



Modernising Powers, Deterrents
and Safeguards:

Bringing HMRC's information powers into line with international standards for tax information exchange

Consultation document

Publication date: 7 July 2011

Closing date for comments: 29 September
2011

Subject of this consultation:	This is a consultation on an amendment to Schedule 36 Finance Act (FA) 2008 to bring HMRC's information powers into line with the international standard for the exchange of information for tax purposes. It concerns ways to ensure that HMRC can collect information in specific cases where the full identity of the taxpayer is not known but can be ascertained by reference to other available information.
Scope of this consultation:	The Government has decided to act, but is consulting on how best to achieve the objective. All options for legislation are open, but HMRC has identified one option as its preferred solution. For the purposes of illustrating that option a possible draft clause is included in this document.
Who should read this:	Businesses holding data about taxpayers, their advisors, and groups representing taxpayers and other interested parties.
Duration:	7 July 2011 to 29 September 2011.
Enquiries:	Please contact: Powers.review-of-hmrc@hmrc.gsi.gov.uk Room 1.72 100 Parliament Street London, SW1A 2BQ
How to respond:	As above.
Additional ways to be involved:	HMRC is willing to meet with representative bodies and other interested parties to discuss the issue set out in this consultation document.
After the consultation:	A response document will be published. HMRC will continue to engage with interested parties and in the autumn will publish a draft clause to form part of the 2012 Finance Bill.
Getting to this stage:	The Review of Powers, Deterrents and Safeguards was set up to provide a modernised framework of law and practice for HMRC appropriate to the merged Department's tasks and which allows those tasks to be carried out effectively and efficiently. Schedule 36 FA 2008 contains a set of powers which HMRC may use to obtain information and documents in connection with a check of a person's tax position. It is now necessary to extend those powers so that the UK may exchange information to the international standard monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes.
Previous engagement:	None in relation to this specific issue.

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1 Introduction

Global Forum on Transparency and Exchange of Information for Tax Purposes

- 1.1. The UK is currently undergoing peer review by the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum is a multilateral framework, within which work in the area of transparency and exchange of information is carried out by over 100 participating jurisdictions. At the request of G20 Heads of Government at the London Summit in April 2009 the Global Forum is conducting a programme of peer reviews of the implementation of the international standards of transparency and exchange of information.
- 1.2. These standards provide for exchange of information on request of foreseeably relevant information for tax administration or enforcement purposes. The standards are incorporated in the Model Tax Conventions of the OECD and the United Nations.
- 1.3. The peer review process involves a review of each jurisdiction's legal and regulatory framework for transparency and the exchange of information for tax purposes, as well as a survey of the practical implementation of the standards. Reviews are conducted in accordance with the Terms of Reference and Methodology published by the Global Forum. More information on the peer review process and the Global Forum more generally can be found on the OECD's website¹.
- 1.4. Once a review is launched, all members of the Global Forum are asked to provide input regarding the assessed jurisdiction. Exchange of information partners are asked to complete a detailed questionnaire about their practical experience with the jurisdiction. Reviews are conducted by an assessment team composed of two expert assessors provided by peer jurisdictions and co-ordinated by the Global Forum Secretariat.
- 1.5. The assessment team's report is presented to the 30 member Peer Review Group (PRG) and, once approved, it becomes a report of the PRG. Finally, all members of the Global Forum are asked to adopt the PRG report, which is subsequently published. The peer review of the UK is currently under consideration by the PRG and is expected to be published in the autumn. As all members are on an equal footing, this is done on a consensus-minus-one basis, so that no one jurisdiction can block the adoption of a report.

Exchanging information

- 1.6. It is important that the UK complies with the international standards and plays a full part in tackling cross-border evasion and the use of tax havens.
- 1.7. All requests for information or documents by an overseas authority are rigorously examined by a small specialist team within HMRC. HMRC needs to be satisfied that
 - the request comes within the scope of the relevant agreement (such as a double taxation treaty or tax information exchange agreement). Specifically, the request must be foreseeably relevant to the assessment, collection or enforcement of a tax covered by the agreement, not merely a 'fishing expedition'
 - the overseas authority is in a position to provide corresponding information if the UK made a similar request to it ('reciprocity')

¹ http://www.oecd.org/site/0,3407,en_21571361_43854757_1_1_1_1_1,00.html

- the overseas authority will keep the information or documents confidential and secure, will use them only for the purposes allowed for under the relevant agreement and will not use the information in any way that might breach a taxpayer's human rights. This is to comply with HMRC's obligations under the Human Rights Act 1998 and the Data Protection Act 1998, in addition to those imposed in the relevant agreement.
- 1.8. Many requests for information are met without HMRC needing to invoke its formal information powers. The information in question may already be in HMRC's possession, or HMRC may be able to obtain it through the use of legal information gateways with other bodies.
 - 1.9. However, in a number of cases it is necessary to issue an information notice, usually under Schedule 36 FA 2008 to obtain the requisite information.

