By email: tafrinformationdata@hmrc.gov.uk

20 July 2023

Dear TAFR Information and Data Team

Re: Tax Administration Framework Review—information and data

The BVCA is the industry body and public policy advocate for the private equity and venture capital ("private capital") industry in the UK. With a membership of over 750 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside London and 90% of the businesses receiving investment are small and medium-sized businesses.

This letter sets out the BVCA's response to the Information and Data Call for Evidence that was published on 27 April 2023. We have not responded to all of the questions raised in the consultation, but have instead focused on those questions of particular relevance to our members. In some cases we have combined our answers to more than one question. An issue of particular importance to our members relates to tax references for non-resident partners in English Limited Partnerships. This is a topic on which the BVCA has had a number of discussions with HMRC in previous years.

While the consultation focuses on the provision of information to HMRC by taxpayers, our members' experience is that it is often very difficult for taxpayers to obtain information from HMRC (for example, residency certificates, or the reason for issuing a penalty notice). Large businesses can escalate problems to their customer compliance managers, but this is far from an ideal solution and smaller businesses do not have this option. For most investment partnerships this can be a real problem, as the only access is to the self assessment helpline, which can involve multiple calls with long waiting times. As a result it can take months to resolve minor administrative issues.

Given the wide remit of the TAFR to review the UK's tax administration system, we consider that it is important for any assessment of the processes by which information and data passes between HMRC and taxpayers to look at the position in both directions. We would be happy to provide more details if that would assist.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of our responses in more detail (please contact Rachel Gauke at rgauke@bvca.co.uk).

Yours sincerely

Maria Carradice

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Chair, BVCA Taxation Committee

Question 2: UK taxpayers are responsible for overall accuracy of their return(s), including supporting information and data. This reflects practice in OECD partner countries, which pre-populate taxpayer return(s):
A. What are your views on retaining the principle that taxpayers are responsible for accuracy of their return(s)?
B. What process(es) should be available for challenging and resolving discrepancies in information and data pre-populated in taxpayer return(s)?
C. Are there any specific alternative approaches to accountability HMRC should consider?

In our view it would be essential for taxpayers to retain the ability to amend any data that is automatically entered into their tax returns by HMRC. It is not clear how pre-population would result in cost savings for taxpayers, as they would still need to check their returns, make any necessary corrections and confirm their accuracy. In the case of more complex returns the costs for taxpayers could increase, due to the need to check and amend pre-populated data. There may also be confusion and the need for potentially lengthy explanations if taxpayers' data differs from that which has been pre-populated.

One of the issues that would need to be addressed concerns situations in which the limitations of the current online SA tool requires taxpayers to file using third party software. For example, the current tool can only accommodate five partnership interests, so taxpayers with multiple partnership interests need either to use a white space explanation, or to use third party software. Unless the online SA tool is to be significantly enhanced, it is not clear how pre-population would work in these circumstances: for instance, whether third party software could be used in the same way as at present, or would need to be linked to the pre-population system in some way.

Consideration would also need to be given to the claiming of reliefs: would a pre-populated return automatically claim all appropriate reliefs? It would need to be open to taxpayers to amend any pre-populated claims where appropriate.

We are concerned that pre-populated returns that have not been verified by the taxpayer should not be used as an automatic basis for the collection of tax under PAYE, particularly in real time. This is again a particular concern for taxpayers with complex affairs and has the potential to result in significantly more tax being collected than is due for substantial periods of time before the position can be rectified.

While only affecting a small proportion of taxpayers, we would also be interested to know whether pre-population would effectively put an end to the option to file a paper tax return. The proposal to pre-populate returns, and share information with taxpayers for their review, would not to appear to be workable in the context of paper filing.

Question 3: In considering potential reforms by HMRC of its information and data-gathering powers, and applicable safeguards:
A. What are your views on the prescriptive framing of HMRC's current information and data powers?
B. What are your views on HMRC adopting a flexible approach to its powers, such as that used by Australia and Estonia?
C. What are your views on alternative approaches, such as the Slovenian approach set out above?
D. Would it be beneficial to taxpayers for HMRC's current, and/or reformed powers to be consolidated into a single piece of legislation?

Question 10: What are your views on HMRC exploring the introduction of a more graded information and data power to reduce administrative burdens and delays for taxpayers and HMRC? Do you have any suggested alternative approaches that could help to improve the process for taxpayers and HMRC?

We consider that there could be merit in the suggestion of a more stringent approach to data collection for taxpayers with a proven history of deliberate non-compliance. In general however, HMRC should not be empowered to require the provision of information that goes beyond what it needs to ensure that taxpayers pay the correct amount of tax, especially if this leads to significant amounts of taxpayer time being taken to comply, or the need to employ a tax representative. Appropriate safeguards are needed to ensure that this is not the case.

Question 5: What are your views on:
A. The advantages, disadvantages, or any specific considerations of HMRC introducing unique taxpayer identifier(s) to enable more accurate information and data-matching to improve tax administration, including fuller pre-population of taxpayer returns?
B. Similar approaches used by partner OECD countries?
C. Alternative unique identifier(s), or data-matching mechanisms which could be utilised to improve tax administration, including fuller pre-population of taxpayer returns?

We acknowledge that a single unique taxpayer identifier that is issued speedily, accurately and consistently could be helpful for UK residents, or non-residents in trading partnerships who have a UK tax liability, provided it can clearly demonstrate benefits over and above the existing system of unique tax reference numbers (UTRs).

