

Explanatory Note

Clause [j3509]: Data-gathering from money service businesses

Summary

1. This measure extends Schedule 23 of Finance Act (FA) 2011 which covers HM Revenue & Customs' (HMRC) bulk data-gathering powers. The powers enable HMRC to collect data from certain third parties to assist with the efficient and effective discharge of HMRC's tax functions.
2. It does so by introducing Money Service Businesses as a new category of data-holder from whom HMRC may require bulk data. This change will allow HMRC to more effectively identify businesses and individuals who disguise income by exploiting services offered by MSBs, particularly through cash-based transactions. The clause does not impose any additional data or record keeping requirements on data holders.

Details of the clause

3. Subsection 1 amends Part 2 of Schedule 23 to FA2011 to insert a new paragraph 13D, which introduces Money Service Businesses as a category of relevant data-holder for the purposes of Schedule 23.
4. The new paragraph 13D(1) sets out, at sub-paragraphs (a) to (c), the conditions that bring a person within the new category of relevant data-holder. These are that the person: (a) does certain activities by way of business (those activities being defined in paragraph 13D(2)); (b) is a person to whom the Money Laundering Regulations 2007 apply; and (c) is not one of certain excluded credit institutions (defined in paragraph 13D(3)).
5. New Paragraph 13D(2) describes the activities, referred to in paragraph 13D(1)(a), that bring a person within the scope of this provision.
6. New Paragraph 13D(3) defines "excluded credit institutions", which will fall outside the scope of this measure by virtue of paragraph 13D(1)(c). In practice, banks and building societies operating in the UK and either regulated in the UK or regulated in another EEA country and with "passporting" rights in the UK will be excluded credit institutions.
7. New Paragraph 13D(5) explains the meaning of "credit institution" for the purpose of this clause.

8. 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 note

9. Greater use of digital record-keeping by businesses, and the use of electronic transaction methods, has meant the government has introduced a series of targeted extensions of HMRC's bulk data-gathering powers to include new types of data-holders. The data may be used to assist with the efficient and effective discharge of HMRC's tax functions, including for example for risk analysis, enabling HMRC to target its compliance work more accurately.
10. The hidden economy places an unfair burden on the vast majority of people and businesses who pay their fair share of tax. Hidden economic activity also disadvantages compliant businesses. Competition between businesses is distorted when a small minority seek to hide under the radar from their tax obligations. This change will allow HMRC to more effectively identify businesses and individuals who disguise income by exploiting services offered by MSBs, particularly through cash-based transactions. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power.
11. HMRC plans to employ the extended Schedule 23 powers to seek data that will help HMRC identify trends or areas where reporting of income is incomplete. Money Service Businesses are not explicitly specified as data-holders in Schedule 23 FA 2011 as originally enacted and this clause extends the definition of data holder to these businesses.
12. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. 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.
13. Treasury regulations are needed to specify the relevant data that HMRC may require from Money Service Businesses. Draft regulations will be published on 8 December 2016 and the Government intends to introduce them to Parliament by the end of the summer 2017.
14. If you have any questions about this change, or comments on the legislation, please contact John Tully on 03000 586687 (email: john.tully@hmrc.gsi.gov.uk)