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THE TAX ADMINISTRATION FRAMEWORK REVIEW – INFORMATION AND DATA

Response by Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation document *The Tax Administration Framework Review – Information and Data*[1] ('the Consultation') issued on 27 April 2023.

1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.

1.3 We were pleased to have the opportunity to discuss detailed aspects of the Consultation with representatives of HMRC in a virtual meeting on Tuesday 13 June 2023. We do not cover that same ground in this response. Rather, we respond to specific questions in the Consultation and focus on what we see as key points.

1.4 The Consultation is taking place during stage 1 of the Tax Consultation Framework. We welcome this early engagement and look forward to contributing at further stages on any outcomes of this Consultation.

1.5 In section 2 of this response, we offer some wider observations on the proposals before dealing with the specific aspects of the Consultation in sections 3: *Third-party information and data-gathering powers and taxpayer safeguards*, and section 4: *Information and data powers and taxpayer safeguards*.

[1] https://www.gov.uk/government/consultations/the-tax-administration-framework-review-information-and-data

2 Wider observations

2.1 In the previous consultation, *Improving the data that HMRC collects from its customers*[2], the Ministerial Forward stated that "the world is changing, and for government to be effective in the 21st century it needs to be joined up, innovative and efficient. Data, the driving force of the world's modern economies, is central to making that happen". We agree with this sentiment, but caution that data is only effective if it is successfully analysed, organized, and combined with other integrated data to create information. This information creates evidence on which knowledge is generated and on which beneficial decision making can be made.

2.2 We fully endorse the aims of the National Data Strategy[3] "for government to securely use data to drive innovation and productivity across the UK, enhancing the delivery of public services to improve people's lives, ..."

2.3 We welcome that this Consultation considers many of the areas recommended for further discussion in the Office of Tax Simplification's (OTS) report on "*Making better use of third party data: a vision for the future*"[4] ('the OTS Report') where it looked at sources of tax-related data that it could be helpful to individuals for HMRC to receive directly from third parties, and how this might best be embedded into the next stage of HMRC's work on the Single Customer Account (SCA) and Single Customer Record (SCR).

2.4 We appreciate that this Consultation focuses on how HMRC's information and data gathering powers could be updated, alongside standardising data provision from third parties, designing more flexible legislation, considering pre-population of returns, and simplifying powers. However, the need for the standardisation of data provided from third parties rests on the successful development and implementation of the SCR which will capture this third-party data and ultimately display it in the taxpayer's SCA.

2.5 Whilst it is important that the proposals of this Consultation are considered, and we support any proposals that makes the exchange of data between third parties and HMRC easier, without the development of the SCA and the SCR, any changes will fail to have the desired impacts.

2.6 We welcome the government's commitment in Budget 2021 to provide £68m towards the development of the SCR and SCA. We recommend that these funds are sufficiently 'ring fenced' within HMRC. The government must ensure that the necessary funds are available so that the SCA and SCR can be fully developed to make the exchange of third-party data effortless, as well as improve and assist the online experience of taxpayers.

2.7 We also note that whilst much of the Consultation focuses on information, data and its collection, Question 2 goes further questioning the core fundamental principles of reporting and accountability under Self-Assessment. This is far beyond the confines of Schedule 23 Finance Act 2011 and Schedule 36 Finance Act 2008, and we wonder whether wider questions around the accountability in the Self-Assessment system should be subject to its own consultation.

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[2] https://www.gov.uk/government/consultations/improving-the-data-hmrc-collects-from-its-customers/improving-the-data-hmrc-collects-from-its-customers published in July 2022.

[3] https://www.gov.uk/government/publications/uk-national-data-strategy/national-data-strategy

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997582/Third_party_data_report.pdf

3 Third-party information and data-gathering powers

3.1 Schedule 23 Finance Act 2011 (Schedule 23) was introduced over ten years ago and provides HMRC with its third-party information and data-gathering powers and safeguards. These enable HMRC to gather specific information from certain third parties about a group of taxpayers, generally for statistical and risk assessment purposes.

