

The Information Commissioner's response to HMRC public consultations and discussion documents:

- The tax administration framework: Supporting a 21st century tax system: Call for evidence
- Clamping down on promoters of tax avoidance: Consultation
- Helping taxpayers get offshore tax right: Discussion document
- Preventing and collecting international tax debt: discussion document
- Raising standards in the tax advice market: professional indemnity insurance and defining tax advice: Consultation

Response to each of the above can be found in following document (see successive headers):

About the ICO

The Information Commissioner has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

Introduction

The Information Commissioner's Office (ICO) welcomes the opportunity to respond to HMRC's public consultations which follow up on its ten year strategy entitled 'Building a trusted, modern tax administration system.' As several of the resulting consultations raise issues with common themes, the ICO has elected to provide a single response. Although our comments appear in relation to specific consultations, the principles we refer to, especially those relating to any data sharing, are of general application.

The tax administration framework: Supporting a 21st century tax system: Call for evidence

The ICO recognises the statutory responsibilities that HMRC has in administering our tax system, including properly collecting revenue and making payments to ensure that everyone pays the right amount of tax. These also include driving efficiencies and being flexible to respond to the needs of a modern tax system. It is well understood that HMRC requires detailed and accurate financial and other information about taxpayers to carry out its functions. Taxpayers may provide much of this information themselves, but HMRC also relies on information that it receives from other sources, such as agents, employers and other tax authorities.

Given these factors, maintaining the public's trust and confidence is vital and is recognised in HMRC's call for evidence on its tax administration framework. This trust and confidence is likely to be maintained when data is shared legitimately and responsibly.

The ICO welcomed the opportunity to engage with the Office for Tax Simplification (OTS) earlier this year during the OTS' consultation on the potential for the use of smarter use of third party data¹ in which we highlighted the importance of embedding data protection principles into any potential third party data sharing. Data protection legislation is not a barrier for sharing arrangements that are fit for purpose, that ensure that the data sharing is necessary and proportionate, and that uphold individuals' rights.

Therefore when exploring any proposals for data sharing, such as using personal data from third parties more extensively, for example, to pre-populate tax returns, HMRC will need to take account of the ICO's data sharing code of practice which was laid in Parliament on 18 May 2021.² The ICO has also published a range of additional resources on its data sharing hub³, which is expected to expand over coming months.

The ICO would be pleased to engage with HMRC as it develops its policies involving the use of personal data after the present public consultation.

¹ Making tax easier through smarter use of third party data - GOV.UK (www.gov.uk)

² Data sharing: a code of practice | ICO

³ Data sharing information hub | ICO

Clamping down on promoters of tax avoidance: Consultation

HMRC is presently consulting on how it can alert taxpayers to tax avoidance schemes⁴. We acknowledge that there is a public interest in protecting taxpayers from engaging with schemes which might expose them to risk.

It is proposed that HMRC will publish the name and details of schemes and relevant promoters in circumstances where HMRC suspect they are tax avoidance schemes and have begun their investigations.

Publication in the circumstances envisaged could be prejudicial and adversely impact on individuals, especially as it would take place before the investigation has concluded or findings made against the promoters concerned, and indeed, HMRC may conclude that the schemes under investigation are not tax avoidance schemes.

The ICO therefore welcomes the approach that HMRC has already taken in preparing a Data Protection Impact Assessment (DPIA) for the proposals in this consultation and which sets out proposed safeguards. These include an intention on the part of HMRC to publish only after the promoter has had an opportunity to make representations about publication. Furthermore, HMRC intends to adopt a case by case approach, involving HMRC's own internal governance process which would require the agreement of solicitors and that of a senior independent officer to publication. The promoter will also have a right to appeal against any decision to publish. HMRC will nonetheless need to consider the necessity and proportionality of publication in each case, which will include taking account of the potential impact on the individual, as well as any public interest in publication.

HMRC will also need to consider the necessity and proportionality of any proposed targeted sharing, whether with users of schemes that are under investigation or others, and assess any additional risks and possible mitigating measures in doing so, which it should set out in its DPIA.

