



Response from ICAS

Office of Tax Simplification Third Party Data Reporting Review – Call for Evidence

8 April 2021

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.
2. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS welcomes the opportunity to respond to the 'Third Party Data Reporting Review – call for evidence', issued by the Office of Tax Simplification in January 2021. We were pleased to have the opportunity to discuss the review with the OTS, at a meeting on 9 March 2021.

General Comments

4. We broadly agree with the premise that where HMRC already receives information from third parties it would be useful for taxpayers not to have to report that information again and that it should be prepopulated in tax returns or in a digital tax account. To some extent HMRC already prepopulates some data received from employers and banks, and details of some pension receipts.
5. Before prepopulation is extended to other third-party data already received by HMRC or to additional data which third parties may be required to provide in future, there are some fundamental issues that need to be addressed, as discussed below.
6. Implementation will need to be spread over a number of years, with the timetable set out in advance to give third parties time to prepare and to allow time for proper communications to taxpayers. Detailed engagement with third parties in affected sectors will be needed at each stage.
7. Staggered implementation will also allow for sensible prioritisation, tailored to types of data but also to the capacity of the third-party data providers. The inclusion of any aspects of the tax regime where significant reform is planned or under active consideration should be deferred, to avoid third-party data providers (and HMRC) having to build systems twice over which would be costly, burdensome and could cause issues with accuracy of data.
8. There are some types of third-party data which it will not be feasible to include in the short term, or in some cases ever – and there will be other taxable income and gains where no third party will have the data. There will therefore need to be a user-friendly mechanism to deal with the interaction between a pre-populated digital account and an additional return or update supplying missing information. This will need to be taken into account in the design of the new digital tax account.
9. We believe it is important that taxpayers should retain responsibility for their tax affairs, but their understanding of this responsibility may be undermined by the development of an awkward half-way house where some data is prepopulated. We discuss this further below, but it will be important that taxpayers have the right to correct incorrect data provided by third parties and that the need to check that prepopulated information is correct and complete is adequately communicated to taxpayers by HMRC.
10. Any breaches of security and resulting problems for taxpayers arising from identity theft, fraud, or inappropriate access to data have the potential to seriously undermine trust in, and acceptance of, any prepopulation system. Robust standards and controls for third-party data providers and HMRC need to be put in place, policed and enforced.

Agent access

11. Large numbers of taxpayers use agents to handle their tax affairs and to deal with HMRC on their behalf. However, to date, and in spite of the commitment in both the old and new versions of the HMRC Charter that HMRC will work with properly appointed agents, HMRC has consistently failed to ensure proper agent access to its systems. Agents cannot see and do what their clients can see and do and new HMRC systems are designed without agent access being built in from the beginning (meaning that either agents never get access, or agent access is not optimal because it is added as

an afterthought). The cumbersome digital handshake for authorising an agent, introduced for both 30-day CGT reporting and the new Trust Registration Service, has also made it very difficult for some taxpayers to appoint an agent in the first place.

12. Before any expansion of prepopulation HMRC needs to ensure that agents have proper access to their clients' existing prepopulated data. Agents cannot currently see clients' Personal Tax Accounts; we understand why this is the case – data in the PTA cannot currently be segregated so that agents could be authorised only to see data relevant to the services they are providing. It is essential that this is addressed when the Personal and Business Tax Accounts are replaced by the single digital tax account for each taxpayer – it is also important that this happens before any expansion of prepopulation.
13. In cases where agents can access some existing prepopulated data via SA APIs in third-party software, the prepopulation often only takes place too late for it to be helpful to agents – data is only included after HMRC has concluded its 'reconciliation' process for the year. This timing issue also needs to be addressed before expanding prepopulation.