3.2 We agree that more "effective use of information and data can provide many benefits to taxpayers and government alike." and that "better use of information and data can help provide a smoother customer experience by reducing the volume and complexity of information and data taxpayers must provide to support their tax returns."

3.3 However, as stated above, Schedule 23 has historically generally been used for statistical and risk-based assessment purposes. The changes proposed to aid the provision of bulk data for use in the SCR and SCA would significantly alter its initial intended purpose. If the proposals were to be adopted, then it would be necessary to review the legislation to ensure that it was still 'fit for purpose' and continues to incorporate the appropriate safeguards for taxpayers and third parties alike.

3.4 ***Overview of international practice***

Q1: 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?

3.5 Our members work predominantly in UK tax compliance, so we do not have the international expertise necessary to provide examples of international approaches to data-gathering, information, and inspection powers.

3.6 ***Accountability***

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

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

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

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

3.10 Under Self-Assessment taxpayer returns originate from the taxpayer. Taxpayers are responsible for final sign-off of their return under Sections 8(1) and (2) Taxes Management Act 1970. This includes taxpayer responsibility for the provision and accuracy of supporting information and data, and documentation. HMRC have various time limits within which to check a return and can levy penalties for late returns and for careless or deliberate errors contained within a return.

3.11 With increases in digitalisation more data and information can be provided by third parties to HMRC and ultimately pre-populated into a taxpayer's return. It is essential going forward that there are clear, unequivocable rules as to who is responsible for the accuracy of this pre-populated data/information, and who is ultimately responsible for ensuring that the overall return is both complete and correct. This

understanding of responsibility is crucial if accountability and penalties for errors are to be attributed to the right person.

3.12 While we agree that it makes sense and is beneficial for taxpayers for HMRC to maximise the use of the data held by other parts of government and data that it receives from third parties, we have concerns around the process of correcting errors when data is supplied by third parties. It is important that taxpayers have access to clear, simple, and timely processes to challenge and correct errors made by HMRC systems/processes – or indeed by the third party themselves. It is particularly important too that unrepresented individuals feel confident enough to challenge data held and understand their responsibilities to review and correct data.

3.13 Our members have expressed concerns that any proposed route which places the onus on the individual to get data corrected by the third party and re-sent to HMRC would be impossible to achieve in peak periods and be burdensome and time-consuming during other periods of time, as there is no obvious incentive for third parties to allocate resources to this work (other than to demonstrate good customer service).

3.14 Before further data is collected, we would like to see more work done to build confidence in the existing processes. Even for a 'simple' piece of information such as bank interest, there can be a number of complexities which mean pre-population does not occur accurately. These include joint accounts held in varying proportions, trust, and estate accounts where the name of the account may not match the name of the taxable person, or exclusion from data provided of accounts closed in the year. In addition, HMRC have acknowledged that their own system for providing PAYE income to third party software is flawed and this too would need to be addressed.

3.15 Given that even 'simple' transactional data presents many challenges, careful thought needs to be given to how appropriate it is to consider collecting more complex data. Equally, members have concerns about the quality of CGT reports from investment portfolio managers. Historical costs are not always accurate and portfolio managers cannot take account of pooling if the individual has shares held elsewhere.

3.16 Ultimately, we support the concept that the final responsibility for the accuracy of the Self-Assessment return remains with the taxpayer. However, there must be well communicated and easily accessible ways for taxpayers to amend any pre-populated data to reflect their own understanding; for instance, where data has been pre-populated, but the taxpayer is only a nominee and not the beneficial owner. The return should also retain the declaration that the return is complete and correct to the taxpayer's knowledge and belief, so that it is obvious when the return has been signed off as filed. This will be important as more of the return is pre-populated and it will be necessary to establish when the return has been agreed by the taxpayer and HMRC's 'correction' and 'enquiry' periods start.

3.17 Any changes in the responsibilities and accountability of taxpayers and data/information providers could raise fundamental questions about the Self-Assessment system as a system of self-assessment. We would caution government against making any fundamental changes to the Self-Assessment system until Making Tax Digital (MTD) for Income Tax Self-Assessment (ITSA) has been fully implemented, and this would include changes to the responsibility for the delivery and accuracy of the return.

