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DRAFT LEGISLATION: IMPROVING THE DATA HMRC COLLECTS FROM ITS CUSTOMERS

Response by Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the Draft legislation: Improving the data HMRC collects from its customers ('the Draft Legislation')¹ issued on 14 March 2024.

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 The Draft Legislation consists of the following:

- The Income Tax (Pay As You Earn) (Amendment) (No. ***) Regulations 2024 ('Regulations (PAYE)')²
- The Income Tax (Additional Information to be included in Returns) Regulations 2024 ('Regulations (Return)')³

1.4 In this response, we have made some general observations in Section 2, followed by drafting observations specific to Regulations (PAYE) in Section 3 and to Regulations (Return) in Section 4.

2 General Observations

2.1 We would re-iterate comments made in our response⁴ to the draft provisions for Finance Bill 2023-24 'Additional information to be contained in returns'⁵ that we would have preferred the crucial details of exactly what additional information was required to be contained in returns to have been included in

¹ [Draft legislation: Improving the data HMRC collects from its customers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/draft-legislation-improving-the-data-hmrc-collects-from-its-customers)

² [Draft The Income Tax Pay As You Earn Amendment No. *** Regulations 2024.odt \(live.com\)](https://www.gov.uk/government/consultations/draft-the-income-tax-pay-as-you-earn-amendment-no-***-regulations-2024)

³ [Draft The Income Tax Additional Information to be included in Returns Regulations 2024.odt \(live.com\)](https://www.gov.uk/government/consultations/draft-the-income-tax-additional-information-to-be-included-in-returns-regulations-2024)

⁴ [230906 - Changes to data that HMRC collects - FB legislation - Web version.pdf \(att.org.uk\)](https://www.att.org.uk/publications/230906-changes-to-data-that-hmrc-collects-fb-legislation-web-version.pdf)

⁵ <https://www.gov.uk/government/publications/change-to-data-hmrc-collects-from-customers>

primary Finance Bill legislation rather than being relegated to regulations which, by their nature, receive much less scrutiny. We do, however, appreciate having the opportunity to comment on these draft regulations.

- 2.2 We still consider that the approach when considering what additional data is to be collected by HMRC should be first to determine what any department is trying to achieve, before then collecting the necessary data to inform that department's actions, rather than collecting and storing data in case a department might ask for it.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003 - number of hours the employee has worked, and reportable description in relation to certain payments

- 2.3 We support any measures which will effectively contribute to ensuring that employees are receiving the National Living Wage (NLW) or National Minimum Wage (NMW) (as appropriate). However, the requirement to report data on hours *paid*, will not enable identification of NLW/NMW non-compliance in all cases as the NLW/NMW are calculated based on hours *worked*.

- 2.4 For example, if an employer is paying an employee for the time working in a warehouse but also requires them to spend time changing into work clothes, or undergoing inspections before or after they clock in, the hours *paid* may show that NLW/NMW requirements are being met. However, because the hours *worked* will include the time spent in preparation for entering/leaving the warehouse then NLW/NMW requirements may still have been breached.

- 2.5 Reporting of hours paid also has minimal relevance for NMW/NLW once pay for the reporting period exceeds a certain point. For example, once an individual's gross weekly pay exceeds the average gross weekly earnings of £673⁶, it is unlikely that they are being paid less than NLW as that would require them to have worked over 58 hours [58 @ £11.44⁷ = £663.52]. Collecting precise data of the hours worked by all employees is therefore (in the context of NLW/NMW) unnecessary in respect of a significant proportion of workers.

- 2.6 It is unclear how these regulations interact with the different definitions under NLW/NMW legislation. For example salaried vs unmeasured. Does HMRC intend to further legislate on this to get employers to report on unpaid time worked?

- 2.7 The draft regulations are ineffective for zero-hour contracts or directors who have no employment contract, where employers have to report 'nil' hours worked.

- 2.8 We share the concerns of the Administrative Burdens Advisory Board (ABAB) that this measure will increase costs for all employers for no benefit to them and unclear benefits to Government.

Additional information to be provided in relation to commencement and cessation of business activities

- 2.9 Many taxpayers and agents will have been surprised to learn that the reporting of a commencement or cessation date of business activities on Self-Assessment returns was not already mandatory.

- 2.10 We agree that the mandatory inclusion of start dates in Self-Assessment tax returns could help HMRC support taxpayers earlier in their business lifecycle. As well as improving compliance - eg collection of Class 4 NIC & when sole traders should join Making Tax Digital (MTD).

