



HM Revenue  
& Customs

# Amending HMRC's Civil Information Powers

## **Consultation document**

Publication date: 10 July 2018

Closing date for comments: 02 October 2018

<b>Subject of this consultation:</b>	This consultation aims to explore how effective and efficient HMRC's civil information powers are, and considers possible targeted improvements.
<b>Scope of this consultation:</b>	The government is seeking comments on whether aspects of the information powers enacted by Schedule 36 Finance Act 2008 are still relevant and on some specific areas being considered for improvements.
<b>Who should read this:</b>	The government would like to hear views from anyone who is affected by or interested in these proposals including individuals, businesses, agents and representative bodies.
<b>Duration:</b>	12 weeks
<b>Lead official:</b>	Brad Kyne (HMRC)
<b>How to respond or enquire about this consultation:</b>	Responses, requests for hard copies, and general queries about the content or scope of the consultation can be sent by email to: <a href="mailto:powers.information@hmrc.gsi.gov.uk">powers.information@hmrc.gsi.gov.uk</a> , using the subject heading " <i>Amending HMRC's Civil Information Powers</i> ", or by post to:  Mr Brad Kyne Tax Administration Policy & Strategy HM Revenue & Customs 9 <sup>th</sup> Floor 10 South Colonnade Canary Wharf London E14 4PU
<b>Additional ways to be involved:</b>	Please contact the lead official if you are interested in meeting to discuss this document.
<b>After the consultation:</b>	The government will publish its response in Autumn 2018.
<b>Getting to this stage:</b>	This document builds on work with our overseas partners to improve tax transparency and through this strengthens HMRC's compliance work.
<b>Previous engagement:</b>	HMRC looked at our information powers during the "Review of Powers" 2007/2008. There has been no recent engagement on this issue.

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# 1. Introduction

## Background

- 1.1. HMRC has three strategic objectives<sup>1</sup> :
  1. Maximise revenues due and bear down on avoidance and evasion
  2. Transform tax and payments for our customers
  3. Design and deliver a professional, efficient and engaged organisation
- 1.2. HMRC promotes compliance and prevents non-compliance as early as possible in each customer's relationship with us. To bear down on avoidance and evasion we are:
  - promoting good compliance by designing it into our systems and processes, enabling customers to get their affairs right from the outset
  - using the data we have to prevent non-compliance by spotting mistakes, preventing fraudulent claims and personalising online services by automating calculations
  - responding to non-compliance by identifying and targeting the areas of greatest risk, and tackling those who deliberately try to cheat the system
- 1.3. To respond to non-compliance, HMRC needs access to information in order to check that the right amount of tax is paid. In many cases, this information is obtained voluntarily from the taxpayer. However, on occasion, HMRC needs to use its formal powers to obtain relevant information. Sometimes the information is held by a third party rather than the taxpayer (for example, the taxpayer's bank). Third parties, in particular, may also require the use of a formal power as data security and other rules may prevent them voluntarily supplying information.
- 1.4. HMRC's Review of Powers, Deterrents and Safeguards created a cross-tax civil information power framework under Schedule 36 Finance Act 2008<sup>2</sup>. Schedule 36 allows HMRC to access information and documents from a number of different sources in a number of different situations:
  - From the taxpayer directly
  - From a third party about a known taxpayer
  - From a third party about a taxpayer whose identity is not known
  - From a third party about a taxpayer whose identity can be ascertained.
- 1.5. This consultation does not consider changes to notices about either taxpayers whose identity is not known or taxpayers whose identity can be ascertained.
- 1.6. Schedule 36 allows HMRC to inspect premises and other property. However, changes to these inspection powers are not being considered in this consultation.

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<sup>1</sup> <https://www.gov.uk/government/publications/hmrc-strategy/our-strategy>

<sup>2</sup> References to Schedule 36 in this document are to Schedule 36 of FA 2008

- 1.7. Part 4 of Schedule 36 sets out a number of restrictions around what information can be requested. This consultation does not consider any changes to this area of the legislation.
- 1.8. Schedule 23 Finance Act 2011 enables HMRC to collect bulk data. Data obtained under Schedule 23 can, for example, be compared with data HMRC already holds to enable HMRC to target compliance activity. Any mismatches alert HMRC to possible non-compliance. This consultation does not consider any changes to Schedule 23.
- 1.9. The provisions in both schedules support HMRC in ensuring that tax is correctly paid across most major UK taxes and duties, including income tax, capital gains tax, corporation tax and VAT. By virtue of paragraph 63(4) of Schedule 36 and paragraph 45(4) of Schedule 23, the provision can also be used to check a taxpayer's tax position in regard to a 'relevant foreign tax', defined as:
  - Any tax or duty imposed by a foreign territory which is covered by international tax enforcement arrangements, such as tax information exchange agreements and double taxation agreements.
  - Any tax covered under European Council's Directive on administrative cooperation in the field of taxation (2011/16/EU)
- 1.10. This consultation reviews a number of aspects of HMRC's information powers. Its aim is to ensure they have remained effective and efficient in the ten years since they were enacted. The consultation also looks at areas where certain anomalies have arisen. As with any review of HMRC's powers, the corresponding safeguards will also be considered to ensure they remain proportional and appropriate.