Scope of HMRC's information and data-gathering powers and taxpayer safeguards

Q3: In considering potential reforms by HMRC's of its information and data-gathering powers, and applicable safeguards:

3.18 ***A. What are your views on the prescriptive framing of HMRC's current information and data powers?***

3.19 Subject to the necessary safeguards and appeals procedures being in place, we would support a legislative approach which creates a simplified and more flexible information and data-gathering framework.

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

3.21 We do not have in depth knowledge of either the Australian or Estonian tax system to provide a critical evaluation of either of these models. In our view, it is important that the wider background of the relationship between the taxpayer and the tax authority in any tax jurisdiction being compared to the UK is fully understood before proposing changes in the UK based on tax data-gathering systems in those countries.

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

3.23 We do not have in depth knowledge of the Slovenian tax system but would comment that Slovenia is a country with (according to the World Bank 2021 figures) a population of 2.108 million and a Gross Domestic Product (GDP) of 61.75 USD billion compared to the UK which (from the same source) had a population of 67.33m and a GDP of 3.131 USD trillion. It is possible that the Slovenian approach could be impractical when scaled-up and applied to the UK because the Slovenian system imposes "reporting obligations for all parties within its tax system" and a bigger UK population and economic system would have more parties, therefore imposing potentially unrealistic and unworkable tax reporting requirements.

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

3.25 We would support structuring the legislation in such a way that it avoided the need for separate updates every time a new party needed to be added, and we can see the benefit of this applying to many types of different businesses and situations. However, it is essential any expansion of the legislation maintains the appropriate safeguards, primarily the appeals procedure.

3.26 ***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?

3.27 We would support any work on aligning and standardising data-holder requirements with common information and data fields that would simplify interpretation of data for HMRC, support better matching and limit the potential for data errors.

3.28 ***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?

3.29 ***B. Similar approaches used by partner OECD countries?***

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

3.31 Accurately matching data that has been supplied to HMRC to the right taxpayer record is important if the security of personal data is to be protected and data security failures are to be avoided. We consider that a unique taxpayer identifier could help alleviate some of the problems with matching data to taxpayer records.

3.32 We support the need for a robust method for identification and matching of third-party information and data for taxpayers.

3.33 We agree with the OTS Report that the National Insurance Number (NINO) is probably the closest unique identifier currently available followed by the Unique Taxpayer Reference (UTR). However, we also accept and recognise that both the NINO and UTR have their drawback as neither currently extends to all taxpayers and records on each system are not always correctly matched.

3.34 We would advocate exploring how the NINO could be changed to address the fact that it doesn't extend to all taxpayers, by for instance shifting the issue of a NINO to at birth and not at 16 (that would also help with repayment claims (R40s) in identifying taxpayers). The NINO could also be extended to non-residents or residents who are not currently eligible. Alternatively, the UTR number which at present is not issued to all taxpayers, could be extended to incorporate all taxpayers.

3.35 For the Unique Customer Record (UCR) programme to deliver its aims and allow HMRC to bring together and match all relevant information and data items collected from a range of sources, including third parties, into one single record which is unique to each individual taxpayer, across HMRC systems it is imperative that the programme has the appropriate funding.

3.36 The development of the UCR will need to build in sufficient time for testing and evaluating to ensure that it can deal with the large volume of data expected. It will need to have been tested to ensure that the matching is precise and accurate, otherwise taxpayer and third-party confidence in the process will have been compromised. Without adequate testing there would also be the potential for data security failures.

3.37 ***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?***

3.38 We agree that the standardisation of 'bulk' information and data reporting from third parties makes sense. We do not have any comments on how any new obligations in this area could be structured.

3.39 ***Simplifying the current information and data-holder notice regime***

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

3.40 ***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?***

3.41 We can see the merits where data is both standard in nature and required on a regular basis, e.g. for inclusions in SCRs/SCAs, that such data should be able to be provided to HMRC without having to go through a "manual and resource-intensive process". It would, however, be necessary to ensure that there were clear rules, guidelines, and safeguards in place for the delivery of such data.

