no circumstances should the ordinary taxpayer have to bear any costs either directly or indirectly.
- 7.4 The implications of the existing Official Secrets Act should be considered before any changes take place as a result of this consultation.
- 7.5 We feel that there could be unintended consequences of this well-intended consultation that may not have been fully explored, such as happened with the lost data on the Child Benefit Disc⁴. Are the risks fully understood and acknowledged and can assurance be given that there is a process in place to efficiently deal with such an event with clear lines of responsibility and successful sanctions for all caught up in it.

LITRG
24 September 2013

⁴ <http://news.bbc.co.uk/1/hi/7103566.stm>