

HMRC's new quarterly accounting proposals are just wrong...

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There is [some anger in the tax profession](#) at the creation of a [strict liability offence for offshore tax evasion](#) at present, but if I am honest I think the profession is directing its anger wholly inappropriately. Of much more concern to me are some paragraphs in the November Spending Review that will, I understand, be the subject of elaboration early next week. These say (page 71):

1.288 At the March 2015 Budget the government committed to transform the tax system over the Parliament by introducing simple, secure and personalised digital tax accounts, removing the need for annual tax returns. This will give individuals and businesses a more convenient real-time view of their tax affairs, providing them with greater certainty about the tax they owe. As the next steps in delivering this ambition, the Spending Review and Autumn Statement announces that the government will:

- invest £1.3 billion to transform Her Majesty's Revenue and Customs (HMRC) into one of the most digitally advanced tax administrations in the world, with access to digital tax accounts for all small businesses and individuals by 2016-17

- by 2020, require most businesses, self-employed people and landlords to keep track of their tax affairs digitally and update HMRC at least quarterly via their digital tax account. HMRC will ensure the availability of free apps and software that link securely to HMRC systems and provide support to those who need help using digital technology. This will not apply to individuals in employment or pensioners, unless they have secondary incomes of more than £10,000 per year from self-employment or property. The government will consult on the details in 2016.

This change is trailed as the 'end of the annual tax return'. It always worries me when HMRC lie: the abolition of the annual tax return, with its replacement by quarterly tax returns, is not a step in the direction that most people would consider to be progress. The claim is deeply misleading. I can already, very confidently, predict that a public relations disaster is in the making on this issue.

But, the issue is more important than that. As I understand it HMRC will expect every

single self-employed person, and quite a number of people with secondary income, to submit details of their income every quarter, probably (is the pattern is consistent with VAT returns) within 30 days of the quarter end. What they are also going to do, but which is not highlighted in the above paragraphs, is require that that these people also authorise their banks to submit data to HMRC on a quarterly basis, confirming the sums deposited in their bank accounts accounts.

These requirements trouble me, greatly, but I want to put my concerns about this issue in context. No one has argued more strongly than me that HMRC should be provided with information from banks about who is trading the UK. Indeed, I wrote legislation to achieve this purpose in 2013, [which was presented by the late Michael Meacher MP to the House of Commons](#), and which was talked out by the government. But, and I want to stress the point very strongly, that legislation was targeted at a very specific, [and identifiable issue](#), which is the fact that hundreds of thousands of companies in the UK that are asked to submit tax returns each year do not do so and, in addition, HMRC do not ask for tax returns from more than half a million companies each year without any evidence to suggest that is an appropriate course of action.

As a result of that evidence I concluded that it is likely that HMRC are not collecting substantial sums of tax as a consequence and so I suggested legislation that would simply require that any UK bank that operated an account for a UK limited company should advise HMRC of that fact, annually. I also suggested that if it subsequently transpired that the company in question did not submit a corporation tax return, or if that return appeared to be inconsistent with information supplied by the bank, then it would be appropriate for HMRC to have powers to ask for further information from the bank in question to assist it in its enquiries that were intended to determine the appropriate amount of tax that was due and payable.

I think that this was an appropriate, and proportionate, information exchange requirement. It was designed to achieve four goals.

Firstly, very obviously, it was designed to ensure that HMRC could identify potential taxpayers who might otherwise try to slip pout of the system.

Secondly, and equal obviously, it was designed to ensure that HMRC did not have to chase tax returns from those companies that did not need to submit one.

Third, when matched with the obligations in the same draft legislation for banks to disclose those persons who operated the limited companies about whom banks would provide information this measure was intended to ensure that those who operated such companies fraudulently would be held responsible for their actions.

Fourth, because the information request from banks was only annual, and of limited scale, and because the information that they would have to pass over was only data that they would have readily available to them, the likely cost of achieving the goal of

substantially increasing the tax take was intended to be very limited, with the main intended consequence being a 'nudge' to those who run companies to let them know that if they failed to comply their obligations not only would they be likely to be found out, but could become personally liable for the consequences. If I might say so, I think that was measured, appropriate, cost-effective and, most importantly, likely to work whilst arousing little suspicion or resentment amongst honest taxpayers.