Responsibility for tax 'returns' – and the right to correct third-party data

14. There needs to be clarity around who is responsible for checking that prepopulated third-party data is correct before the tax position for a year is finalised. The earlier 2016 HMRC consultation (Making Tax Digital: Transforming the tax system through better use of information) stated that taxpayers will still have a statutory obligation to make sure that the information is correct and complete – and to report any income not prepopulated on an annual basis. We agree that this should be the case.
15. However, it will be important to remind taxpayers that they retain this responsibility and that they should not assume that employers, banks, building societies (or other information providers) will necessarily get it right. Many individuals already assume that HMRC and their employer will get things right – and do not check coding notices etc. Extensive prepopulation of data is likely to reinforce this view, which could be problematic, particularly for taxpayers with more complex affairs.
16. Where there are errors in prepopulated third-party information taxpayers (or their agents) should be able to correct these themselves, where they have the information to do so. We do not believe that taxpayers should have to request that the third party should correct the data – it is the taxpayer's return (or account), they retain a statutory obligation to ensure it is correct and complete and they should have an absolute right to override data they believe is incorrect. Forcing taxpayers to contact third parties to request a correction is likely to increase rather than reduce burdens on taxpayers and to undermine trust and confidence in the system.
17. If, contrary to our recommendation above, taxpayers (and their agents) do not have the right to correct data supplied by third parties, it is essential that there are statutory provisions (and a well-publicised process) to ensure that:
 - Third-party data providers are required either to correct the data, or provide a detailed response to the taxpayer (explaining why the information is considered to be correct), within a specified time of the correction being requested (see below for further discussion of this point from the perspective of third-party data providers).
 - There is a right of appeal by the taxpayer against a refusal to correct data.
 - There is a mechanism allowing the taxpayer to postpone finalisation of their return/account for the tax year (and submission of their declaration that it is correct and complete) with HMRC, pending resolution of a dispute with the third-party data provider; and
 - HMRC does not collect any tax arising from disputed data until the dispute is resolved.

Types of data which might be prepopulated

18. From the perspective of agents and advisers some of the data sources under consideration would be likely to be more useful than others – and potentially easier to implement.

Interest received

19. HMRC already receives details of bank and building society interest and there is already some prepopulation. Financial institutions are accustomed to providing data to HMRC and those who provide ISAs will already hold national insurance numbers (NINOs) for some of their customers.

Issues which would need to be resolved include how to deal with jointly held accounts where the income split may not be obvious and how to deal with accounts held by nominees, bare trusts etc.

20. Detailed consideration will need to be given to the presentation of the data in the prepopulated return or account. Taxpayers will need to be able to easily see the paying institution and partial account details (sufficient to distinguish between accounts held with the same institution) for all entries; if they cannot do so, HMRC and third parties are likely to receive many queries.
21. Interest is commonly paid either monthly or annually – or sometimes at the end of a fixed term which could be longer. The call for evidence asks about frequency of reporting. From the perspective of taxpayers and agents annual reporting is likely to be most useful ie to report and prepopulate the total for the tax year. If reporting frequency is more often than annually, it will be very important to distinguish between annual and monthly interest payments (or payments at other frequencies) – particularly if HMRC intends to use the data for dynamic coding purposes as well as prepopulation of returns.

Dividends and distributions received

22. Details of dividends and distributions from UK companies and UK unit trusts/OEICs: it would broadly be helpful if these could be prepopulated. We envisage that large companies and financial institutions (including wealth managers) would probably be able to hold and transmit data in a secure way, but they will definitely need time to prepare their systems and communicate with customers (particularly if they would need to obtain NINOs). However, we anticipate that there would be problems for smaller companies which will need to be addressed – or these companies could be excluded from the requirement to report.
23. As with interest, individuals may receive dividends from a number of different companies, unit trusts etc, so the presentation of prepopulated data will be important to allow taxpayers to check that the information is correct and complete.

Pension contributions paid

24. It is unlikely that this information should be considered in the initial phases of any prepopulation programme. The outcome of the 2020 call for evidence 'Pensions tax relief administration' has not yet been published – but significant administrative changes could be required. Prepopulation should only be considered when it appears that there will be some medium-term stability.

