

## Data-gathering from merchant acquirers

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### Who is likely to be affected?

Merchant acquirers.

### General description of the measure

The measure will provide HM Revenue & Customs (HMRC) with a power to require merchant acquirers to provide bulk data about business taxpayers, in order to identify those who do not declare their full sales.

### Policy objective

This measure will significantly improve HMRC's data-gathering to support more effective risk assessment of businesses and to create a fairer, more level playing field. Merchant acquirers process credit and debit card payments for merchants and retailers. The data that will be provided, covering the monthly totals paid to merchants, is expected to be of significant value in identifying businesses that do not declare their full sales, and activity in the hidden economy. It will enable compliance interventions to be better targeted on those who are underpaying tax, as part of HMRC's efforts to close the tax gap.

### Background to the measure

Schedule 23 to Finance Act 2011 introduced a new framework for HMRC's data-gathering powers with effect from 1 April 2012, following two formal consultations. No formal public consultation on the detail of this current measure has taken place, but HMRC has been in direct consultation with those most affected in the industry.

## Detailed proposal

### Operative date

The measure will have effect on and after the date that Finance Bill 2013 receives Royal Assent. The Government intends to put the necessary secondary legislation in place by autumn 2013, after which HMRC will issue notices requiring data from merchant acquirers.

### Current law

Merchant acquirers are not explicitly specified as data-holders in Schedule 23 to Finance Act 2011 and due to their contractual arrangements, do not fall within any other categories of data-holder specified in Schedule 23.

### Proposed revisions

Legislation will be introduced in Finance Bill 2013 to amend Schedule 23 to Finance Act 2011 by adding merchant acquirers as a category of data-holders. This will allow HMRC to issue a notice to merchant acquirers requiring them to provide data.

Secondary legislation made under paragraph 1(3) of Schedule 23 will specify the relevant data that HMRC can require merchant acquirers to provide. This will be information about credit and debit card sales made by retailers, and the retailers' name, address, VAT number if available, and bank account details. It will not identify the details of the credit or debit card holder, just the total sales made by particular businesses in each month. These will be used by HMRC to cross check against VAT registrations and business income declared on tax returns.

The safeguards in Schedule 23 Finance Act 2011, including the right of appeal, will apply to notices issued to merchant acquirers as they do to all other types of data-holder.

These proposals will provide HMRC with third party information of a high quality, in a form that can be used effectively. By connecting this with data already held, HMRC expects to be able to carry out compliance checks that are more accurately targeted on the areas of highest risk, and which can be concluded more quickly. This should result in a higher yield from checks that require less time.

### Summary of impacts

<b>Exchequer impact (£m)</b>	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. This measure supports the Exchequer in its commitment to protect revenue.					
<b>Economic impact</b>	The measure is not expected to have any economic impacts.					
<b>Impact on individuals and households</b>	The measure is not expected to have any impact on individuals or households. HMRC will not be gathering data relating to card holders.					
<b>Equalities impacts</b>	The measure is not expected to have an equalities impact.					
<b>Impact on business including civil society organisations</b>	<p>This measure is expected to have a negligible impact on businesses. Merchant acquirers will incur an additional administrative burden in providing HMRC with information. There will also be a negligible one-off cost to businesses as they familiarise themselves with this policy.</p> <p>Businesses not declaring their full income, or trading in the hidden economy, can expect to face greater scrutiny as a result of this measure, but this will have no impact on businesses undertaking normal business transactions.</p>					
<b>Operational impact (£m) (HMRC or other)</b>	<p>The data will enable HMRC to improve its compliance work in identifying businesses suppressing their income or operating in the hidden economy.</p> <p>The overall HMRC operational impacts are considered as negligible and will be managed within the existing resources.</p>					
<b>Other impacts</b>	Other impacts have been considered and none have been identified.					

### Monitoring and evaluation

The measure will be monitored by HMRC, making use of the data obtained under the proposed legislation.

### Further advice

If you have any questions about this change, please contact George Margesson on 020 7147 3069 (email: [george.margesson@hmrc.gsi.gov.uk](mailto:george.margesson@hmrc.gsi.gov.uk)).

**1 Data-gathering from merchant acquirers**

- (1) In Part 2 of Schedule 23 to FA 2011 (data-gathering powers: relevant data-holders), after paragraph 13 insert—

*“Merchant acquirers*

13A A person who is a merchant acquirer is a relevant data-holder.”

- (2) This section applies in relation to relevant data with a bearing on any period (whether before, on or after the day on which this Act is passed).

