

# Briefing document

## HMRC information powers

### Introduction

Information requests generally arise during an enquiry. In recent years we have seen an increase in the number of investigations being carried out by HMRC, particularly in relation to corporates, leading to more information requests being issued.

This note gives an overview of HMRC informal information requests and formal information powers. It also covers additional measures such as identity unknown notices, proposals to amend HMRC's Information powers, notification of offshore structures, persons with significant control, Know Your Customer (KYC) data, and cross-border co-operation.

### Information available to HMRC

Traditionally, the information available to HMRC was limited and came mainly from tax returns and financial accounts. There has been a gradual change of late seeing HMRC having access to much more information, both on a domestic level and from overseas. The introduction of HMRC's Connect database, a data-analytics tool that analyses information available to HMRC, has enabled HMRC to see much more closely the links between a taxpayer and their different business interests, properties and family links of those individuals and much more.

HMRC now also have much more visibility on a global scale, indeed HMRC recently stated that 90% of global GDP is now subject to automatic exchanges of information. In the corporate sphere, Country by Country reporting to tax authorities under the OECD Action 13 BEPS (Base Erosion and Profit Shifting) initiative, relevant to all groups with turnover of at least €750million, will have a significant impact on cross border information sharing. In addition, over 100 jurisdictions have joined the Common Reporting Standard ('CRS'): a global initiative where financial intermediaries are required to file details of individual accounts with national tax authorities on an annual basis.

As a result, we are seeing a change in how HMRC are using their formal powers. HMRC are now much more confident about their right to ask for what they are requesting, and may even have an expectation themselves of what response they will receive. The number of formal information requests issued as part of an enquiry is on the rise, as compared with standalone requests.

### Informal information requests

HMRC's primary formal powers are contained within Finance Act 2008 Schedule 36, but it is rare for HMRC to use these powers without first making an informal request.

An informal notice is an opportunity to have dialogue with HMRC and find a pragmatic way forwards. In the current climate, ignoring an informal request will likely just trigger a formal notice and then an important negotiating space has been lost. If the organisation is busy, a more pragmatic approach could be to ring the inspector and agree a revised timetable or methodology for the request.

Ultimately, the scope of HMRC's request should be underpinned by the rules and regulations in Schedule 36, although for an informal request HMRC will often scope their request more broadly. HMRC's formal powers should be carefully considered to determine whether or not a request is reasonable. [Note that GDPR regulations have a carve out for information requests by law enforcement and tax collection agencies.]

### Formal information powers

The two main types of formal information notice that can be issued by HMRC under Schedule 36 are taxpayer notices (first party) and third party notices (where the identity of the taxpayer is known to HMRC, but the request is sent to another party to answer questions about the initial taxpayer).

Third party notices are often approved by Tribunal and, if so, the notice cannot be appealed. There is no set timeframe in the legislation, but an appeal against a formal information notice (that isn't Tribunal-approved) must be made within 30 days. The appeal needs to have good grounds attached to it, so should be carefully considered.

For HMRC to be entitled to ask for information, it must be **reasonably required** by the inspector for the purpose of checking the taxpayer's tax position. This is often an area for debate with HMRC. It is important to remember that information needs to be reasonably required for the current tax position; not a hypothetical question in the future. For HMRC, the request might be made with a view to moving an enquiry onwards and keeping the momentum. It might also be about gaining a key piece of information that they believe will clarify the technical area under enquiry. There are other restrictions as to the type of information HMRC are entitled to under their formal powers which also need to be taken into consideration when responding to information requests. For example, legally privileged information is scoped out in Schedule 36.

Most organisations and individuals will understandably prefer to receive an informal information request from HMRC, because there is the scope to discuss with HMRC how that information request can be satisfied, and that gives inbuilt flexibility to the process.

In most cases we would hope matters can be resolved before Schedule 36 notices are issued, but, where notices have been issued, it is important to understand the ramifications of any potential non-compliance. Deloitte would seek to work collaboratively with HMRC to meet the requests of the notice, whilst protecting the client's position and narrowing scope where possible.