## 2. How the Relevant Provisions of Schedule 36 Currently Work

### Taxpayer Notice

- 2.1. If information or documents reasonably required by HMRC to check a taxpayer's tax position are in the power or possession of the person whose tax position they are checking, an officer of Revenue and Customs may issue a taxpayer notice. The notice would require the taxpayer to provide the relevant information or documents to HMRC.
- 2.2. The taxpayer must then comply with the notice within a reasonable time-limit, usually 30 days. If the information requested forms part of the taxpayer's "statutory records"<sup>3</sup> they have no right of appeal against a notice. For notices that require items other than statutory records the taxpayer may appeal against the notice, or any requirement in it, to an independent tribunal.
- 2.3. An officer of HMRC may ask for the approval of the tribunal to the issuing of a taxpayer notice. Where a notice is issued with tribunal approval, the taxpayer has no right of appeal against the notice. The tribunal has to be satisfied that various conditions are met before it can approve the giving of a taxpayer notice (paragraph 3(3) of Schedule 36). Applying for tribunal approval prior to issuing a taxpayer notice may be appropriate where, for example, prior knowledge of the taxpayer indicates that they are likely to appeal against the notice with the sole intention of delaying having to comply with the notice.

### Third Party Notice

- 2.4. If information or documents reasonably required by HMRC for the purpose of checking a taxpayer's tax position are in the power or possession of a third party (that is, somebody other than the taxpayer), an officer may issue a third party notice. The notice would require the third party to provide the relevant information or documents to HMRC.
- 2.5. Before a third party notice can be issued there are a number of requirements set out in the legislation:
  1. HMRC may not issue a third party notice without either obtaining the agreement of the taxpayer (that is, the person whose tax position is being checked), or the approval of the tribunal.

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<sup>3</sup> "statutory records" are defined at paragraph 62 of Schedule 36 – basically the records which a person is required to keep by tax laws.

2. An approach to the tribunal by HMRC must be made, or approved by, an authorised officer of Revenue and Customs<sup>4</sup>.
  3. Before approaching the tribunal, HMRC must contact the person to whom the notice will be addressed, tell them what information or documents are required and give a reasonable opportunity for them to make representations to HMRC (a summary of those representations must then be given to the tribunal).
  4. The taxpayer must have been given a summary of the reasons why the information or documents are required.
  5. Requirements 3 and 4 do not apply to the extent that the tribunal is satisfied that taking those actions might prejudice the assessment or collection of tax (likewise the taxpayer may not be named in the notice where this condition is met).
- 2.6. The tribunal hearing where HMRC asks for approval to issue a third party notice is “ex parte” in nature - that is the taxpayer and third party have no right to attend the hearing. As explained above, the third party may make representations to the tribunal via HMRC. The taxpayer has no right to make representations (either in writing or at the hearing).
- 2.7. Where a tribunal has approved a notice, the third party to whom it is given has no right of appeal. Where the notice is not approved by the tribunal but is issued with the agreement of the taxpayer instead, the third party may appeal on the ground that the request is unduly onerous (although there is no appeal against a requirement to provide information or documents forming part of the taxpayer’s statutory records). In either case, the taxpayer has no right to appeal against the giving of the notice to the third party.

## Penalties

- 2.8. The majority of recipients of information notices comply in a timely manner. However, there are a small minority who do not comply. To discourage this behaviour a range of penalties apply:
- For supplying HMRC with inaccurate information in response to an information notice, the recipient may be liable to a penalty not exceeding £3,000.
  - For an initial failure to comply with a notice, the recipient is liable to pay a fixed penalty of £300, unless they had a reasonable excuse for this failure. If the recipient still does not comply with the notice after the initial penalty of £300 has been imposed, they are liable to a penalty not exceeding £60 for each subsequent day on which the failure continues.
  - For non-compliance with a notice about persons whose identity is not known, HMRC may apply to a tribunal to impose increased daily default

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<sup>4</sup> An “authorised officer” for the purposes of Schedule 36 is defined at paragraph 59 and is used to ensure that only officers with appropriate experience and training can carry out certain functions.

penalties. The amount of these are set by the tribunal and can reach a maximum of £1,000 per day.

