

Information Powers

Who is likely to be affected?

Businesses holding details of a customer's name and address as well as other data which identifies a customer, for example, a bank which can identify a customer from a bank account number.

General description of the measure

A new power allowing HM Revenue & Customs (HMRC) to require a data-holder to provide a person's name, address and date of birth from identifying information held by HMRC and provided to the data-holder.

Policy objective

HMRC or an overseas tax authority may hold information which identifies a person but without knowing that person's name and address. In order to check that person's tax position the full identity is required. The new power will allow that person's identity to be ascertained. Once the identity is known, HMRC's existing information powers can be used to obtain any further information that may be required.

Background to the measure

The fact that HMRC's information powers do not work satisfactorily where identifying information is held, but full identity of the person is not known was highlighted in the recent report by the Global Forum on Transparency and Exchange of Information for Tax Purposes about the UK's ability to exchange information to the international standard. This measure remedies that shortcoming.

The Exchequer Secretary to the Treasury announced at Report Stage debate of Finance Bill 2011 that the UK would introduce regulations in 2012 to allow HMRC to exchange information to the international standard. A full consultation on the proposal was issued on 7 July 2011 and closed on 29 September 2011.

Detailed proposal

Operative date

The new power will be effective from Royal Assent to the Finance Bill 2012.

Current law

Schedule 36 of Finance Act 2008 contains a power to require information about a person from a third party where the identity of the person is known (paragraph 2) and a power to require information where the identity of the person is not known, but only where there is a likelihood of serious loss of tax (paragraph 5). Neither power covers the unusual situation where there is suspicious activity (but insufficient evidence of a serious loss of tax) by a person whose identity is not known but for whom information is held from which identity can be ascertained.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to insert a new power into Schedule 36. It will apply only where HMRC holds information from which a person's identity can be ascertained and will be limited to obtaining basic identifying information of the person whose tax position is being checked, i.e. name, address and date of birth. The new power will not require tribunal approval, but in line with the existing paragraph 5, power may only be exercised by an authorised officer of HMRC and the data-holder will have the same right of appeal against a notice.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer. Any impact will be set out at Budget 2012.				
Economic impact	This measure has no significant economic impacts.				
Impact on individuals and households	There will be no direct impact on compliant UK individuals and householders.				
Equalities impacts	Equality has been carefully considered and it has been concluded that there are no adverse impacts from this change on groups with different protected characteristics.				
Impact on business including civil society organisations	The only direct impact on businesses will be the provision of the name, address and, if known, date of birth of a person from identifying information provided by HMRC. A notice will only be issued to a person who can be expected to have that information readily available. The cost is expected to be negligible.				
Operational impact (£m) (HMRC or other)	As it is anticipated that few additional notices will be issued, the costs incurred by HMRC will be negligible.				
Other impacts	<u>Privacy impact:</u> Strict procedures will be in place to demonstrate that the interference with privacy is proportional and justified, and thus lawful.				

Monitoring and evaluation

The implementation oversight forum will consider changes brought about by this measure. The forum, with a majority of external members, was established to consider the changes brought about by the Review of Powers, Deterrents and Safeguards.

Further advice

If you have any questions about this change, please contact Richard Davey on 020 7147 2391 or send via email to powers.review-of-hmrc@hmrc.gsi.gov.uk.

1 Information powers

(1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.

(2) After paragraph 5 insert –

“Power to obtain information about persons whose identity can be ascertained

5A (1) An authorised officer of Revenue and Customs may by notice in writing require a person to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that –

- (a) the taxpayer’s identity is not known to the officer, but
- (b) the officer holds information from which the taxpayer’s identity can be ascertained.

(4) Condition C is that the officer has reason to believe that –

- (a) the person will be able to ascertain the taxpayer’s identity from the information held by the officer, and
- (b) the person obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “Relevant information” means all or any of the following –

- (a) name,
- (b) last known address, and
- (c) date of birth (in the case of an individual).

(7) This paragraph applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “the taxpayer” are to be read accordingly).”

(3) In paragraph 6 (notices), in sub-paragraph (1), for “or 5” substitute “, 5 or 5A”.

(4) In paragraph 31 (right to appeal against notice given under paragraph 5), after “paragraph 5” insert “or 5A”.

(5) Accordingly, in the heading immediately before paragraph 31, at the end insert “or 5A”.

- (6) In section 18D of TMA 1970 (savings income: content of regulations under section 18B), in subsection (1), for “sections 17 and 18” substitute “paragraph 1 of Schedule 23 to the Finance Act 2011 (data-gathering powers)”.
- (7) The amendments made by subsections (1) to (5) apply for the purpose of checking the tax position of a taxpayer as regards periods or tax liabilities whenever arising (whether before, on or after the day on which this Act is passed).
- (8) The amendment made by subsection (6) is treated as having come into force on 1 April 2012.

EXPLANATORY NOTE

INFORMATION POWERS

SUMMARY

1. This clause inserts a new paragraph 5A into Schedule 36 to Finance Act (FA) 2008. It provides a power for HM Revenue & Customs (HMRC) to require a third party to provide the name, address and date of birth (if known) of a person for whom HMRC has information from which that person's identity can be ascertained. A notice will only be issued to a person who can be expected to be able to identify the taxpayer from the information provided by HMRC in the notice.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for amendments to Schedule 36 FA 2008.
3. Subsection (2) inserts the new power into Schedule 36.
4. New paragraph 5A(1) provides that an authorised officer of HMRC may issue a notice requiring a third party to provide relevant information about a person, subject to conditions the conditions set out in new paragraphs 5A(2) to (5)
5. New paragraph 5A(7) ensures that the identity details of all persons must be provided where the identifying information provided relates to more than one person, for example in relation to a joint bank account.
6. Subsections (3) to (5) make consequential amendments to Schedule 36 including ensuring that the same rights of appeal apply as for a notice under paragraph 5 of Schedule 36.
7. Subsection (6) updates the reference in section 18D Taxes Management Act ("TMA") 1970 to sections 17 and 18 of that Act which are repealed by Schedule 23 FA 2011 from 1 April 2012.
8. Subsection (7) provides that the new power, which will come into force on Royal Assent, will apply to tax whenever due.
9. Subsection (8) provides for the amendment in subsection (6) to take effect from 1 April 2012.

BACKGROUND NOTE

10. This new power is added to the range of information powers in Schedule 36 FA 2008 which may be used in carrying out a check of a person's tax position. In a case where the full identity of the taxpayer is not known but information is required from a third party, the existing powers can only be used where a serious loss of tax is suspected. The new power allows HMRC to issue an information notice in a case where identifying information is held (for example a bank branch and account number) in order to find out relevant information.
11. Relevant information is narrowly defined and only consists of the name, address and date of birth (if known) of the person to whom the identifying information relates. Once the taxpayer is fully identified in this way any further enquiries that are necessary will be made using the existing powers in Schedule 36.
12. This new power is necessary in order to bring the UK's powers into line with latest international standards as determined by the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes.
13. Subsections (6) and (8) update a reference in TMA 1970 that was overlooked in Schedule 23 to FA 2011.
14. If you have any questions about this change, or comments on the legislation, please contact Richard Davey on 020 7147 2391 (email: powers.review-of-hmrc@hmrc.gsi.gov.uk).