<b>Information requests</b>	<b>Informal notices</b>	<b>Formal notices</b>
Format	<ul style="list-style-type: none"> <li>• HMRC could issue this notice in any format. For example, in a letter, meeting or call.</li> </ul>	<ul style="list-style-type: none"> <li>• A formal notice under Schedule 36 FA 2008 will be issued by HMRC.</li> </ul>
Flexibility/Appeals	<ul style="list-style-type: none"> <li>• Discussions may be possible with HMRC around what needs to be provided.</li> </ul>	<ul style="list-style-type: none"> <li>• The taxpayer will need to comply with the request unless successfully appealed.</li> <li>• Appeals must be made formally.</li> </ul>
Penalties	<ul style="list-style-type: none"> <li>• There are no penalties for not providing information, although refusal is practically likely to be followed by a formal notice.</li> <li>• Lack of cooperation may impact penalty mitigation later.</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply penalty of £300 and an additional £60 each day in which the failure continues.</li> <li>• Inaccurate information can lead to a penalty of up to £3,000.</li> </ul>

## **Additional measures**

### **Identity unknown notices**

Identity unknown notices were introduced as part of HMRC's response to mass-marketed avoidance schemes that were common in the early-2000s. Whilst 'standard' Schedule 36 notices identify the ultimate taxpayer, HMRC can also request details of a group of persons who can be described (for example, *the persons who took advice on XYZ planning*), but whose individual identities remain unknown.

### **Amending HMRC's Civil Information Powers**

In July 2018, HMRC issued a consultation 'Amending HMRC's Civil Information Powers'. The consultation examined whether HMRC's Schedule 36 powers remained fit for purpose a decade after their introduction. A key driver cited in the consultation was that HMRC anticipated being asked to provide more detailed information to overseas tax authorities to assist them in their review of the high-level data already provided by the UK under the CRS. We await HMRC's reaction to the initial consultation responses.

### **Offshore structures**

In December 2016, HMRC announced a consultation on a potential new obligation for intermediaries to notify HMRC of offshore structures that they provide to clients, and also of the client lists connected with those structures. Since the consultation was undertaken, the OCED and the European Union have commenced work on similar measures. We understand that HMRC intends to work with its international partners on the development of multinational standards and will take into account the responses received to the consultation.

### **Persons with significant control**

As of April 2016, all UK limited liability partnerships and companies are obliged to identify people with significant control and to record this on a public register at Companies House, often referred to as the "beneficial ownership register". There is also a non-public beneficial ownership register for trusts. In July 2018, HMRC published a draft bill setting out proposals to extend this to foreign companies that own or are seeking to acquire UK land or property, or bid for UK government contracts. In addition, the UK has joined over 50 other

jurisdictions in committing to share beneficial ownership information, albeit the practicalities of this remain to be decided.

### **Schedule 23 FA 2011**

In addition to its information powers in Schedule 36, HMRC has the power to request certain types of data from a range of data holders such as employers, rental businesses, banks and other financial institutions under Schedule 23 FA 2011. These powers are used to help HMRC gather specific pieces of information about groups of taxpayers who are not themselves the recipients of the information request. It is anticipated that the data received under the requests will then be used by HMRC for their risk analysis into those parties whose data was exchanged under the request. For example, these powers can be used by HMRC to approach the UK entities of offshore service providers to request KYC data records in relation to offshore trusts and companies formed by the service provider for their clients. Data requests under these powers can also cover a period up to 4 years, and the appeal rights against such notices are relatively narrow compared with HMRC's powers under FA 2008. There appears to be a recent project whereby HMRC are using their Schedule 23 FA 2011 powers to obtain third party information instead of Schedule 36 FA 2008 third party information notices.

### **Cross-border co-operation**

HMRC are increasingly working alongside other tax authorities in several areas, including handling ad hoc information requests. This could be HMRC either gathering information on behalf of another tax authority or HMRC requesting other tax authorities to gain information on non-UK parties. As organisations are increasingly globalised, HMRC is likely to continue to be interested in seeking information from overseas branches, offices, customers and suppliers. This trend will only increase through the automatic exchange of information, whether through the Common Reporting Standard or Country by Country reporting.

### **Find out more...**

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