⁴ Clamping down on promoters of tax avoidance: Consultation

Furthermore, given the potential impact on individuals as a result of publication, especially if HMRC were to conclude that the scheme is not a tax avoidance scheme, HMRC could usefully clarify its process for ensuring that the information on the published list of ongoing enquiries is kept up to date. At present, HMRC proposes to confirm that the list is correct once a year. It also suggests that if it concludes that a scheme is not a tax avoidance scheme, it will remove the details at the earliest opportunity. HMRC will however need to consider whether additional communications might be required, especially if it had proactively shared information with users at an earlier stage to tell them that a scheme was under investigation.

When considering the steps that HMRC might take in publicising the names of promoters of tax avoidance schemes, whether on a published list or in any other manner, HMRC will need to consider whether this sharing of personal data might amount to an international transfer. The ICO has published guidance⁵ which explains various safeguards which might be employed, as there are only limited exceptions on which an organisation might rely. In particular, the exception which allows such transfers for important reasons of public interest should not be used for systematic transfers. In the absence of any of the specified safeguards, HMRC should therefore only rely on this exception in specific situations, and each time HMRC will need to be satisfied that the transfer is necessary for an important reason of public interest.

HMRC should ensure that it keeps its DPIA under review. In particular, it will need to set out its assessment of any material changes or developments in the proposals as they arise throughout the development of this policy, including any amendment to the risks identified and the mitigating steps that HMRC plans to take to address them.

⁵ International transfers after the UK exit from the EU Implementation Period | ICO

[Helping taxpayers get offshore tax right: Discussion document](#)

HMRC is considering contacting individual taxpayers and their agents or intermediaries to deliver reminders that the taxpayer has known offshore assets which will need to be included in their upcoming tax return.

HMRC will need to look carefully at the source of the information it might rely on to 'pre-select' taxpayers for such reminders to ensure that it has been shared lawfully and appropriately with HMRC. This might be particularly important in the context of information supplied to HMRC where a financial institution did not exercise its discretion to apply certain exemptions and thresholds when complying with its reporting obligations.

HMRC will also need to consider carefully the lawful basis for processing that it might rely on for any sharing of personal data in these circumstances. This should form part of HMRC's assessment of the necessity and proportionality of the sharing, which should also include safeguards to protect taxpayers from inappropriate disclosures and communications. In particular, any safeguards will need to address situations such as where an agent ceases to act for the taxpayer. HMRC might also usefully consider how it could deliver messages of this nature in ways that do not disclose any personal data.

[Preventing and collecting international tax debt: discussion document](#)

HMRC has put forward the possibility of using personal data received from other tax authorities, for example, under the international Common Reporting Standard (CRS) exchange of information agreement to assess if a taxpayer has the means to pay their international tax debt. It is also considering whether such data can be combined with other data to identify professions, activities or jurisdictions with a higher risk of creating this kind of debt.

As mentioned above, in relation to '*Helping taxpayers get offshore tax right*', HMRC will need to assess carefully the sources of the information it relies on when considering a taxpayer's means to pay. This will form part of its assessment of the proportionality of any action HMRC might take in reliance upon it. HMRC will also want to take account of the provisions in UK GDPR regarding profiling and automated decision making and the ICO's guidance in this respect.⁶

⁶ What is automated individual decision-making and profiling? | ICO

Raising standards in the tax advice market: professional indemnity insurance and defining tax advice: Consultation

HMRC intends to require tax advisers to carry professional indemnity insurance and wants to ensure that individuals can check on the insurance status of their adviser. HMRC will need to ensure that any personal data shared on any portal accessible by the tax payer (or more widely) about the insurance status of tax advisers is limited to what is necessary and proportionate.

HMRC will also need to consider the circumstances in which personal data relating to tax advisers who do not comply with requirements for insurance will be published. HMRC will also need to ensure that the information on which it intends to rely is accurate and up to date.

Future engagement

We welcome the opportunity to engage with HMRC in the development of its policy proposals arising under any of the present consultations and discussions papers which fall within the remit of the ICO.

We also look forward to meaningful consultation with HMRC under Article 36(4) UK GDPR in respect of any future legislative proposals involving the processing of personal data. The requirement for consultation under this provision is a continuing obligation which should be kept under review. We therefore welcome the opportunity to engage further with HMRC on its proposals to clamp down on the promoters of tax avoidance which has already been referred to us, if there should be any material change to the proposed policy after the public consultation responses have been considered.

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