- A tax-related penalty may also be charged. These are considered where someone continues not to comply with a taxpayer notice after an initial penalty is charged. If this failure to comply leads an officer to believe the amount of tax paid by that person is considerably less than it otherwise would have been, they may apply to the Upper Tribunal to impose a tax-related penalty. The Upper Tribunal will then decide the amount of the penalty.

## 3. Drivers for Change

- 3.1. It is now over a decade since the current framework of information provisions was enacted following the Review of Powers. Many of these powers mirror provisions that date back to the 1970s. This consultation is an opportunity to review aspects of these provisions, to ensure they remain appropriate, enable HMRC to carry out its functions efficiently and effectively, and also to consider whether the relevant safeguards remain proportionate. There are a number of anomalies in the current rules which could be addressed.
- 3.2. Since the 1970s digitalisation has led to significant changes in the way businesses work. These changes include:
- The UK has seen a continuing decline in the use of cash resulting in many more payments being handled electronically.
  - Securities trading has become almost entirely electronic.
  - The use of paper bank statements is starting to decline.
  - Traditional banks and building societies are seeing new competition from start-up “banks” which often have no physical branches.
  - As explained below, there are also new international agreements to facilitate the exchange of bank data between countries.
- 3.3. These changes, as well as many others, have resulted in much more information being held electronically. Financial records in particular can now be shared with greater ease than ever before as the financial system becomes ever more flexible. It is important that HMRC regularly reviews its processes to ensure they are keeping pace with such a rapidly changing world.

### **The Common Reporting Standard and its Impact on Third Party Notices**

- 3.4. The global context has also been fundamentally altered by the advent of the Common Reporting Standard (CRS), which the UK played a leading role in developing. By September 2018, more than 100 jurisdictions will automatically exchange financial account information regarding one another’s tax residents under the standard. Almost 50 jurisdictions, including the UK, began exchanges in September 2017. This bulk exchange of financial account information is a highly valuable tool for tackling tax avoidance and evasion. Under the CRS, UK financial institutions are now required to collect data on all relevant customers and pass this to HMRC, without the need for an information notice or right of appeal, so that it can be sent to the tax authority where the customer is resident. This contrasts markedly with the process required under Schedule 36 for third party information notices.
- 3.5. A further effect expected as a result of these automatic exchanges will be a rise in the number of requests for additional information from international partners. This is a natural outcome of these jurisdictions receiving high-level financial account information automatically, and they are expected to quickly begin using this data to open domestic tax enquiries where appropriate. Exchanges on

request will therefore continue, complementing automatic information exchange by allowing the receiving jurisdiction to make further enquiries to support domestic tax investigations. This rise in requests is expected to place a larger burden on the resource of both HMRC and the tribunal service which, without some reform, will make it increasingly difficult for the UK to meet the international standards it has committed to in providing timely replies to requests from partners.

## Increased International Cooperation

- 3.6. The UK has played a leading role internationally in the development of tax transparency policy. The rapid progress in recent years to develop more extensive international agreements for tax co-operation is a major step forward in tackling offshore tax avoidance and evasion across the globe. The UK, and our extensive network of tax treaty partners, increasingly relies on this reciprocal, mutually beneficial cooperation to support domestic tax compliance work. Under the international agreements information is exchanged between tax authorities under strict rules about confidentiality and when information may be shared.
- 3.7. Standards for the international exchange of tax information are set out in treaties and their commentaries, and by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum). This body also periodically reviews its 149 member jurisdictions to ensure the standards for exchange of information on request are being met in practice.
- 3.8. In the UK's last Global Forum report in 2013 the UK was rated as "Largely Compliant", this marking is internationally recognised as indicating a satisfactory performance in meeting the international standards and is shared by most major economies. However, the UK requirement for tribunal approval was heavily criticised for adding significantly to the time taken to respond to requests for banking information from other jurisdictions, and for requiring more information to justify the request than is expected under the international standard<sup>5</sup>. Some jurisdictions have found the UK system to be so onerous that they are discouraged from making a request for third party information.
- 3.9. In recent years HMRC has more than doubled the resource it employs to handle requests for information to and from its overseas partners. This has improved the timeliness of responses to some degree, but the UK's unusually formal and lengthy process for obtaining third party information means that additional resources alone are unable to allow it to meet this aspect of the globally agreed standards. It is important that the UK acts to address this issue.

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<sup>5</sup> OECD (2013), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United Kingdom 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264205987-en>

- 3.10. International standards have increased rapidly in recent years, and those standards are expected to rise, therefore the UK must also adapt to meet this challenge.