3.42 We consider that the frequency with which information and data should be reported to HMRC will depend on obligations imposed under MTD for ITSA. Income Tax is currently assessed annually over a tax year and therefore there are little immediate benefits for asking for data on a more frequent basis.

4 Information and data powers and taxpayer safeguards

4.1 Schedule 36 Finance Act 2008 (Schedule 36) provides formal powers for HMRC to obtain information and data from taxpayers, or third-party data-holders (such as the taxpayer's bank or building society) which they have previously informally asked for without results.

4.2 It is right and proper that HMRC have appropriate powers to enable them to exercise their functions but also that there are suitable safeguards over HMRC's ability to access sensitive private information.

4.3 In our opinion, HMRC's information powers under Schedule 36 currently provide a coherent balance between the right of HMRC to obtain information and the protection of taxpayers and third parties against unwarranted intrusion and cost.

4.3 ***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?***

4.4 We agree that the "obligations and safeguards provided by the notice regime are well established" and as such taxpayers and agents understand the powers and safeguards well. We also agree that these "powers enable HMRC to clarify and address potential non-compliance, protecting the Exchequer and wider UK public against those who inadvertently, or deliberately understate their tax position."

4.5 We would make the following comments in relation to each of the challenges referred in Section 4 of the Consultation:

4.6 *"Responses to the 2021 TAFR 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."*

4.7 We agree with this statement.

4.8 *"The current approach has not always kept pace with modern technology, including the advent of digital record-keeping. Requests can sometimes involve multiple resource-intensive exchanges of correspondence, and delay issue resolution."*

4.9 We accept that advances in modern technology and digital record-keeping can create difficulties of exchanging data with HMRC. However, it is inevitable that there are going to be some "*multiple resource-intensive exchanges of correspondence"* issues where cases are of a complex nature.

4.10 *"Penalties may not incentivise compliance, often being relatively small compared to the size of the tax under dispute and/or the size of the taxpayer/business."*

4.11 We understand that the penalties for non-compliance with Schedule 36 notices were consulted during the initial implementation of Schedule 36 and they were considered appropriate and just at the time. If HMRC consider that the current level of the financial penalties is at a level insufficient to incentive a drive to compliance, then it would seem right that HMRC petition government for increases in the penalty legislation. The pros and cons of any changes to legislation could then be commented on by interested stakeholders. The proposals being considered within this Consultation would not address this challenge.

4.12 *There are occasions when non-compliant individuals and businesses appear to actively seek to delay providing requested information and data for as long as possible. This includes exploiting safeguards such as reviews and appeals to the Tribunal, only to withdraw appeals at the last moment. This generates unnecessary costs, puts pressure on the Tribunal system and is unfair to other taxpayers who try to get things right first time.*

4.13 As stated at 4.3, in our opinion, HMRC's information powers under Schedule 36 currently provide a coherent balance between the right of HMRC to obtain information and the protection of taxpayers and

third parties against unwarranted intrusion and cost. The safeguards are provided to ensure that all taxpayers have the same rights. If a taxpayer chooses to withdraw an appeal at the last minute, then that is their prerogative and part of the appeal process and available to all taxpayers. To tamper with the appeals process because some taxpayers may be seen to exploit the safeguards would have a detrimental impact on other taxpayers.

4.14 *As technology evolves HMRC may in future be able to better verify a customer's tax position by using information and data from third-party sources, which may mean the role of information and data powers changes.*

4.15 We accept that technological advancements may mean that a change is needed to the role of information and data powers.

4.16 We have not been made aware by our members of any other challenges that HMRC should consider.

4.17 ***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?***

4.18 We understand that a "graded power" would "operate with the aim of simplifying the process, making it less burdensome for taxpayers and supporting a more collaborative relationship. This would allow HMRC more scope to tackle or use other means to reduce delays for those thought to be displaying, more seriously non-complaint behaviour."

