



FINANCE BILL 23-24 CLAUSE 35: ADDITIONAL INFORMATION TO BE CONTAINED IN RETURNS UNDER TMA 1970 ETC

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Briefing for MPs on the **Finance Bill** by ICAEW Tax Faculty.

For questions on this paper please contact ICAEW's Tax Faculty at taxfac@icaew.com quoting REP 5/24.

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EXECUTIVE SUMMARY

1. The FB legislation will not achieve the government's objectives and needs to be redrafted.

THE MEASURE

2. As noted in the [Explanatory Notes](#), in this clause HMRC intends to implement three specific new requirements, including requiring employers to provide additional information via Real Time Information PAYE reporting.
3. The clause will apply for tax year 2025/26 onwards.

OUR CONCERN AND OUR RECOMMENDATIONS

4. ICAEW's primary concern is the proposed additional reporting obligation for employers. ICAEW notes that it is intended that regulations will initially specify reporting data concerning employee hours. However, it has not been explained why data concerning employee hours is relevant for the purposes of the collection or management of the taxes listed in s1, Taxes Management Act 1970 (ie, income tax, corporation tax and capital gains tax).
5. As a result, ICAEW considers that the FB legislation will not work to obligate employers to report hours worked or hours paid. This is because the clause confines the power to collect information to data needed for the collection and management of tax. Subclause (1) that provides wider vires is overruled by the adjacent more restrictive subclause (2).
6. Hours worked, while needed to calculate gross amounts of pay for workers paid by the hour, are not needed for the collection and management of tax. Tax is a separate calculation based on total pay.
7. If hours are needed to check national minimum wage compliance, this is not tax.
8. Even if the clause were rectified, it is not clear how employers should calculate the number of hours to be reported for salaried workers. If an individual is paid an annual salary monthly and expected to work 40 hours per week, how should employers deal with bank holidays, annual leave, etc, and varying lengths of months. Can the employer divide the annual number of hours (ie, 40 hours times 52) by 12 in the same way that they would the payment of salary?
9. It is also contrary to ICAEW's *Ten Tenets for a Better Tax System* by which we benchmark the tax system and changes to it (summarised in Appendix 2).

SUGGESTED AMENDMENT

10. ICAEW suggests that lines 9-22 on page 28 need to be redrafted to allow non-tax information to be collected from employers but with built-in safeguards so that it cannot be used to replace existing data sources available to government (eg, a census).

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>).