### International Comparisons

- 3.11. A comparative review has been made of the information powers of tax authorities across the G20 to obtain third party banking information to exchange with other jurisdictions; details are in Annex A<sup>6</sup>.
- 3.12. None of the 18 countries reviewed require tribunal or court approval before issuing a third party notice. Penalties for non-compliance are awarded by a court in Australia and judicial consent is required for notices about un-named persons in Canada. Some jurisdictions, including USA, Canada and South Africa can use the courts to enforce compliance. The usual process to obtain third party information in these countries is via a notice issued to the third party requiring information to be provided within about a month. Judicial review, rather than a right of appeal, is the way such a notice can be challenged. However, appeals against specific types of notice are possible in Germany and some other countries – such as notices in respect of un-named persons in Canada. In Mexico, the tax authority has an electronic link which it can use to obtain banking information. Others such as France and Australia have access to a centralised database allowing rapid identification of bank account numbers.

### Third Party Notice Checks and Balances

- 3.13. Information powers and their associated safeguards should be proportionate to the risk they are designed to address, the sensitivity of the material involved and the intrusiveness of the power. At one end of this spectrum are routine requests for information such as tax returns whilst at the other are more intrusive criminal investigation and surveillance powers. Compared to other tax provisions the safeguards attached to third party notices, as set out in paragraph 2.5, seem disproportionate.
- 3.14. A typical third party notice under Schedule 36 involves a written notice to a bank or other financial institution requiring them to provide information or a document (often bank statements or similar financial records) within a reasonable period, usually 30 days. It does not involve entering the third party's premises. As well as requiring tribunal or taxpayer approval the other conditions set out at paragraph 2.5 above also apply, including giving the third party a reasonable chance to make representations before any notice is issued.
- 3.15. When considering the checks and balances applied to third party notices it is instructive to compare them to other tax related provisions. Under Part 2 of Schedule 36 (power to inspect business premises etc.) HMRC has the ability to

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<sup>6</sup> Other peer reports can be found at [http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews\\_2219469x](http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x)

enter a person's business premises, and inspect business assets and business documents that are on the premises, to check that person's tax position. Carrying out such an inspection, including in some situations without warning, does not require the approval of a tribunal, nor is there a right of appeal. However, a person can only be penalised for obstructing an inspection where the inspection was approved by the tribunal – given the intrusive nature of an inspection, this approval is seen as proportionate.

- 3.16. From 1 April 2016 to 31 March 2017 there were 215 requests for tribunal approval of a third party notice. This shows that third party notices are not issued in large numbers. However, due to the lengthy processes involved in obtaining tribunal approval, they require a disproportionate amount of resource from both HMRC and the Tribunal Service. Even after a possible increase due to the CRS, the numbers of third party notices issued is expected to remain low. Therefore HMRC do not anticipate that third parties will see a material increase in administrative burdens as a result of any changes.
- 3.17. It is also instructive to note that for third party notices that have arisen through the exchange of information process, HMRC has only had its request for approval rejected once. This is another persuasive point for reviewing whether this safeguard remains appropriate.

### Obtaining Information for Other Tax Functions

- 3.18. Schedule 36 allows for information to be required to check a person's "tax position"<sup>7</sup>. It does not allow HMRC to obtain information for debt collection purposes. The ability to obtain such information would be a useful tool if a taxpayer owes tax and is suspected of having hidden assets. It would also help the UK to meet the international standards for exchange of information to which it has agreed.
- 3.19. HMRC also faces difficulty in cases where it requires information about a company that has no tax liability of its own, for example to decide whether the company falls within the scope of "joint and several liability" legislation.

### Schedule 36 Penalties

- 3.20. HMRC can levy penalties where a person does not comply with a notice, as set out above in paragraph 2.8. The increased daily penalty provisions, as currently enacted, are not sufficiently clear and can lead to confusion and obstacles to the administration of these penalties.
- 3.21. This issue is explained further at paragraph 4.14.

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<sup>7</sup> The checking of a tax position is defined at paragraph 64(1) of Schedule 36

## Third Party Notices – The Requirement to Notify the Taxpayer

- 3.22. When applying for a third party notice under Schedule 36 HMRC must send the taxpayer a summary of the reasons why the information or documents are required. If the HMRC officer believes that doing this could prejudice the assessment or collection of tax, they may apply to the tribunal not to send the summary of reasons to the taxpayer.
- 3.23. Whilst this process removes the need for HMRC to notify the taxpayer of the issuing of a notice, there is no provision to prevent the third party from notifying the taxpayer. In certain circumstances this runs the risk of the taxpayer being told about the notice even though a tribunal has already decided such action could prejudice the assessment or collection of tax.

## 4. Proposals for Reform

### Third Party Notices - Options for Change

- 4.1. Obtaining approval from the tribunal and its associated processes (please see paragraph 2.5 above) can add a great deal of time to the information gathering process, and ultimately prolongs the course of a domestic enquiry or the time taken to exchange information internationally. As set out in the previous section, these older processes not only leave the UK out of line with the rest of the world, but also out of step with new innovative approaches to sharing information, such as the CRS. Options that might help with the current issues are set out below.