4.19 We do not consider that such a "graded power" would be practical or beneficial.

4.20 We fail to see how these proposals of creating essentially a two-tier system for compliance and penalties amongst taxpayers can aid simplification.

4.21 We also have reservations about how such subjective assessments of taxpayers and, in the case of historically non-compliant taxpayers, pre-judging current attitudes to compliance can be reconciled with HMRC's Charter[5], especially the Charter standard "Treating you fairly".

4.22 ***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?***

4.23 We appreciate that "a blanket notice could be issued to all users of the same avoidance arrangements (for example, the same Disclosure of Tax Avoidance Schemes reference number). That notice could cover the promoter, all users, and beneficiaries, rather than HMRC needing to issue separate, individual notices to all parties linked to the scheme." However, if this type of proposal was to be adopted, it would mean the entire re-writing of those aspects of Schedule 36 which at present operate on the premise that an officer requires either a taxpayer or a person to provide information or produce documents.

4.24 We are not in favour of changing the current Schedule 36 provisions to incorporate the use of 'blanket notices'.

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

4.25 We envisage practical problems with monitoring compliance and the issue of penalties. What safeguards would be applied to the various recipients of a 'blanket notice' given that the notice could have been issued to promoters, users, or beneficiaries all of whom would have had a different interaction with the scheme and therefore have different information and documents available for production? If the notice is a 'blanket notice' to promoters, users, or beneficiaries, who is responsible for any penalties stemming from non-compliance with the notice? Would it be fair to penalise a party to a notice who themselves had no access to parts of the documentation or information being sought?

4.26 ***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)?***

4.27 We are not in favour of creating a category of information notice that covers connected persons or third parties.

4.28 At present Schedule 36 clearly defines the recipient of an information notice, what is required from the recipient and consequences and ramifications for failing to comply with a notice. We consider that there is already too much confusion amongst the Owner Managed Businesses (OMBs) community regarding the demarcation of responsibilities and duties as directors and shareholders, and joint information notices to OMBs could compound this confusion further.

4.29 If information notices are given, as in the example in the Consultation, in relation to the tax affairs of the director and the company, then we would support both notices being taken before a Tribunal at the same time, and two separate and distinct notices being issued, so that it is clear where the responsibilities remain. We appreciate that as the director, and the company they manage, are separate legal entities, that this makes them 'third parties' in relation to requests for information on the other, and that either the taxpayer or the Tribunal consent is required for the issue of the notice. We consider this to be the correct position and maintains an appropriate safeguard, and the segregation of duties of individuals and the companies they manage.

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

4.31 We understand and appreciate that "HMRC would like to explore options to expand the scope of current legislation to encompass a broader set of powers that enable HMRC to obtain and access any type of information and data (including software) from any system that stores or processes information or data relevant to UK tax administration." and that "these legislative changes would also cover information from third parties and intermediaries, by extending the mandatory principle in current legislation."

4.32 We accept that "(t)technological developments over the last few decades have led to information and data being held online and digitally, especially on the cloud, with third parties and intermediaries having more control over that information and data" and that it is necessary to ensure that the legislation keeps pace with such changes.

4.33 We have some concerns where the Consultation states that "HMRC would like to analyse and investigate the software of third-party and intermediary software providers. The aim is to work with these providers to identify any flaws in their software in terms of compliance." Whilst we can see the benefit, do HMRC have sufficient resources to assist software providers with the re-design of their software?

4.34 We support the legislation being updated to reflect technological developments. However, if the intention is to "expand the scope of current legislation to encompass a broader set of powers that enable HMRC to

obtain and access any type of information and data (including software) from any system that stores or processes information or data relevant to UK tax administration" then, as stated in the Consultation, "(e)effective and appropriate safeguards would be a crucial element of any reform in this area".

4.35 Any proposed changes to the legislation should be consulted on and would need to be clearly and effectively communicated well in advance of any commencement date.

5 Contact details

5.1 We would be pleased to join in any discussion relating to this Consultation. Should you wish to discuss any aspect of this response, please contact atttechnical@att.org.uk.

The Association of Taxation Technicians

6 Note

6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.

The Association has more than 9,500 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.