**EXPLANATORY NOTE**

**DATA-GATHERING FROM MERCHANT ACQUIRERS**

**SUMMARY**

1. This clause amends HM Revenue & Customs' (HMRC) bulk data-gathering powers. The change enables HMRC to issue notices to merchant acquirers, who process payment card transactions, requiring them to provide data about business taxpayers. The changes will have effect from Royal Assent.

**DETAILS OF THE CLAUSE**

2. Subsection 1 amends Schedule 23 to Finance Act 2011 (FA 2011). It specifies that merchant acquirers are relevant data-holders within the meaning of Schedule 23. Accordingly, it enables HMRC to issue notices to merchant acquirers to obtain bulk data about businesses.
3. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power for HMRC to obtain data from merchant acquirers.
4. Subsection 2 provides that data can be required which relates to periods before the law comes into effect. This approach follows that taken for Schedule 23 FA 2011 and is subject to the time limits in Schedule 23.

**BACKGROUND**

5. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultation. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.
6. Merchant acquirers were not explicitly specified as data-holders in Schedule 23 FA 2011 as originally enacted, and do not fall within any other existing categories of data-holder specified in the schedule.
7. The clause refers to 'merchant acquirers' but does not define them. The Government believes this term applies only to financial institutions, commonly known as merchant acquirers, that contract with businesses to reimburse them for supplies made where a credit, debit or charge card (or an equivalent method of payment as may be

introduced) was accepted. The clause is intended to apply solely to the narrow field of such institutions.

8. The data held by merchant acquirers about credit, debit and charge card transactions represents a valuable source of information about businesses' incomes. The data will be matched with data HMRC already holds to check returns and identify businesses that may not have declared their full sales, or who are not registered for tax. This will improve HMRC's ability to identify and target those who are underpaying tax.
9. HMRC will use the data to help in the risk assessment of businesses, and will not be obtaining data about individual card holders.
10. Treasury secondary legislation is needed to specify the data that HMRC may require merchant acquirers to provide. These draft regulations were published on 11 December 2012.
11. If you have any questions about this change, or comments on the legislation, please contact George Margesson on 020 7147 3069 (email: [george.margesson@hmrc.gsi.gov.uk](mailto:george.margesson@hmrc.gsi.gov.uk)) or Madeleine O'Brien on 020 7147 2466 (email: [madeleine.o'brien@hmrc.gsi.gov.uk](mailto:madeleine.o'brien@hmrc.gsi.gov.uk)).

**2013 No.**

**TAXES**

**The Data-gathering Powers (Relevant Data) (Amendment)  
Regulations 2013**

<i>Made</i>	- - - -	<i>2013</i>
<i>Laid before the House of Commons</i>		<i>2013</i>
<i>Coming into force</i>	- -	<i>2013</i>

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 1(3) of Schedule 23 to the Finance Act 2011(a).

**Citation and Commencement**

1. These Regulations may be cited as the Data-gathering Powers (Relevant Data) (Amendment) Regulations 2013 and come into force on *date* 2013.

**Amendments to the Data-gathering Powers (Relevant Data) Regulations 2012**

2. The Data-gathering Powers (Relevant Data) Regulations 2012(b) are amended as follows.
3. After regulation 11 insert –

**“Merchant acquirers**

**11A.**—(1) The relevant data for a data-holder of the type described in paragraph 13A of Schedule 23 are –

- (a) in relation to each person who holds a merchant account with the merchant acquirer (a “trader”), information relating to payments made to a merchant account, including the currency the payments were made in;
- (b) the reference number of the account into which the payments referred to in subparagraph (a) were made and, where necessary for identifying the account, the branch where the account is held;
- (c) the customer ID number, being any unique reference number which has been allocated to a trader, for the purposes of identifying the trader, as part of the business arrangement between the merchant acquirer and the trader;

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(a) 2011 c.11. Schedule 23 to this Act was amended by section 1(1) of the Finance Act 2013 (c.XX).  
(b) SI 2012/847.

- (d) the merchant ID number, being any unique reference number which has been allocated to a trader's merchant account, for the purposes of identifying this merchant account, as part of the business arrangement between the merchant acquirer and the trader;
- (e) the name, address and telephone number of each trader and for each merchant account; and
- (f) where available to the merchant acquirer at the time of receipt of a data-holder notice, the e-mail address, website address and VAT number of each trader and for each merchant account.

(2) In this regulation "VAT number" means "registration number" as defined in paragraph 1 of regulation 2 of the Value Added Tax Regulations 1995(a)."

[Dated] *Name*  
*Name*  
Two of the Lords Commissioners of Her Majesty's Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 by specifying the relevant data which merchant acquirers must provide an officer of Revenue and Customs on receipt of a data-holder notice under Schedule 23 to the Finance Act 2011 (c 11).