### Aligning With Taxpayer Notice

- 4.2. Under this option, the process for issuing third party notices would be aligned with that for taxpayer notices. This change would see the removal of the requirement to seek approval from the tribunal or the taxpayer before a third party notice could be issued. An authorised HMRC officer would still have to authorise the issue of a third party notice, and the taxpayer would be given a summary of why the information or documents are being sought.
- 4.3. The third party would have a right of appeal against the notice on the grounds that it is too onerous.
- 4.4. HMRC would still retain the ability to seek approval from a tribunal to issue the notice. These cases would follow the current process. HMRC would most likely continue to seek approval to issue a notice where it believed, based on previous experience, that a particular third party was likely to seek to deliberately delay the provision of information or documents.
- 4.5. As now HMRC would also be able to approach the tribunal to waive the requirement to notify the taxpayer that the third party notice had been issued, where they thought this notification would prejudice the assessment or collection of tax.
- 4.6. HMRC would be able to ask for the same types of information and would be subject to the same restrictions, for example around items that fall within the definition of legal professional privilege, as they do now.

*Question 1: Do you have any views on the suggested change to align third party notices with taxpayer notices?*

*Question 2: Do you think any further internal processes, or safeguards, prior to issuing the notice, would be required?*

*Question 3: Should there be any further restrictions on the type of information that could be requested under this notice?*

## Financial Institution Notice

- 4.7. The majority of third party information requests received by HMRC are requests for banking information. A more targeted alternative to the above suggestion would be to introduce a new notice specifically for this type of information. As the international comparisons show, many countries comparable to the UK can require the production of third party information, by issuing an information notice to the bank within, for example, around one month. Such a notice does not have to be approved by a court and there is no right of appeal.
- 4.8. At the moment, the UK has an analogous notice where paragraph 34 of Schedule 36 applies - this is where, for example, the information or documents requested relate to a supply of services and are "statutory records" of any person. Where paragraph 34 applies there is no need to get tribunal approval for issuing the notice, nor is there a right of appeal. However, it is not always clear whether banking information constitutes a statutory record; most requests for third party information requiring tribunal approval involve banking information.
- 4.9. For this option, something similar to paragraph 34 would apply to third party banking information which is held by a financial institution. Banking information would be defined to include bank statements, information about transactions on the account and information held about the legal and beneficial ownership of the account (e.g. Know Your Customer information). This notice would be available for use in both domestic cases and those where information was requested by an overseas partner.
- 4.10. There would be no need to get tribunal approval for the issue of such a notice, nor there a right of appeal. However, this option would only be available to obtain banking information reasonably required to check a taxpayer's tax position. The issue of the notice would have to be approved by an authorised officer and HMRC would be required to notify the taxpayer of the issuing of the notice. If a notice is not complied with and penalties are issued, an appeal could be made against the penalties in the usual way.
- 4.11. If HMRC considers that to notify the taxpayer might prejudice the assessment or collection of tax, they would, as now, ask the tribunal for permission not to notify the taxpayer.

*Question 4: Do you think there should be a separate rule for third party notices for banking information?*

*Question 5: Should this power be subject to any restrictions or safeguards? If so, please state the restrictions or safeguards.*

*Question 6: Do you have any other ideas for options that could deliver both the objective of speeding up the process and providing appropriate safeguards?*

## Obtaining Information for Other Functions of HMRC

- 4.12. As explained in paragraph 3.17, Schedule 36 does not allow HMRC to obtain information for debt collection purposes or where a company, usually created in contrived circumstances, has no tax liability.
- 4.13. A change here would allow HMRC to access information that was reasonably required for all its tax functions, including the collection of tax debt.

*Question 7: What are your views on extending information powers in this way?*

## Schedule 36 Penalties

- 4.14. HMRC can levy penalties where a person does not comply with a notice, as set out above in paragraph 2.8. For failure to comply with a notice which requires information or documents about a person whose identity is not known, HMRC can charge increased daily default penalties. However, the increased daily default penalties legislation, as currently drafted, is not sufficiently clear, may lead to confusion and has created difficulties with the administration of these penalties.
- 4.15. Under the current rules, certain conditions must be complied with before the tribunal can allow an increased daily penalty of up to £1,000. If those conditions are met, an officer of HMRC may make an application to the tribunal for an increased daily penalty to be “imposed” on the person who has failed to comply with the notice. The tribunal will also give an indication of the amount which should be charged per day.
- 4.16. The current wording is misleading. Tribunals do not impose penalties; instead they grant permission for HMRC to assess penalties. This lack of clarity in the legislation results in neither tribunal nor HMRC actually being able to assess the penalty.
- 4.17. This change proposes to make it explicit that, HMRC seeks permission from the tribunal to assess increased daily penalties. If the tribunal agrees HMRC would then notify the person that, from the date specified by the tribunal, they would be liable for an increased daily penalty of the amount determined by the tribunal. HMRC would then assess the increased penalty against the person in the same way it assesses any other penalty under Schedule 36.
- 4.18. Currently increased daily penalties can only be charged upon a failure to comply with a notice which requires information about a person whose identity is unknown. HMRC would like to explore harmonising the penalty regime across Schedule 36 by extending the scope of increased daily penalties to cover all of the notices contained in Schedule 36. This would bring about a consistent and robust penalty regime. Daily penalties can be useful in encouraging compliance with an obligation in a timely manner. This change would help HMRC deter long periods of non-compliance with an information notice. As with the existing daily penalties the tribunal’s permission would be needed before such penalties could be charged.