Gift aid payments to charities

25. Discussed separately below.

Chargeable gains

26. We only comment here on gains/losses relating to shares, securities and similar investments. We assume (from the wording of the call for evidence which links reporting of chargeable gains to wealth managers) that prepopulation of gains/losses on disposals of property and other assets is not under consideration.
27. Data from investment and wealth managers relating to chargeable gains: we believe this data would present considerable difficulties. It is unlikely that this data will ever be suitable for prepopulation and certainly should not be considered for the initial phases of any rollout of additional third-party reporting and prepopulation.
28. Third-party data holders might be able to report the proceeds from straightforward disposals of securities but prepopulating this information would not be helpful. It would be impossible to provide accurate information on the CGT gains and losses arising from disposals because investment and wealth managers would not have all the relevant data relating to acquisition costs and pools (and, for example, might only have a partial picture of an individual's holding in a particular company). It is also unlikely that third-party data holders would be able to provide accurate information on more complex disposal or dilution events such as rights issues, reorganisations or mergers.
29. Investors move between wealth managers, so the manager at the date of disposal may not hold information relating to earlier transactions affecting the calculation. Even where a taxpayer has used

a single platform over the life of an investment, some data may have been archived so the complete history will not be available in a form which could reasonably be routinely accessed and reported.

Insurance bonds chargeable events

30. Taxation of insurance bonds chargeable events is complex and there have already been issues with returns software. These events are likely to be unsuitable for prepopulation.

Overseas data

31. As discussed at our meeting with the OTS we do not believe it would be feasible or helpful to require reporting from overseas institutions. Reports of overseas interest etc to HMRC (under CRS) already cause difficulties because they do not align with the UK tax year so the adjusted figures in the tax return do not match the reports sent to HMRC.

Charities and gift aid payments

32. Reporting and prepopulation would be irrelevant for basic rate taxpayers. There is only any tax significance for higher and additional rate taxpayers, or those at the other end of the spectrum where insufficient tax has been paid. We do not believe this justifies imposing a requirement on charities to collect and hold NINOs and report all gift aid payments within a tight timeframe - it would impose disproportionate burdens on many charities, particularly smaller ones.
33. The requirement to obtain and store NINOs securely and report all gift aid payments electronically to HMRC would be a significant challenge for many charities and would probably lead to a decline in gift aided donations, partly because some individuals will be reluctant to provide NINOs to charities, but also because most donors will not remember their NINO and will therefore be unable to complete gift aid declarations when invited to make donations. Charities which are providing, for example, access to individual heritage sites are particularly likely to be affected by this, as most individuals do not have their NINOs with them on days out.
34. One advantage of the UK gift aid regime is that the declarations are relatively simple and do not require detailed information which would be likely to deter individuals from gift-aiding their donations. A requirement to supply NINOs would undermine this.
35. We assume that the OTS is holding discussions with larger charities which generally have electronic systems and might be able to deal with some of the difficulties, albeit probably at additional cost and at the risk of losing some donors (even the largest charities would not currently hold donors' NINOs). However, concerns have been raised with us that the challenges for smaller charities would be considerable and that obtaining NINOs would be a major problem due to security and data privacy concerns.
36. Charities can currently submit gift aid claims up to four years in arrears – this would have to be changed if gift aid payments had to be reported to HMRC for prepopulation by (or shortly after) the tax year in which they were made. Many smaller charities would struggle to cope – the extended timeline is helpful. It is also useful for new charities because it can take time to obtain recognition of the charity from HMRC and put in place processes for gift aid declarations.
37. It is also worth noting that [HMRC currently allows the aggregation](#) of a number of small donations from various donors, provided the total does not exceed £1,000 and the individual donations do not exceed £20. Presumably, this helpful concession would be removed if details of all individual donations had to be supplied.
38. Some jurisdictions which do require charities to report/issue receipts for all donations eligible for tax relief also have minimum donation levels. An attractive feature of UK gift aid is the absence of any minimum; many charities receive gift aid donations of £10, £5 or even less – particularly, for example, where cash is placed in envelopes.

Security and GDPR

39. It is essential that third-party data is allocated to the right taxpayers and that transmission and storage of data is secure. There are obvious issues arising from individuals with similar names (including family members in the same household) and problems with house names and c/o addresses.