However, the position is different for non-resident partners in investment partnerships. We have previously made representations about the difficulties our members have faced in relation to the current system of UTRs for non-resident partners in English (or Scottish) Limited Partnerships, and would be concerned to ensure that any new system of unique identifiers would not replicate the same problems.

This issue has a long history, but essentially investment partnerships have, for many years, been able to use a "dummy UTR" for non-resident partners when completing the partnership return rather than the partner needing to register for a formal UTR. This policy reflects the fact that a non-resident partner in an investment partnership should not be subject to tax in the UK, and followed widespread issues with non-resident partners being sent notices to file tax returns and late filing penalties in error (as they did not in fact have a UK tax filing obligation). These issues have caused real investor relations concerns for the UK funds industry. Following changes made by the Finance Act 2018, the use of a standardised UTR was formalised with specific standard UTRs used for non-resident partners based on their CRS status.

It would be important in any system involving a new unique identifier that the position of non-resident partners is considered and managed appropriately, recognising that the non-resident partners will be partners in multiple partnerships and could end up with multiple reference numbers unless there is an extremely effective cross referencing system. In our view the current standard UTR as set out in FA 2018 is a simpler solution for entities with no UK tax liability.

As noted above, timing and accuracy would be key to this process. For UK residents, or non-residents in trading partnerships, it is essential that any identification number is issued accurately and quickly. We are currently aware of requests for new UTRs taking many weeks to issue and this in turn can delay the filing of partnership returns.

We also observe that measures would need to be put in place to address the risks of cyber crime and identity fraud that would be associated with requiring taxpayers to provide a unique identifier to every potential data-holder, including a rectification process for when things go wrong.

Question 6: What are your views on the advantages and disadvantages of adopting a set of 'schema' like the OECD model, to standardise information and data reporting from third parties? If HMRC were to explore this further, how should any new obligations in this area be structured?

We consider that a standardised reporting schema could be attractive in theory, but foresee some practical obstacles stemming from the fact that data-holders currently collect data for their own purposes rather than for HMRC. They may therefore need to incur significant cost in order to collect data in the format required by HMRC, and at least some of these costs are likely to be passed on to consumers. A standardised schema is also likely to involve a loss of flexibility.

The appropriateness of the schema would also need to be considered in detail to make any information meaningful for investment partnerships or funds, as the current position with CRS involves reporting of some data points that have no bearing on the partners' UK tax liability.

Question 7: What are your views on adopting a different approach for submitting information and data on a regular basis to HMRC, including alternatives to the current notice regime?

There are some circumstances, such as monthly interest payments by banks, in which it would make sense for information to be provided regularly (and in some cases already is). In general, however, a regular flow of information and data, as opposed to HMRC only receiving information and data that it has specifically requested through a notice, would be expected to result in a greater quantity of data. This would only be appropriate if HMRC is to be resourced with the additional personnel that would be required to process this additional data and to manage taxpayers' requests for checks and corrections.

An increase in the amount of data collected would also be expected to result in a correspondingly increased risk of GDPR failures, with all of the negatives consequences these entail. Appropriate safeguards would need to be designed with the utmost care.

Question 8: What are your views on the frequency with which information and data should be reported to HMRC, particularly with a view towards the increasingly real-time nature of tax reporting, and other taxpayer services?

There needs to be a mechanism whereby data that is provided directly to HMRC can also be provided to the taxpayer, so that it can be checked and corrected if necessary. Some data needs commentary to support it and on its own can be taken out of context. The mechanism that would enable taxpayers to provide this input would need careful consideration. In particular, it should be possible for taxpayers to make corrections and provide commentary without this automatically triggering an enquiry.

Taxpayers should ultimately be able to override information provided by third parties if this is incorrect. Our members' experience is that it is currently very difficult for taxpayers to correct records held by HMRC for simple errors such as an incorrect name or address, and so this should be borne in mind when considering HMRC's ability to resource the administration of a significantly increased quantity of taxpayer information. Taxpayers would need to be protected from the imposition of interest or penalties in respect of delays caused by the time taken by HMRC to verify corrections.

Question 12: What are your views on creating a category of information notice that covers connected persons or third parties (this could cover the 'person with significant control', in the case of a company)?

In our view, removing taxpayer safeguards in the context of information notices should be approached with great caution. From the perspective of the private capital industry, we would not be in favour of a category of notice that covers "persons with significant control", as this can be hard to interpret in the context of funds that are structured as limited partnerships.

Question 13: What are your views on updating Section 114 Finance Act 2008 to take into account the issues set out above?

We note that this includes a proposal to introduce a broader set of powers to enable HMRC to obtain and access any type of information and data (including software) from any system that stores or processes information or data relevant to UK tax administration.

We would repeat our comments above to the effect that HMRC should only be able to require information if this is necessary for it to fulfil its statutory functions. The law should not empower HMRC to collect information that goes beyond what it requires to collect the correct amount of tax, particularly if these powers come at a cost to the taxpayer or data collector. We would also repeat the point that an increased flow of information would require HMRC to have a greater number of personnel to analyse the data. Additional checks would appear to increase the risk of delays in agreeing complex tax returns.

Regarding the "highly mechanised commercial shared service centres that turn taxpayers' information and data into tax returns at low cost", referred to in the consultation paper, we would suggest that HMRC's concerns could be more appropriately addressed by a system under which the service centres are subject to an audit by a tax professional, who could provide assurances regarding how the service operates. This would be preferable to allowing HMRC free access to large quantities of taxpayer data where there is no reason to suspect non-compliance. Again, great care over confidentiality and cyber security would also be necessary.