*Question 8: Do you have any views on amending the legislation in this way?*

*Question 9: Should the increased daily penalties apply to all Schedule 36 information notices?*

### **Third Party Notices – The Requirement to Notify the Taxpayer**

- 4.19. As explained above the tribunal may give HMRC permission not to give the taxpayer a summary of the reasons explaining why they require information and documents under a third party notice. The tribunal can also give HMRC permission not to name the taxpayer in the notice or to send a copy of the third party notice to the taxpayer. However, there is currently nothing to prevent a third party from notifying the taxpayer about the notice despite a tribunal having already decided such action might prejudice the assessment or collection of tax. In some cases it might be obvious who the taxpayer is by the very nature of the information required.
- 4.20. The proposal here is to put an obligation on the third party not to inform the taxpayer about the notice where the tribunal has disapplied the requirement to send a summary to the taxpayer under paragraph 3(3)(e) and (4) of Schedule 36.

*Question 10: Do you have any views on making amendments to prevent the third party from notifying the taxpayer in this way?*

*Question 11: What form of sanction should be imposed on the third party for a breach of this rule?*

## 5. Assessment of Impacts

If, after reviewing the responses to this consultation, a decision is taken to make a change in the areas outlined work will be undertaken establish the impacts of any changes. These will include impacts on HMRC's customers, the legal framework and the Exchequer.

## 6. Summary of Consultation Questions

*Question 1: Do you have any views on the suggested change to align third party notices with taxpayer notices?*

*Question 2: Do you think any further internal processes, or safeguards, prior to issuing the notice, would be required?*

*Question 3: Should there be any further restrictions on the type of information that could be requested under this notice?*

*Question 4: Do you think there should be a separate rule for third party notices for banking information?*

*Question 5: Should this power be subject to any restrictions or safeguards? If so, please state the restrictions or safeguards.*

*Question 6: Do you have any other ideas for options that could deliver both the objective of speeding up the process and providing appropriate safeguards?*

*Question 7: What are your views on extending information powers in this way?*

*Question 8: Do you have any views on amending the legislation in this way?*

*Question 9: Should the increased daily penalties apply to all Schedule 36 information notices?*

*Question 10: Do you have any views on making amendments to prevent the third party from notifying the taxpayer in this way?*

*Question 11: What form of sanction should be imposed on the third party for a breach of this rule?*

## 7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

### How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 02 October 2018, by e-mail to [powers.information@hmrc.gsi.gov.uk](mailto:powers.information@hmrc.gsi.gov.uk) or by post to:

Mr Brad Kyne  
Tax Administration Policy & Strategy  
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### **Please do not send consultation responses to the Consultation Coordinator.**

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

**Please do not send responses to the consultation to this address.**

## Annex A: Civil Information Powers: International Comparators

Jurisdiction	Access to information	Judicial Approval	Notification Procedure	Other safeguards	References
Argentina	Section 35 of the Tax Procedure Law allows the tax authority to request information from first and third parties and impose fines for failure to provide it. In practice the tax office opens a “preventive audit” unless there is an ongoing audit. Information is requested by the tax official normally with a 10 day deadline and a reminder after 15 days. Search and seizure methods could be used with the consent of a federal judge to a warrant.	No.  A warrant requires the consent of a judge.	No	No	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Argentina 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205505-en">http://dx.doi.org/10.1787/9789264205505-en</a> .
Australia	The Australian Taxation office (ATO) has general access powers which can be used to obtain all kinds of information. For banking information, the ATO has a useful database (AUSTRAC) that can be used to identify bank accounts (e.g. account number and name of bank). In practice, the EOI unit usually issues a notice under s353 of the Tax Administration Act 1953 to require production of the information typically giving 28 days to respond. It can take longer when a bank receives a significant number of requests. Failure to comply with a request for information is an offence punishable by a fine or imprisonment.	Penalties for non-compliance are imposed by a Court.	No	Judicial review.	OECD (2017), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes: Australia 2017 (Second Round): Peer Review Report on the Exchange of Information on Request</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264280069-en">http://dx.doi.org/10.1787/9789264280069-en</a> .

