

HMRC Data Collection and the Finance Bill 2023-24

LSE Research Briefing

Summary

- After a 2022 consultation on **improving the range of data that it collects, uses and shares across government**, HMRC has now published draft legislation to change the information that businesses are required to provide via income tax self-assessment and real-time returns completed by employers.
- Dr Andy Summers, Associate Professor of Law at the London School of Economics, strongly supports the broad aim of expanding HMRC's powers to collect information.
- However, he is concerned that **the draft legislation does not go far enough** and may not achieve HMRC's aim of improving the scope and utility of the data it collects. He has therefore suggested **improvements that will:**
 - **Ensure that HMRC can collect the data needed to improve the tax system and inform policymaking across government;**
 - **Strengthen the consequences for failing to provide information that has been validly requested; and**
 - **Extend equivalent powers to a broader range of taxes.**

The proposals

- HMRC plans to introduce **three specific new requirements:**
 - 1) Requiring employers to provide more detailed information on employee hours worked via real-time information PAYE reporting.
 - 2) Requiring shareholders in owner-managed businesses to provide the amount of dividend income received from their own companies separately to other dividend income.
 - 3) Requiring self-employed people to provide information on the start and end dates of self-employment via a self-assessment return.
- These requirements were supported by industry stakeholders in the public consultation, and HMRC argues that they will help to provide better outcomes for taxpayers, improve compliance and build a more resilient tax system.
- The powers to collect this new information will be introduced in the next Finance Bill through amendments to the Taxes Management Act (TMA) 1970 and the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 and will **come into force no earlier than tax year 2025-26.**

Key thoughts and recommendations

Improving the Power to Require Information

- The 2022 consultation and subsequent government response identified that HMRC should have additional powers to collect data **to support policy evaluation and statistical analysis**. Dr Summers agrees that HMRC should be equipped to collect data expressly for these reasons.

- However, as drafted, the legislation would currently restrict the power to require information to instances where it is “*relevant for the purpose of the collection and management of any of the taxes listed*”. This provision could be interpreted to cover **only information which is necessary for the administration of the tax system**.
- Currently, the legislation could leave HMRC open to challenge by taxpayers where it is hard to justify the collection of data on these narrow grounds.
- **The legislation should therefore be amended to add words to the effect of: “...for the purpose of the collection, management or evaluation of any of the taxes listed or for the purposes of statistical analysis in the public interest”.**

Strengthening Consequences for Non-compliance

- In the original consultation, HMRC stated that it would expect the new data being collected to be classified as mandatory, **with any returns not containing the required information being “treated as incomplete” and incurring “relevant fees or appropriate penalties”**. This would require a specific legislative power for HMRC.
- However, the draft legislation **only imposes a penalty of £60** in the case of individuals, partnerships or trustees, and there is **no penalty** for employers in relation to PAYE.
- Unless the required information is treated by HMRC and employers as mandatory, Dr Summers believes that its use will be severely limited in practice. **If there is significant non-random failure to comply, the information could become, in effect, useless for analysis and research because it cannot be treated as representative of the population.**
- The £60 penalty could end up being treated as a price, and may not be sufficient to compel the high levels of compliance that are needed to make the data useful.
- **The legislation should therefore be amended to words to the effect of: “A person who fails to comply ... shall be treated as having not made and delivered a valid return”.**

Extending powers to other taxes

- The current draft legislation **would apply only to income tax, capital gains tax and corporation tax, as well as to the operation of PAYE**. However, there are many other taxes where such powers would be useful for similar reasons.
- For example, Dr Summers notes that analysis of inheritance tax would be bolstered if HMRC was able to require information about large lifetime gifts made by a UK domiciliary at the time when a gift is made, not only upon death. Such information would be useful not only for evaluation of inheritance tax policies but also for compliance purposes.
- These other taxes are not covered by the same legislative framework as those in the draft legislation, which only applies to taxes covered by the Taxes Management Act 1970.
- **Equivalent legislation should be brought forward to provide HMRC with appropriate powers to collect information for a broader range of taxes.**