



HM Revenue
& Customs

Tackling the hidden economy: Extension of data- gathering powers to Money Service Businesses

Summary of Responses
5 December 2016

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1. Introduction

- 1.1. HM Revenue and Customs (HMRC) published a consultation on 26 August 2016: *'Tackling the hidden economy: extension of data-gathering powers to Money Service Businesses'*. The consultation closed on 21 October 2016.
- 1.2. Under Schedule 23 to the Finance Act 2011, HMRC has the power to gather data from relevant data holders. In 2013 and 2016, these powers were extended to merchant acquirers, business intermediaries and businesses which facilitate online payments.
- 1.3. The consultation covered the extension of this power to Money Service Businesses (MSBs) - entities that provide money transmission, cheque cashing, or currency exchange services. This will allow HMRC to better check the accuracy of declarations that customers make about tax, and identify non-compliant customers who are exploiting MSB services to hide their income and operate in the hidden economy.
- 1.4. The hidden economy places an unfair burden on the vast majority of people and businesses who pay their fair share of tax. The hidden economy is the largest behavioural element of the UK's tax gap at £6.2bn. Businesses operating in the hidden economy may also enjoy an unfair advantage over those who comply with their tax obligations.
- 1.5. HMRC consulted on this issue to seek views on the scope of changes and best method to deliver them in legislation. HMRC was also interested in ways to minimise the costs for businesses when complying with the new requirements. This document summarises the responses received and the next steps.
- 1.6. HMRC published two further consultations alongside this one on measures to tackle the hidden economy: *'Tackling the hidden economy: conditionality'* and *'Tackling the hidden economy: sanctions'*. At Autumn Statement 2016, the Government signalled its intention to progress the measures covered by those consultations. Response documents will also be published for these at Budget 2017.

2. Responses

- 2.1. 'Tackling the hidden economy: Extension of data-gathering powers to Money Service Businesses' sought views on the extension of Schedule 23 to the Finance Act 2011, to include MSBs. This data will help HMRC to identify non-compliant customers trading in the hidden economy.
- 2.2. In particular, the consultation invited views on the proposal and options for implementation, to ensure that it addresses the exploitation of MSBs by non-compliant customers to hide undeclared income, while minimising the compliance burdens on MSBs.
- 2.3. In total, there were 28 responses to the consultation: 20 by email, four by telephone and four via face to face meetings. Respondents came from a range of industry and business backgrounds. These are set out in Table 1.

2.4. Table 1: Respondents by background

Respondent type	Number of respondents
Representative bodies	12
Money Service Businesses	7
Accountants	3
Professional Bodies	3
Service Providers to MSBs	2
Public Bodies	1

2.5. General responses

- 2.6. The majority of respondents agreed that extending HMRC's data-gathering powers to MSBs could help the Government to achieve its objective of reducing the hidden economy tax gap. Having considered the policy rationale and background, they agreed that MSBs hold relevant data.
- 2.7. Many respondents agreed with the Government that hidden economy activity disadvantages compliant businesses. There was a common request to "make it simple to do business" and provide a level playing field when implementing any extended powers.
- 2.8. Most respondents emphasised the importance of HMRC minimising any burdens placed on businesses providing data. They stated that MSBs are already under economic and regulatory pressures, and were concerned this measure could introduce a new burden. HMRC will only request data when the value of the data is proportionate to the burdens placed on the data-holder, and it will attempt to minimise the cost to businesses by discussing what is being requested before a notice is sent.
- 2.9. Respondents asked about the interaction of bulk data powers and the Data Protection Act 1998, and wished to be assured that providing data to HMRC would not contravene the Data Protection Act. Schedule 23 to the Finance Act 2011 gives HMRC the power to require bulk data to be provided while ensuring that Data Protection Act obligations are met.

2.10. Several respondents asked about penalties for failing to comply with requests made under Schedule 23. HMRC are able to issue penalties for failure to comply with a notice issued under Schedule 23.

2.11. **Responses to specific questions**

2.12. **Question 1: What are your views on the proposed inclusion of MSBs as “relevant data-holders”? Is there a better route for HMRC to achieve the aims of this proposal?**

2.13. There were 21 responses to this question.

2.14. The responses were generally positive, most were supportive of the change. Many respondents also explained that MSBs are likely to hold this information already.

2.15. Some respondents noted that this measure would rely on all MSBs operating in the UK being properly registered and supervised under anti-money laundering provisions, and observed that some MSBs providing services from abroad might not be included in these measures.