Brazil	The tax authority has access to some banking data automatically provided to it by banks. They can issue a formal notice to produce information, usually within 20 days, to a first or third party. They can impose penalties for non-compliance. Search and seizure methods can be used with a court order. For banking information that goes beyond what is held by tax authorities, they issue an order to the taxpayer before going to the third party bank. This approach to the taxpayer can be disappplied with the consent of a judge.	No.  A court order is required for search and seizure in cases of non-compliance or to disapply the initial approach to the taxpayer in banking cases.	Not generally but taxpayer is approached first for bank information not already held.	A right of appeal exists for a taxpayer who receives a summons to provide banking information.	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Brazil 2013: Phase 2: Implementation of the Standard in Practice</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264202610-en">http://dx.doi.org/10.1787/9789264202610-en</a> .
Canada	The Canadian Revenue Authority (CRA) can require the production of information under the requirement power at 231.2 of the Income Tax Act or, alternatively, use an audit power under 231.1. If the information is not then provided, the CRA can impose sanctions and/or refer the case via the Department of Justice to a court to issue a compliance order. A compliance order is only used in a small number of EOI cases.  In practice, banking information is typically obtained by the Competent Authority issuing a requirement under 231.2 giving 30 days to respond. For criminal cases the CRA prefer to use a judicially authorised production order or search warrant.	In most cases judicial consent is not required. Consent required for third party notices on unnamed person(s).	No	Judicial Review.  Appeals can be made by the recipient of the notice against third party requirements regarding unnamed persons and the requirement to provide foreign-based information (information outside Canada)	OECD (2017), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes: Canada 2017 (Second Round): Peer Review Report on the Exchange of Information on Request</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264280137-en">http://dx.doi.org/10.1787/9789264280137-en</a> .
China	China's tax authority can obtain bank information with a warrant authorised by a tax bureau commissioner at county/district level or above. No external authorisation is required. Fines can be imposed by the tax authority for non-compliance.	No	No	A taxpayer can seek administrative review by a	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax</i>

				higher level of the tax bureau.	<i>Purposes Peer Reviews: People's Republic of China 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205567-en">http://dx.doi.org/10.1787/9789264205567-en</a> .
France	<p>The “droit de communication” is used to obtain information from businesses including banks either by written request or by visiting the premises to obtain the information directly. Failure to comply is punishable by a fine and possibly a tax examination. The French authorities also have access to a database listing bank accounts held in France.</p> <p>Search and seizure for use in serious fraud cases exclusively of a tax nature requires judicial approval.</p>	Consent of a court is only required in search and seizure cases.	No	A person subject to “droit de communication” can challenge whether the authority is acting within its powers before an administrative court but this does not suspend the information order.	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: France 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205628-en">http://dx.doi.org/10.1787/9789264205628-en</a> .
Germany	The tax administration (BZSt) has broad powers to access banking information; these are the same powers to access any information. The BZSt has access to the financial regulator’s database of beneficial ownership information and Customer Due Diligence populated by banks.	No	Yes. Prior notification with right to be heard and object. Exceptions apply but only used in 10% of cases.	Judicial review.  A German participant must be given the right to first provide the information and lodge an appeal	OECD (2017), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes: Germany 2017 (Second Round): Peer Review Report on the Exchange of Information on Request</i> , Global Forum on Transparency and

				(normally four weeks).	Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264280205-en">http://dx.doi.org/10.1787/9789264280205-en</a> .
India	India has powers to obtain banking and other information including a Power to Call for Information. In practice, once the bank name and account number are known the information can be obtained by the issuance of a summons under section 131 of Income Tax Act or a call for information under section 133. These powers can be used by persons of a certain rank within the tax authority without judicial approval.	No	No	Any action of a government authority in India can be challenged under Article 226 of the Indian constitution on the basis that the action is not authorised by law.	OECD (2017), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes: India 2017 (Second Round): Peer Review Report on the Exchange of Information on Request</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264283756-en">http://dx.doi.org/10.1787/9789264283756-en</a> .
Indonesia	A third party can be required to provide information at the request of the tax authorities. Non-compliance is punishable by a prison sentence and a fine.	No	No	Not specified.	OECD (2014), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Indonesia 2014: Phase 2: Implementation of the Standard in Practice</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264217737-en">http://dx.doi.org/10.1787/9789264217737-en</a> .
Italy	The tax authorities usually access the information by visiting the entity and asking for information to be provided. A high	Consent of a court is only	No	No. There is no right of appeal	OECD (2017), <i>Global Forum on Transparency</i>