⁶ [Average weekly earnings in Great Britain - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/employment-and-labour-markets/earnings-and-wages/bulletins/average-weekly-earnings-in-great-britain)

⁷ [What is the real Living Wage? | Living Wage Foundation](https://www.livingwagefoundation.org/)

2.11 We also consider that the mandatory inclusion of cessation dates in Self-Assessment tax returns has the potential to avoid the unnecessary issue of future Self-Assessment returns to individuals where there is no longer a requirement to file, saving the need for any subsequently issued returns to be vacated. However this may cause issues where returns are vacated and the taxpayer has new sources of income that require to be disclosed in the subsequent tax year. The taxpayer may assume that HMRC vacating the return implies that they have no further obligation. Would it be more practical to include a tick box where the taxpayers asserts if they will require to remain in Self-Assessment.

2.12 We would however re-iterate two points we raised in our earlier consultation response, namely:

(a) Tax cases and the supporting HMRC guidance in BIM80505⁸ (and subsequent sections through to BIM80555) attest to the fact that identifying the precise start date of trading is not always straightforward. Tax cases and BIM80565⁹ (through to BIM80585) do likewise in respect of cessations.

Given the significance of the identification of the dates now that notification is compulsory and that there can be problems with identifying the precise start and cessation dates, we would hope that there would be no sanction (even though there is provision for one) in situations where (upon closer examination) either the originally reported date had been entered on the return after taking proper care or where no overall change in the individual's tax liability resulted from the initial adoption of a date that was then found to require amendment.

(b) The introduction from the tax year 2017/18 onwards of the Trading Allowance means that where an individual runs a business but its gross annual income does not exceed £1,000, the income is not charged to tax and does not need to be reported (unless the individual elects otherwise). These provisions mean that the reporting of profits from a new source can be required for the first time in a tax return without a trade having commenced in that year and, conversely, that a reporting requirement can evaporate without the source actually ending. Making the identification of the dates compulsory has increased the importance for appropriate guidance regarding the Trading Allowance to be included in the supporting tax return notes. It might be helpful if additional boxes could be added to confirm that trading is considered to have 'started' or 'finished' purely because turnover has exceeded/fallen under the Trading Allowance.

Additional information to be provided in relation to directorships, close companies and dividend income

2.13 We previously raised concerns that the identification of shareholdings would be problematic as an individual's percentage shareholding could change from year to year, and within the year. This could happen both intentionally, but also through actions which may be outside shareholders' control. It could require liaison with the company secretary prior to finalisation of the tax return, which is not currently needed in relation to the reporting of dividend income. It would be much more logical (and more reliable) to obtain this information from Companies House, where it should already be held.

2.14 In some situations, the reporting of an individual's percentage shareholding could give rise to confusion when viewed in conjunction with their reported dividend income – for example where there are

⁸ [BIM80505 - Computing the amount to assess: business changes: commencement: general principles - HMRC internal manual - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

⁹ [BIM80565 - Computing the amount to assess: business changes: cessation: general principles - HMRC internal manual - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

different classes of share or preference shares in existence. The proposed legislation does not address the distinction between capital rights, voting rights or income rights.

3 Regulations (PAYE) – specific observations and drafting issues

- 3.1 21A(3)(d) refers to ‘an amount determined directly by reference to a measure of output.’ Would this capture a bonus? That isn’t paid by reference to hours worked or other time period, so would appear to fall into 21(4). Should it not refer to the actual description rather than the 'amount' of the piece of work/output?

4 Regulations (Return) – specific observations and drafting issues

4.1 Additional information to be provided in relation to commencement and cessation of business activities

4.2 We have no specific comments on section 2 (1)-(3) covering this aspect.

4.3 Additional information to be provided in relation to directorships, close companies and dividend income

4.4 4(a) refers to a ‘director’. However, a director may not be a shareholder – especially outside the owner managed business (OMB) context. If HMRC are actually interested in gathering data on ‘participators’ of companies (as opposed to anyone holding a directorship, regardless of whether they are also a shareholder) then it should be made explicit in the legislation.

4.5 If the intention is for the legislation to apply to directors (and not just participators), what about office holders etc? The legislation is currently silent in relation to these.

4.6 4(c) refers to ‘shareholding’ in the close company’ but no definition is provided for ‘shareholding’. Does this just refer to ordinary share capital? What about preference shares, debentures etc?

4.7 5(c) refers to ‘percentage of the person’s shareholding’. Without stating what classes of shares are required to be disclosed, it is unclear how the percentage held is to be calculated. Are different types of shares to be pooled together regardless of the rights assigned to those classes?

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 Notes

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.

- 6.2 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.
- 6.3 The Association has more than 9,800 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.