2.16. **The Government agrees that MSBs are likely to already hold the information that could identify tax non-compliance. The Government believes that requesting relevant data from MSBs under Schedule 23 will be an effective and proportionate tool to tackle the hidden economy. HMRC works to ensure all MSBs operating in the UK are registered for anti-money laundering supervision. The Government believes this extension to HMRC’s powers will be effective. HMRC cooperates with foreign regulators and tax authorities when seeking data from businesses based overseas.**

2.17. **Question 2: What are your views on the proposed range of persons and businesses which the measure will cover, including different types of MSB? Are there businesses conducting substantially similar activities to MSBs that do not fall within this range?**

2.18. There were 19 responses to this question.

2.19. Respondents generally felt that while targeting MSBs would be useful, seeking greater data gathering powers from domestic bank accounts would be more effective for the purposes of reducing the tax gap. Several respondents questioned the rationale for excluding banks and building societies from the legislation.

2.20. One respondent asked for confirmation that non cash activities are excluded.

2.21. **The Government believes that the proposed range of persons and businesses will include all relevant types of MSB. The scope of the legislation will need to capture the full range of these businesses, which will include non-cash businesses offering services which can be exploited by those operating in the hidden economy, but excluding banks. HMRC already receives information from banks and building societies under a variety of regular reporting obligations, and has an established relationship with the sector that enables access to bulk data. This measure would allow HMRC to establish a similar relationship with the MSB sector.**

2.22. **Question 3: What are your views on whether the proposed definition captures the full range of businesses which HMRC proposes to include, and no others? Is there a better way of defining the businesses HMRC wishes to include, or those HMRC wishes to exclude?**

2.23. There were 19 responses to this question.

2.24. Respondents agreed that the proposed definition of MSBs, which follows the definition of MSBs found in the Money Laundering Regulations 2007 but excludes banks, captures the full range of

businesses that the Government wishes to include. One respondent said that the alternative definition within the Payment Services Directive (2007) did not include all the relevant businesses.

- 2.25. Several respondents felt that particular parts of the MSB sector should also be excluded, such as cheque cashers, payment institutions and e-money institutions. They thought that these types of businesses presented a lower tax risk. One also responded that providers of electronic stored value payments are already in scope of Schedule 23 after the extension in 2016.
- 2.26. **This measure is designed to tackle a specific hidden economy risk associated with the disposal of cash income which is not declared for tax purposes. HMRC's operational experience shows that MSB services can be exploited for this purpose. As such, the legislation will use the definition of MSBs from the Money Laundering Regulations 2007, excluding banks, as proposed in the public consultation. The legislation will not exclude certain parts of the MSB sector but HMRC will take a risk based approach when choosing to issue a notice under Schedule 23.**
- 2.27. **Question 4: Do you agree that MSBs should already hold adequate relevant data to allow HMRC to meet the aims of this proposal?**
- 2.28. There were 19 responses to this question.
- 2.29. Most respondents agreed that MSBs would already hold the identifying data that HMRC could request under the extended powers. Some explained that whilst MSBs may hold relevant data, it might be difficult to extract and send to HMRC.
- 2.30. Some respondents said that the risk-based approach to data capture set out in the Money Laundering Regulations 2007 may mean that customers do not have to identify themselves for small transactions or may not have to prove their identity.
- 2.31. One respondent also explained that additional due diligence processes could have a negative impact on profit margins for MSBs.
- 2.32. **Responses to the consultation demonstrate that the data MSBs already hold under their anti-money laundering obligations should be sufficient to meet the Government's aim of tackling the hidden economy. The data requested under the legislation of Schedule 23 will aid HMRC in detecting those in the hidden economy. This measure does not require MSBs to collect any new information from customers.**
- 2.33. **Question 5: In relation to the customer information collected by MSBs:**
- 2.34. **A. At what thresholds below the statutory requirement do MSBs collect and verify identifying customer information?**
- 2.35. There were 14 responses to this question.
- 2.36. There were varied responses to this demonstrating the different ways MSBs meet their obligations under the Money Laundering Regulations 2007. For example performing customer due diligence on all cases, through to performing customer due diligence only on transactions that are above the statutory requirement.