A Tax Information and Impact Note covering this instrument [was published on 11th December 2012 alongside the relevant clause and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

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(a) SI 1995/2518, to which there are amendments not relevant to these Regulations.

**EXPLANATORY MEMORANDUM TO  
THE DATA-GATHERING POWERS (RELEVANT DATA) (AMENDMENT)  
REGULATIONS 2013**

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

- 1.1. This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These Regulations amend the Data-gathering Powers (Relevant Data) Regulations 2012 to prescribe what data a merchant acquirer must provide to HMRC on receipt of a data-holder notice. Merchant acquirers, which process payment card transactions for businesses, are introduced by Finance Act 2013 as a new class of data-holder under Part 2 of Schedule 23 to Finance Act 2011 (FA 2011).

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 These Regulations are subject to the negative procedure of the House of Commons because they are not the 'first' regulations made under paragraph 1(3) of Schedule 23 to the FA 2011. Therefore, paragraph 44(2) of Schedule 23 does not apply. Consequently, paragraph 44(3) of Schedule 23 applies instead.

4. **Legislative Context**

- 4.1 HMRC's data-gathering powers were modernised in Schedule 23 to FA 2011 following consultation. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

- 4.2 Merchant acquirers were not explicitly specified as data-holders in Schedule 23 to FA 2011 as originally enacted, and do not fall within any other existing categories of data-holder specified in the schedule.

- 4.3 The relevant section in Finance Act 2013 (which introduces merchant acquirers as a new class of data-holder under Schedule 23) refers to merchant acquirers but does not define them. It is intended to apply solely to the narrow field of financial institutions, known as merchant acquirers, that contract with businesses to reimburse them for supplies

made using a credit, debit or charge card. The number of businesses that will be affected by notices issued under this measure is small.

4.4 These Regulations are needed to specify the data that HMRC may require merchant acquirers to provide.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The policy objective is to provide HMRC with a power to require merchant acquirers to provide bulk data about business taxpayers, in order to identify those who do not declare their full sales.

7.2 These Regulations specify the types of data that can be obtained from merchant acquirers. These cover the total card payments made to each UK business that accepts credit and debit cards, their contact details, bank account details, and their VAT number where it is held.

7.3 This data will be matched with data HMRC already holds to check returns. It will improve HMRC's ability to identify and target those who are underpaying tax, allowing HMRC to compare actual sales made using cards with turnover declared to HMRC. It will also highlight businesses have not registered with HMRC for tax, in particular for VAT. HMRC's current estimate of uncollected tax (the tax gap) is around £32 billion, of which £9.6 billion is represented by VAT.

7.4 HMRC will use the data to help in the risk assessment of businesses, and will not be obtaining data about individual card holders. More accurately targeted compliance checks will help level the playing field for those who do pay the correct amount of tax.

7.5 The data to be collected is currently held by merchant acquirers and no practical concerns about providing it have yet been raised. Merchant acquirers will be able to appeal against a data notice on the grounds that complying would be unduly onerous.

7.6 Legislation is required to provide HMRC with the power to issue notices to merchant acquirers. It would not be feasible to rely on the willingness of the merchant acquirers to provide such information. Doing so without clear legal cover could leave them open to possible challenge under data protection law. Legislation will provide certainty on this point.

- *Consolidation*

7.6 This is the first time that the Data-gathering Powers (Relevant Data) Regulations 2012 have been amended. There are currently no plans to consolidate the instrument that is being amended.

## **8. Consultation outcome**

8.1 No general consultation has previously been undertaken on this measure. The draft primary and secondary legislation is being published for comment on 11 December as part of the 2013 Finance Bill.

## **9. Guidance**

9.1 Relevant guidance will be updated, working with the merchant acquirers.

## **10. Impact**

10.1 The impact on business, charities, voluntary bodies and the public sector is negligible. Merchant acquirers will incur an administrative burden in providing the data to HMRC. Businesses that are not paying the full amount of tax will face greater scrutiny from HMRC as a result of this measure, but there will be no impact on businesses that comply with their tax obligations.

10.2 A Tax Information and Impact Note will be published alongside the legislation on 11 December 2012.

## **11. Regulating small business**

11.1 The legislation does not apply to small business. There are a small number of merchant acquirers in the UK and they are all large financial institutions.

## **12. Monitoring & review**

12.1 The measure will be monitored by HMRC, making use of the data obtained under the proposed legislation.

## **13. Contact**

If you have any questions about this instrument please contact **George Margesson** at HMRC (tel: 020 7147 3069, or email: [george.margesson@hmrc.gsi.gov.uk](mailto:george.margesson@hmrc.gsi.gov.uk)).