Let me contrast this with the government is now proposing. First, the government is, apparently, going to take no action on limited companies under its new proposals.

Apparently they are going to be able to trade without supplying any on line information to HMRC. Staggeringly then the scheme now proposed will open the most extraordinary loophole for anybody who wishes to get round it by simply encouraging them to incorporate a company which they will then not declare to be trading. It takes a quite extraordinary degree of incompetence to create such a blatant and easily used loophole at such an early stage in a legislative proposal.

Secondly, the government thinks the disclosure of this information will, in some way, mean that they can better tackle the shadow economy. I suspect that there is some truth to this, although if the loophole of using a limited company persists, it will be of much less benefit than the government predict.

Third, I think it is fairly naive to think that demanding that quarterly sales records be submitted will significantly increase the tax take. Submission will not necessarily imply completeness.

Fourth, quite clearly money taken in cash will completely miss this system.

And fifth, the chance that bank accounts will also be omitted is significant. It seems unlikely the banks will be asked to submit information on all bank accounts, but only on those identified by taxpayers, and this means that evasion will continue, undetected, in other accounts.

To put it another way, I am far from convinced that this information will add significantly to the quality of information supplied, and I do not think it is likely to add extensively to the identified number of taxpayers. HMRC will instead be inundated with vast amounts of data, but whether that will be particularly useful as information (which is something fundamentally different from data) is open to question.

Even then though this is not my real concern, although I am worried about how a tax authority with so many fewer people engaged in it will actually undertake any meaningful analysis of these new disclosures. What really worries me are several things.

The first is the additional burden on business. For years governments have tried to reduce the accounting requirements of business, and with some reason. Many small

businesses do not need to keep detailed accounting records up-to-date at all times, or even on computer. It is nonsense to suggest that they do: there are plenty of other opportunities for record-keeping available to them which entirely satisfy the requirement that they have the information to support the existing tax return. And the fact that quarterly reporting is a burden has been recognised in the VAT system, which itself has a very high threshold for registration in the UK, and also has within it an option that tax returns be submitted annually, precisely to keep this obligation for accounting to a low-level. Overturning this now would seem to be a recipe for disaster in the relationship between HMRC and small business, as well as representing the imposition of an additional cost without any necessary benefit arising to HMRC as a result.

Secondly, that perception of burden will be enhanced by the fact that it is glaringly obvious that the supply of sales data and cash bank data produces two conflicting sources of information on the activity of a business which cannot always, or even very easily, be reconciled one with another. Sales are recorded on an accrual basis i.e. when they occur. Cash is recorded when payment is made, which can be substantially later than when the sale is recognised, and also, on occasion, substantially sooner than when the income should be recognised in a set of accounts because payment has been made in advance. Without any information being made available on such matters to HMRC this suggests that they will have data which it is all too easy that they may interpret entirely incorrectly.

This risk is significantly increased by the fact that deposits in a bank account do not, by any means, always represent the receipt of sales income. They may be the injection of capital, the repayment of loans, the movement of sums on or off deposit accounts, and many other things. It is very unlikely that information supplied by banks would be able to satisfactorily identify these differences and as a consequence it is entirely possible that HMRC may substantially misinterpret the data that they are supplied with and as a consequence believe that income is seriously understated when that will not be the case. The risk that erroneous demands for additional tax may arise as a result is enormous.

Third, if anyone should understand that income tax is not paid on turnover then, surely, it is HMRC. As I understand it the information that is being requested by them is, however, only sales data and is not data to estimate a complete income statement or profit and loss account. It is, of course, entirely possible to have high level of sales and a low profit, even a loss. These patterns can also change rapidly over time and without the supply of information on costs in the form of an income statement then HMRC's ability to interpret the data that they will be supplied with will be very limited indeed.

However, it seems likely then HMRC will use this information to inform their decisions on which taxpayers to investigate, and even to make demands for tax. Why else would they want such large amounts of information on a regular basis? And why else are they implying that tax payments on account may be brought forward in future partly as a

consequence of the supply of this information? But that these demands may be made, inappropriately, at a time when the Revenue does now have powers to take funds directly from bank accounts does seem to me to be deeply troubling.