- 2.37. Some respondents said that cheque cashers always perform customer due diligence because if a cheque is refused, they need to contact the customer after the initial transaction.
- 2.38. One respondent explained a graduated system by which they took basic details for all transactions, photo ID for larger transactions and proof of address for the largest (all below the statutory limit of €15,000). Another responded that they have a risk-based approach to collecting ID below the statutory requirement (although it was not clear how that respondent assessed risk).
- 2.39. Two respondents said that some larger businesses might find it more difficult to meet their obligations under the Money Laundering Regulations to link transactions made at different agents by customers who avoid providing identification. One respondent was not fully aware of HMRC's guidance on what constitutes "linked transactions".
- 2.40. **The Government understands there are a variety of different business models, which collect and verify identifying customer information at different thresholds below statutory requirements. Based on the consultation responses, the Government believes businesses which fall under the proposed definition of MSBs will hold the relevant data. Guidance about linked transactions is published at: <https://www.gov.uk/guidance/money-laundering-regulations-your-responsibilities>**
- 2.41. **B. How do these thresholds vary between different services, e.g. money transmission versus cheque cashers or currency exchangers, and between electronic and cash transactions?**
- 2.42. There were nine responses to this question.
- 2.43. There was a consensus from all responses that the thresholds varied for different businesses and services, from zero to the regulatory requirement of €15,000.
- 2.44. **The Government is aware that some businesses may not hold useful data on transactions below the statutory requirements. The Fourth Money Laundering Directive, which will be implemented in June 2017 will lower these statutory thresholds. As part of informing a risk-based approach to requesting data from MSBs, HMRC will consider what information a business holds.**
- 2.45. **Question 6: What systems, formats and software are used for storing customer information and transaction records across the MSB sector?**
- 2.46. There were 14 responses to this question.
- 2.47. Respondents agreed that different businesses use different systems, software and formats to store their data. Some businesses keep their due diligence data as scanned data and not in fields that would be easily accessible to HMRC.
- 2.48. One respondent said: "Some firms have developed their own software in house. Other firms will typically buy money transfer bespoke software from developers ... other smaller firms may simply use common spreadsheet software to store customer data."
- 2.49. A few respondents explained that businesses might feel the need to purchase new software or work with their software developers, anticipating the need to comply with a notice issued by HMRC.

- 2.50. Two respondents said that most MSBs and systems would be able to export data in common formats (Excel, CSV or PDF.)
- 2.51. **It is clear that businesses use a variety of systems, formats and software to store customer data. HMRC will endeavour to discuss the data requested with businesses when issuing notices under Schedule 23, and will also provide guidance on meeting data format requirements.**
- 2.52. **Question 7: What are your views on the costs and benefits of agreeing a single standardised data reporting format between HMRC and the MSB sector?**
- 2.53. There were 16 responses to this question.
- 2.54. Most respondents agreed that a standardised approach to data-reporting would be sensible. One respondent said that a clear, standardised approach could be particularly helpful to newer or smaller MSBs who might not already have standardised data processes in place to meet their anti-money laundering obligations.
- 2.55. There was a general response that this could introduce new costs for those businesses that still rely on scanned documents. It was generally noted that it would require time and personnel to process this data into the requested format.
- 2.56. One respondent felt that all customers should be required to provide an HMRC reference number in order to use MSB services, so that anyone not registered with HMRC for any tax or service would not be able to use MSB services.
- 2.57. **HMRC will request data in a standardised format in compliance with the relevant legislation (Schedule 23). A standardised format will reduce the possibility for error and reduce the administrative burden for MSBs in receipt of a notice. The Government is clear that this measure will have no impact on the ability of customers to access MSB services.**
- 2.58. **Question 8: What are your views on how regularly HMRC should request data from money service businesses?**
- 2.59. There were 17 responses to this question.
- 2.60. Some respondents felt that quarterly or annually would be reasonable. One respondent said that the system could be designed to automatically extract and send the correct data daily.
- 2.61. Several respondents felt that HMRC should only request targeted data, when they required it, rather than on a wholesale basis.
- 2.62. **HMRC will consider each data request individually and may vary the timing and frequency of these requests. HMRC will request data in a way that is proportionate, considering both any administrative burdens on the data-holder, and the value of the data in meeting the Government's aim of tackling the hidden economy.**
- 2.63. **Question 9: What are your views on the potential costs to MSBs of complying with this proposal?**