40. The call for evidence indicates that third-party data providers (other than some of those who already report data to HMRC, such as ISA providers) would therefore have to collect additional data from customers, including national insurance numbers.
41. It is not clear whether this would ensure accurate matching to taxpayers in all cases – or whether additional taxpayer identification information would need to be collected. The more items of confidential identifying data are collected and stored about taxpayers, the greater the risk arising from any breaches of security – either in the databases of third-party data providers or in the process of transmission to HMRC.
42. If it is made mandatory for taxpayers to provide additional identifying information, such as NINOs to a range of third parties to meet their tax obligations and permit third-party reporting to HMRC, it needs to be made clear how HMRC and the government will ensure that data is kept secure at all stages of the process.
43. All third-party data providers would presumably be required to comply with existing security/GDPR legislation – but how will this be enforced, where the only reason for collecting and storing the data is for tax reporting purposes? Large financial institutions will have procedures and systems in place but as noted above, we envisage that small charities and small companies would have problems with compliance and inadequate resources to deal with any problems. We assume that the use of secure data transmission methods will be mandatory, but who will be responsible if a breach occurs in the process of transmitting data to HMRC?
44. Proper consideration needs to be given to the controls that should be put in place (and enforced) both at HMRC and third-party data holders to prevent unwarranted knowledge of/access to taxpayers' confidential information.
45. Any reports of breaches of security and resulting problems for taxpayers arising from identity theft, fraud, or inappropriate access to data have the potential to seriously undermine trust in, and acceptance of, the system.

Third-party data providers

46. If the expansion of prepopulation goes ahead, implementation will need to be spread over a number of years, with a clear timetable for different types of data and providers set out in advance. Detailed definitions of providers who will be subject to the requirements will be essential at all stages and there should be industry engagement to assess the utility of bringing proposed sectors within scope and an examination of any barriers.
47. Newly mandated third-party data providers will require clarity on when they will need to be ready to report; those who already report some data will need to upgrade systems as the requirements change and expand – so they will also need clarity on timing.
48. Adequate lead time needs to be built into the timetable. Large organisations typically need agreed data requirements 18 to 24 months in advance of implementation, to enable them to make the necessary amendments to complex online platforms and systems. It is not acceptable for requirements only to be finalised at the last minute, as happened with MTD for VAT.
49. It will be essential that HMRC works closely with large data providers to minimise the burden of implementation and compliance – and to facilitate, as far as possible, the provision of good quality, accurate data.
50. Feedback we have received from third-party data providers indicates that there should not be a presumption that third-party data used in prepopulation is correct. In addition to transposition and reporting errors by the data provider there could be problems because the third party will not have access to all relevant information for individual taxpayers (which will affect their tax position) and in some cases may be collating data from multiple sources.
51. An effective process for correction should be put in place between HMRC and taxpayers. A requirement for taxpayers to contact third-party data providers to correct data, before HMRC will accept that correction is required, would be too burdensome for the taxpayer and the third-party data

provider. It would not be realistic for data providers to investigate problems and deal with corrections in a timeframe likely to be acceptable to taxpayers and HMRC.

52. We assume that HMRC would want to follow up with providers where incorrect data has been supplied – it would certainly be helpful for HMRC to report problems to the third parties so that they can review their systems.
53. There would be issues for data holders if they were required to obtain additional identification data (such as NINOs) from clients where products are already in place. Data is frequently obtained at the beginning of a relationship, for example, for anti-money laundering purposes. For some long term products, there may be little subsequent contact with the client until the maturity of the product. There should not be an automatic assumption that third parties will be able to update data for pre-existing clients – experience demonstrates that standalone data update/correction requests to customers have a high rate of non-response and inaccuracy.

Communications to taxpayers

54. Piecemeal changes to tax procedures, which are inadequately communicated to taxpayers cause confusion and problems. An effective communications campaign to inform taxpayers will be essential, if additional prepopulation goes ahead.
55. Taxpayers will need to understand their ongoing responsibility for ensuring their tax 'return' or account is correct and complete each year.
56. If reporting and prepopulation is mandatory, taxpayers will need information about why and how they will be required to provide additional confidential identification information, such as NINOs to third-party data providers – and an understanding that a range of organisations will ultimately be reporting information about them directly to HMRC.
57. As noted above any security and privacy issues could seriously undermine trust in HMRC and third-party data providers - and acceptance of the system. Taxpayers will need to have confidence that data they are required to provide to third parties, to enable reporting to HMRC, will be kept secure and that proper controls are in place to restrict access to that data.