No one has worked harder than me to highlight the risks within the tax gap, or to make clear that a very large part of this arises from tax evasion, and I want that to be tackled. But at the same time I am a tax justice campaigner, and tax justice requires that a person only pay the right amount of tax that they owe, and this new system does seem to have inherent within it the risk that demand will be made for tax that is not owing, and on the basis of incomplete or blatantly incorrect data. That risk, if it arises, would be wholly unacceptable.

I do, therefore, suggest that HMRC need to step back very quickly from what I understand they are to propose. Firstly, that's because quarterly data will help no one. It simply imposes an obligation upon business to submit data which will be incomprehensible to HMRC as its user, and which will not give rise to any useful information that they can interpret.

Second, it has always been the case that a person's income has been determined over an annual period in the UK, and that should continue to be true. What is also the case is that we have always assessed people upon their net income, which is their total chargeable sales less their allowable expenditure incurred in the course of undertaking their trade, and it is vital that information continue to be submitted to HMRC on this basis if that is people wish to do (in other words, I accept flat rate reduction schemes may suit some people, but should not be imposed).

And, third, I make clear that the preparation of accounts that are meaningful, and which provide relevant, reliable, consistent, comparable, comprehensive and comprehensible data (these being the necessary conditions to be fulfilled if information is to form the basis for tax assessment) take time to complete and this must be permitted within the tax system or abuse will arise. Anyone who thinks that such an obligation can be satisfied by simply entering transactional data into an app on a mobile phone is, frankly, seriously deluded as the nature of accounting, the judgements involved within it, and the qualities that are inherent in the information it should deliver.

So, I want the tax gap to be closed, and soon but if that is to be done then there are other ways to do it. First, the proposal I made in 2013 on information exchange with regard to banks regarding limited companies would be considerably more effective, faster, cheaper, and yield a higher return than anything that is likely to be proposed now in this quarterly data submission programme.

Secondly, any programme tackling the self-employed must be run in parallel with the programme tackling limited companies or the ability to get round the disclosure program will be available to anyone, and that would make it useless.

Thirdly, as anyone who understands anything about tax collection should know, the aim is to create maximum voluntary compliance at minimum possible cost to both the tax authority and the taxpayer. In the area of self-employment this is done by creating the greatest possible potential risk to the taxpayer of being found out, and penalised, if they do not declare their income appropriately. To achieve that goal all that is needed is that banks be required to supply information on an annual basis to HMRC on all accounts that they maintain on behalf of UK-based customers that appear to have irregular and sporadic deposits of cash that might indicate that the person in question is trading, or which indicates that they handle significant amounts of cash, or which comes from rental or other agents, implying that they have letting income. I do not think it is beyond the wit of any bank to create a risk assessment tool to make enquiry of its bank accounts to identify such data and to then supply it to the Revenue on a regular basis at relatively low cost. The obligation on the bank would then be for them to disclose to their customer that they had advised HMRC of this information, and the obligation on that customer would then be to advise the Revenue as to what the account was being used for, and whether or not income not previously charged to tax was being received. And finally, the obligation upon the Revenue would be to enquire of those people who did not respond, issuing estimated tax assessments if it was felt appropriate at that point of time to encourage the submission of information, as happened prior to the creation of the income tax self-assessment system against which the taxpayer would then be allowed to appeal based upon the promise of the supply of information within a reasonable time period.

Such a proposal has a number of massively appealing qualities completely absent from the Revenue's proposal. First, it would be comprehensive, as any data sweep should be, and which quite fundamentally the proposal made by HMRC is not, revealing how ill-conceived it is. Secondly, it would be cheap, which is highly desirable. Thirdly, it would impose remarkably little cost or inconvenience on the already compliant taxpayer, which has to be the aim. Fourth, it includes a reasonable follow-up process which does not presume guilt until the taxpayer has had the opportunity to explain their transactions.

I would urge HMRC to start again on this issue.

I am happy to meet with them.