- 2.64. There were 18 responses to this question.
- 2.65. Generally, respondents wanted HMRC to ensure the costs remained as low as possible. It was echoed that costs for small businesses could be high.
- 2.66. Several respondents commented that the cost of new software would be a large part of this.
- 2.67. Two respondents expressed the opinion that costs would not be great, with one commenting, “I would assume that the costs are not great. They would be counted as downtime for a Director or someone senior, measured in hundreds of pounds.”
- 2.68. **HMRC intends to make targeted bulk data requests to data-holders in a way that is proportionate, considering both any administrative burdens on the data-holder, and the value of the data in meeting the Government’s aim of tackling the hidden economy. There are provisions in Schedule 23 for businesses to challenge an excessively onerous request for data.**
- 2.69. **Question 10: How else can HMRC minimise any additional burdens placed on MSBs in complying with this proposed data-gathering power?**
- 2.70. There were 15 responses to this question.
- 2.71. One respondent asked that HMRC undertake an advertising campaign to ensure MSB customers know that additional information requested is for HMRC.
- 2.72. One response asked for the system to be fully automated in order to remove burdens from the business.
- 2.73. One respondent asked that HMRC find savings for businesses under the Money Laundering Regulations 2007 to offset the cost.
- 2.74. One respondent noted that pawnbrokers might stop providing MSB services if the costs to comply were too high.
- 2.75. Two respondents asked that HMRC not request bulk data but the business should undertake some selection on behalf of HMRC. They felt that using a targeted approach would be more effective.
- 2.76. A few respondents asked that HMRC be flexible in its requirements with respect to the data formats.
- 2.77. **HMRC intends to use the proposed data gathering power to focus on areas where it believes there has been activity in the hidden economy. In order to do this, HMRC will use its compliance data and intelligence to target relevant data holders. HMRC will attempt to minimise the cost to businesses when discussing with them what is being requested before a notice is sent. HMRC will only request data that the MSB already holds, so the measure will not create a new information requirement on customers.**
- 2.78. **Question 11: HMRC would welcome views on any other potential impacts that may need consideration when implementing this proposal.**

- 2.79. There were 13 responses to this question.
- 2.80. Several respondents could not identify additional impacts to the sector beyond those already noted.
- 2.81. Several respondents expressed concern about ongoing time and resource costs of complying with notices under Schedule 23.
- 2.82. Some MSB respondents expressed concern that their customers might be reluctant for data about them to be provided to HMRC, and as a result, might avoid accessing services, or seek alternative, unregulated businesses. They emphasised that this risk might be higher among diaspora communities.
- 2.83. One respondent said that there while there was undoubtedly tax at risk in this sector, HMRC should consider how proportionate its actions will be perceived to be.
- 2.84. One respondent expressed concern about how secure the data would be with HMRC. However the Information Commissioners Office noted in its response, “It is helpful to see that HMRC have given consideration to how data security can be embedded into these proposals and how the risk of misuse or loss of the information can be minimised.”
- 2.85. **These proposals are proportionate given the scale of the tax gap created by the hidden economy. HMRC will only require data that MSBs already collect from their customers, and not on individual transactions, only aggregated data on customers’ total transactions. As comments from the Information Commissioner’s Office recognise, the Government has carefully considered data protection issues in developing this measure. HMRC will not ask for nor collect any data outside of the scope of Schedule 23. HMRC takes its responsibility for data security extremely seriously and has a legal responsibility to protect customer confidentiality. Data required can be sent to HMRC via a secure, encrypted system which complies with strict security protocols and will be held by HMRC on systems which conform to the highest information security standards.**
- 2.86. **The Government recognises the valuable financial services that MSBs provide, including for those remitting abroad money earned in the UK’s formal economy. This measure will allow a risk-based approach to be taken when identifying non-compliance without affecting the accessibility of MSB services.**

3. Next steps

- 3.1. Alongside this response document, the Government is publishing draft legislation that will add a new type of data holder to Schedule 23 of Finance Act 2011; and draft secondary legislation, defining the type of data that HMRC can request from Money Service Businesses.
- 3.2. Following consultation on the draft legislation, the Government plans to include the measure in Finance Bill 2017.
- 3.3. HMRC will be publishing guidance to support the extended provisions. This guidance will help to support MSBs in understanding the requirements of notices issued under Schedule 23.

Annex A: List of stakeholders consulted

Association of Accounting Technicians

ACCA

Association of UK Payment Institutions

Association for Convenience Stores

BCCA

BDO

Compliance Culture Ltd.

Electronic Money Association

European Escrow

Forexco

Forum of Private Business

Information Commissioners Office

I-FACT

Mazars LLP

MoneyGram

National Pawnbrokers Association

NordPay Financial

Tourism Alliance

UAE Exchange UK Ltd

UKForex

Whitefield Tax Ltd

Xpress Money Service Ltd