	level of internal permission is required (regional director/commander level) for requests to banks and other financial institutions but there is no external oversight. Where a TIN is held most bank information can be obtained electronically. Failure to comply leads to administrative sanctions.	required in criminal search and seizure cases.		other than against an assessment of tax liability in Italy	<i>and Exchange of Information for Tax Purposes: Italy 2017 (Second Round): Peer Review Report on the Exchange of Information on Request</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264283800-en">http://dx.doi.org/10.1787/9789264283800-en</a> .
Japan	The tax authorities have the power to compel the provision of information under the Tax Treaties Special Provisions Act (TTSPA). Failure to comply can be punished by a prison sentence or a fine. Where they use the search and seizure provisions in a criminal case, consent is sought from the District Court.	Consent of a court is only required in criminal search and seizure cases.	Yes, written notification to the taxpayer unless urgent or likely to undermine the success of the case.	No special rights against the information-gathering powers in the TTSPA.	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Japan 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205765-en">http://dx.doi.org/10.1787/9789264205765-en</a> .
Republic of Korea	The tax authorities have the power to compel the provision of information including banking information. Failure to provide the information is punishable by a fine.	Consent of a court is only required in criminal search and seizure cases.	Notification is made to the taxpayer <u>after</u> the information is exchanged.	Not specified.	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Republic of Korea 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global

					Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205802-en">http://dx.doi.org/10.1787/9789264205802-en</a> .
Mexico	The tax administration (SAT) has broad powers to access banking information. This includes accessing information directly from a bank when an investigation is still ongoing. Information is accessed by the tax authority through an automated system between banks and authorities. It supervised by the National Banking and Securities Commission (CNBV). All requests are sent electronically to the banks via the CNBV in a standard electronic format.	No	No. Banks are prohibited from disclosing the requests received from the CNBV to the account holders.	A taxpayer or the third party subject of a request can only appeal on the basis of administrative errors.	OECD (2014), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Mexico 2014: Phase 2: Implementation of the Standard in Practice</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264217751-en">http://dx.doi.org/10.1787/9789264217751-en</a> .
Russia	The Federal Tax Service has powers to obtain information. Since 2013 this has included personal bank account information. Failure to voluntarily comply is punishable by fines and documents can be seized	No	No	Right of appeal to a higher authority in the tax administration.	OECD (2014), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Russian Federation 2014: Phase 2: Implementation of the Standard in Practice</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris,

					<a href="http://dx.doi.org/10.1787/9789264223103-en">http://dx.doi.org/10.1787/9789264223103-en</a> .
Saudi Arabia	Banking information is obtained via the Saudi Arabian Monetary Agency (SAMA). However compulsory powers only apply where there is a Saudi Arabian taxpayer.	Not specified.	No	There is a general right under section 43 of the Basic law	OECD (2016), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saudi Arabia 2016: Phase 2: Implementation of the Standard in Practice</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264250895-en">http://dx.doi.org/10.1787/9789264250895-en</a> .
South Africa	The South African Revenue Service (SARS) can obtain bank and other information. Failure to comply can give rise to an administrative penalty or a prison term. SARS can also visit the premises and obtain information using s74B Income Tax Act. If, exceptionally, failure persists the information can be enforced by a formal enquiry authorised by the High Court. Search and seizure powers also require judicial approval.	The High Court is used for enforcement using a formal enquiry procedure. A judge must also approve a search and seizure warrant.	No	Not specified.	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: South Africa 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205901-en">http://dx.doi.org/10.1787/9789264205901-en</a> .
Turkey	The tax administration has powers under the Tax Procedure Law to require the production of information. Access to banking information is a routine power of the Ministry of Finance and no special procedure applies. Failure to comply leads to a fine.	Only if a search warrant is required.	The tax authorities provide a general explanation	No	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax</i>

			about the purpose of the investigation		<i>Purposes Peer Reviews: Turkey 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264205963-en">http://dx.doi.org/10.1787/9789264205963-en</a> .
USA	The USA has powers to obtain information for tax purposes. The IRS can issue an Information Document Request. For banking information, the IRS usually issues a formal summons. The power to do this is held by the IRS and is not subject to any special procedures but they can choose to enforce the summons through the courts. Failure to provide the information can be punished by fines and/or imprisonment.	Courts are used for judicial enforcement of a summons. Judicial approval is also required for a search and seizure.	Yes, usually the taxpayer is notified when formal summons is used unless consent to disapply the requirement is given by a court.	Yes, anyone entitled to a notice of a summons can apply to federal court to quash the summons.	OECD (2013), <i>Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United States 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings</i> , Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <a href="http://dx.doi.org/10.1787/9789264206007-en">http://dx.doi.org/10.1787/9789264206007-en</a> .