



DRAFT FINANCE BILL: CHANGE TO DATA HMRC COLLECTS FROM CUSTOMERS

Issued 11 September 2023

ICAEW welcomes the opportunity to comment on the *Change to data HMRC collects from customers* draft Finance Bill legislation published by HMRC on 18 July 2023, a copy of which is available from this [link](#).

For questions on this response please contact us at taxfac@icaew.com quoting REP 92/23.

This response of 11 September 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. The purpose of this measure, as stated in the policy paper dated 18 July 2023 is as follows:
“The change will improve the quality of data collected by HMRC and help to
 - a. provide better outcomes for taxpayers and businesses;
 - b. improve compliance; and
 - c. build a more resilient tax system.”
2. However, in the consultation document published on 27 April 2023, the reasons given for the collection of further data were so that they could be shared with other government bodies. If the latter is the case, the legislation as introduced will be ultra vires as the information collected will not be for the purpose of the collection and management of tax.
3. Although the information that will be requested is not included in draft primary legislation, it was set out in the accompanying policy paper.
4. We question to what extent the information requested on working hours will be accurate and therefore provide any meaningful assistance to HMRC in assessing or charging related taxes.
5. In addition, we believe that there will be a significant cost burden placed on employers to provide the information requested, which could be spent on more productive endeavours.
6. The information that HMRC is requested is already being provided through other means, albeit not at the volume being requested by HMRC. We invite the government to make better use of the data it already collects, rather than placing the burden of data collection on businesses.
7. If the proposal for gathering hours worked is to proceed, we urge the government to make good on the promise set out in the summary of responses to the consultation by including the requirement in primary legislation or release the secondary legislation setting out the information to be provided with plenty of time for consultation. The summary stated:
“HMRC will work closely with businesses and software providers to ensure clear definitions and requirements and adequate time for implementation of changes.”

THE MEASURE

8. This measure will add to the information businesses will be required to provide to HMRC via PAYE real time returns completed by employers.
9. In addition,
 - The self-employed will be required to provide information on start and end dates of self-employment via their self-assessment returns; andShareholders in owner-managed businesses will be required to provide the amount of dividend income received from their own companies separately from other dividend income and the percentage share they hold in their own companies via their self-assessment returns.
10. This response focuses solely on the proposal for employers to record and report the number of hours worked by employees as we believe that this imposes the biggest burden on businesses.

INFORMATION TO BE REQUIRED FROM EMPLOYERS: HOURS WORKED**OUR CONCERNS**

11. Actual hours worked is not data that is currently collected for most employees, particularly those paid by way of monthly salary. Hence, the data collected in many cases will be at best an estimate based on contractual hours. This applies in practice also to national minimum wage reporting.
12. As employers embrace flexible working more, employees' hours are likely to change more often than in the past. This means that any initial data provided is likely to become out of date more quickly, unless the employer performs a regular check of hours being worked and reported. There are several other reasons why data is likely to be unreliable, as set out in the [summary of responses](#) to the consultation document.
13. The current PAYE RTI reporting rules require that hours worked is reported in bands, rather than 'by the hour' reporting. Hence, this will place an additional compliance burden on employers without resulting in additional accurate information that HMRC can rely on.
14. New reporting infrastructure would also need to be adopted by employers to ensure that RTI reports include the additional information requested. The government's estimate of this additional one-off cost is £35m but through discussions with our members, we consider that this is likely to be significantly higher. We also do not agree with the government's assessment that ongoing costs would be 'negligible'.
15. As set out in the summary of responses, "respondents highlighted that these updates and any other technical upgrades would be costly and administratively burdensome for business. Some software and payroll providers reflected that the expected benefit of this data did not outweigh the burden on business, particularly where the resulting data is expected to be inaccurate."
16. According to the government's own [statistics](#), there are approximately 1.4m employers in the UK. Based on this figure, the government is therefore estimating that it would cost on average £25 for each business to set up the infrastructure it needs to collect hours worked data. We believe that this estimate is far lower than it will be in practice. .
17. The reason that the number of hours worked is not currently collected for most employees paid by way of monthly salary is that it is not needed to calculate how much such employees are paid and therefore how much tax should be accounted for on their earnings. This is borne out by the TIIN published alongside the legislation which says: "This measure is not expected to have an Exchequer impact."
18. This suggests that there is doubt as to whether collecting hours worked information is "information ... relevant for the purpose of the collection and management of any of the taxes listed in s1, Taxes Management Act 1970..." and therefore whether the proposed legislation will provide the desired vires for imposing this additional burden on employers.
19. This is also demonstrated by the comments included in the original consultation document on employee hours, which stated; "Having a more detailed understanding of the hours that employees work would help with the analysis of labour market trends across government. It would help improve government interventions in the labour market through increasing our understanding of both voluntary part-time work and underemployment. " There is no mention here of assistance with the collection or maintenance of tax.
20. We believe that a more appropriate way for HMRC to obtain the information would be to carry out more extensive analysis of the information gathered through the existing ASHE (Annual Survey of Hours and Earnings) survey. The information requested under the survey already includes the number of basic and overtime hours carried out by the employee for the pay period.
21. We appreciate that the ASHE survey is only sent to approximately 300,000 businesses each year and is based on a 1% sample of employee jobs taken from HMRC records. This therefore does not give HMRC a clear picture of the hours worked by every employee in the

UK. However, we do not believe that HMRC has the resource to check every single employee's hours worked position. We therefore question what additional benefit would be gained from introducing this additional reporting requirement.

OUR RECOMMENDATION

22. Our recommendation is that the requirement to provide hours worked information is excluded from the list of information to be gathered by employers.
23. If the government is determined to proceed with this requirement, we request that a draft of the secondary legislation implementing it is made available as soon as possible so that software houses, representative bodies, agents and other stakeholders have sufficient time to examine it and discuss the implications with HMRC.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).