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DRAFT PROVISIONS FOR FINANCE BILL 2023-24

ADDITIONAL INFORMATION TO BE CONTAINED IN RETURNS

Response by the Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to be able to comment on the draft Finance Bill 2023-24 measures on 'Additional information to be contained in returns' published on 18 July 2023 (the 'draft legislation')¹.

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 In summary we consider that:

- the detail of any additional information required to be included in returns should have been contained within the primary Finance Bill legislation and not relegated to regulations;
- without knowing exactly what additional information is required, it is impossible to comment on how workable the plans for their provision are; and
- this enabling legislation provides unlimited scope for extra data and information in relation to direct taxes to be requested at a future date via regulations.

1.4 Whilst we have no comments on the specific wording of the draft legislation, we have set out in Section 2 our overall comments and in Section 3 some comments on the proposed penalty.

2 Overall comments on the draft legislation

2.1 The proposed legislative amendments are being introduced to enable changes to the information required to be provided to HMRC via both income tax self-assessment and real-time returns to include information 'relevant to the collection and management of tax'. The legislation will allow HMRC to issue secondary regulations specifying the required additional information from the tax year 2025-26 onwards.

¹<https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers>

2.2 Our main concern with this ‘enabling legislation’ is that the crucial details of exactly what additional information will be requested are relegated to regulations which will, by their nature, receive much less scrutiny. Given the importance of this detail to how workable the plans for additional information are, we would have preferred it to be included in the primary Finance Bill legislation.

2.3 In the ‘*Improving the data HMRC collects from its customers*’ consultation² issued on 22 July 2022, HMRC indicated that there were six areas where it felt that its data could be improved. These were:

- the business sector of the self-employed
- the occupations of employees and the self-employed
- the location of an employment or a business
- the hours employees work *
- dividends paid to shareholders in owner managed businesses*
- the start and end dates of self-employment*

* Following the consultation responses³ the Government stated that it intended to proceed with legislation for these three areas only.

2.4 The draft legislation, however, does not restrict any future regulations to the three areas highlighted above, and in fact, the only limitation placed on the issue of any regulation is that the information being sought is ‘relevant for the collection and management of taxes referred to in section 1 Taxes Management Act 1970⁴ (i.e., Income Tax, Capital Gains Tax and Corporation Tax)’. We therefore have concerns that the breadth of ‘collection and management’ of taxes provides unlimited scope for extra data and information to be required in relation to direct taxes via regulations.

2.5 We would like to understand how ‘relevant for the collection and management of taxes...’ will be interpreted by HMRC when regulations are being considered. Whilst the three areas referred to at 2.3 above, would have some tangible connection to the ‘management’ of taxes, the collection of additional information such as ‘the location of an employment or a business’ (one of the original six areas considered) might - when aggregated with the data of all other businesses and individuals – inform the Government’s regional transformation and levelling up policies, but it is surely questionable as to whether this information would be ‘relevant’ for the ‘management’ of taxes. We appreciate that the Government does not intend to take forward changes in this area at this stage. However, the draft legislation would not preclude HMRC from making regulations to collect this information, if it considered that it was needed for the ‘management’ of taxes at a future date. This is also the case for the other areas within the consultation not taken forward at this stage.

2.6 We would request that before any secondary regulations are introduced, that the remit, context, and content of any such regulations are fully consulted on.

² <https://www.gov.uk/government/consultations/improving-the-data-hmrc-collects-from-its-customers/improving-the-data-hmrc-collects-from-its-customers#next-steps>

³ <https://www.gov.uk/government/consultations/improving-the-data-hmrc-collects-from-its-customers/public-feedback/improving-the-data-hmrc-collects-from-its-customers-summary-of-responses#next-steps>

⁴ <https://www.legislation.gov.uk/ukpga/1970/9/part/1>

- 2.7 When looking at the collection and collation of additional information, some of which might be useful to other Government departments, we would re-iterate our comments in our consultation response⁵ that we think that the approach should be to determine what any department is trying to achieve first and then collect that data, rather than collecting and storing data in case a department might ask for it.
- 2.8 We had suggested in that response, that a consultation in respect of the obligations, safeguards, and legal framework be undertaken before the wider data collection project was progressed. We are disappointed that that suggestion was not pursued, and that this draft legislation (included penalties) was issued before further consultation.
- 2.9 We note that the amendments made by the draft legislation will have effect for the tax year 2025-26 and subsequent tax years. We would request that the content of any regulations issued as a result of this enabling legislation are consulted on and communicated well in advance of the start of any tax year in which the regulation would apply, thus ensuring that taxpayers have the time to collate the additional information and IT providers have the time to revise and update their software packages.

3 Penalty considerations

- 3.1 The draft legislation imposes a fixed penalty of £60 on a person who fails to comply with the requirement to report the additional information in a return.
- 3.2 Should any of the three areas referred to above at 2.3 be omitted from a return there would be no Potential Loss of Revenue (PLR), so no penalty could be levied under a current enforceable penalty regime. We therefore see some merit in providing a specific deterrent to non-compliance.
- 3.3 We would recommend that in introducing a new penalty that HMRC produce guidance clearly explaining how and when the penalty would be levied, and the process taxpayers would need to undertake to make an appeal. For instance, we are unsure from the wording of the draft legislation whether, if no return has been submitted to HMRC, the taxpayer would be subject to both a late filing penalty for failure to submit a return and a penalty under this draft legislation for the failure to provide the information set out in a regulation.
- 3.4 With a new penalty points system being introduced for Income Tax, it is unclear how the proposed penalty would interact with those new penalty provisions, and we are concerned that it could result in further complexity in the penalty regime.
- 3.5 We would re-iterate comments in our consultation response, that in respect of the provision of any data which is not required for tax administration purposes, consideration could be given to the awarding of penalty point *credits*. That might enable the provision of such data to be kept on a voluntary basis (and therefore outside of sanctions) but with an incentive to provide the data – carrot rather than stick.
- 3.6 If HMRC are (whether in the mid or long term) to collect data which has no direct relevance to the tax affairs of those providing the data or their employees, we think there needs to be a fundamental discussion of whether the sanctions and safeguards that apply in respect of non-compliance with a tax-related obligation are appropriate.

⁵ <https://www.att.org.uk/sites/default/files/2023-08/221006%20ATT%20Response%20to%20Data%20Collection%20Consultation%20FINAL.docx>

4 Contact details

- 4.1 Should you wish to discuss any aspect of this response, please contact us at atttechnical@att.org.uk.

The Association of Taxation Technicians

5 Note

- 5.1 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 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.