The issue

- 1.10. On one particular issue, the assessment team reviewing the UK has concluded that HMRC's information powers do not allow the UK to exchange information under its network of tax treaties to the international standard. The international standard requires a jurisdiction to exchange information in response to a valid request from an overseas revenue authority where the taxpayer is identified, whether by name or by other identifying information. Schedule 36 does not currently provide for this to happen where the taxpayer's name is not provided.
- 1.11. Legislative change is therefore needed to bring the UK into line with international standards. The Exchequer Secretary announced during the Report Stage of the current Finance Bill that appropriate changes would be made to Schedule 36 in FA 2012.
- 1.12. The shortcoming strictly applies only in relation to the UK's ability to exchange information. In the main this would impact on foreign taxes although there could be circumstances where UK tax is involved. But any change limited to extending the powers for foreign taxes only could contravene European Law, as in substance the UK would have greater enquiry powers for overseas taxpayers compared to UK taxpayers. And having different rules for overseas taxes and UK taxes would run counter to the steps taken to align the rules across all taxes for which the HMRC has a tax function. Accordingly, the Government has decided that a change allowing a notice to be issued where identifying information about a person is held, but the full identity is not known, should apply for all taxes covered by Schedule 36.
- 1.13. This consultation considers possible ways in which legislative change may be made. This document sets out:
 - Chapter 2: the issues associated with the proposed power and the necessary associated safeguards
 - Chapter 3: possible policy responses to the problem
 - Chapter 4: draft legislation on one of the options, intended to inform the debate.
- 1.14. We welcome views on the various options set out in Chapter 3 or any other suggestions about how the shortcoming may be remedied. We would be particularly interested to hear ideas on how safeguards can be introduced in a way which affords sufficient protection to taxpayers while also allowing the UK to meet its international obligations.

2 Design Issues and Safeguards

- 2.1. The circumstances in which this legislation is being introduced are unusual. Powers have long been available to check a person's UK tax position, including in respect of certain foreign taxes. Foreign taxes are included so that the UK can meet its obligations under European Union law or double taxation arrangements to exchange information with overseas tax authorities. However, as set out in Chapter 1, it has become clear that there is a shortcoming which applies only in relation to the UK's ability to exchange information.
- 2.2. The Government's proposed approach is to extend what the UK can do currently so as to be able to meet international standards. In the UK tax system, the taxpayer's "identity" usually means a person's name and address. However, under international standards, "identity" is a broader term which can extend to other information sufficient to uniquely identify the person, even if the name and address are unknown.

Schedule 36

- 2.3. Schedule 36 FA 2008 aligned the rules allowing HMRC to make tax checks across almost all of its tax regimes. Schedule 36 includes three information powers which HMRC may use to obtain information and documents from a taxpayer or a third party as part of a check into a person's tax position. Those powers are in paragraphs 1, 2 and 5.
 - Paragraphs 1 and 2 apply where the full identity (and in particular the name) of the taxpayer being checked is known.
 - Paragraph 1 is used to obtain information from the taxpayer.
 - Paragraph 2 is used to obtain information from a third party about a particular taxpayer.
 - Paragraph 5 is used to obtain information from a third party where the full identity of the taxpayer, or more usually a class of taxpayers, is not known.
- 2.4. The powers in paragraphs 1 and 2 have always been available not only in relation to a check of a person's UK tax position, but also in relation to a check of a person's tax position in respect of foreign taxes. Foreign taxes are included so that the UK can meet its obligations under its international agreements to exchange information with overseas tax authorities. For applications for third party notices under paragraph 2 the approval of the First-tier Tribunal is required, unless exceptionally the taxpayer has agreed to the issue.
- 2.5. In addition, the various safeguards in paragraphs 3 and 4 of Schedule 36 apply to a notice under paragraph 2. These include a requirement to copy a third party notice to the taxpayer. This requirement can only be disapplied by a tribunal if it can be demonstrated that this would prejudice the assessment or collection of tax.
- 2.6. The Government has proposed that the power in paragraph 5 is also made available to obtain information in relation to foreign taxes. This is the intended effect of Schedule 24 to the Finance Bill currently before Parliament. If these proposals become law, from 1 April 2012 the full range of powers in Schedule 36 will be available to obtain information required by an overseas authority in connection with tax checks that it is making. The text of Part 1 of Schedule 36, as it would appear following the amendments in Schedule 24 to the current Finance Bill, is shown in Annex B.

Schedule 36 and the international standards

- 2.7. In order to use paragraph 2 of Schedule 36 to obtain information from a third party, it is necessary for the full identity of the taxpayer to be known. So paragraph 2 cannot be used in a case where unique identifying information is supplied by the overseas authority – for example a bank branch and account number or a credit card number – but the person’s name and address is not known.
- 2.8. If the proposals discussed in paragraph 2.6 become law, HMRC will be able to use the paragraph 5 power relating to taxpayers whose identity is not known for exchange of information cases. However, the safeguards in paragraph 5, in particular the restriction in sub-paragraph (4)(c) to cases likely to have led or to lead to serious prejudice to the assessment or collection of tax, limit the availability of this power, meaning it cannot be used in all cases covered by international exchange of information.

Scope of the new power

- 2.9. This issue has arisen in relation to foreign taxes, rather than an identified weakness with the UK’s domestic tax system. However, if the UK were to limit the change to just foreign taxes there would be greater powers to enquire into taxpayers on behalf of other countries than would be available for the assessment and collection of UK tax. Having different rules for overseas taxes and UK taxes not only runs counter to HMRC’s alignment of its rules across all its taxes, but could contravene European Law.
- 2.10. The Government therefore proposes amendments to HMRC’s general information powers under Schedule 36, rather than a separate bespoke power. The implication of this decision is that the power will be available for domestic use as well as for obtaining information for the purposes of foreign tax. The domestic implications are discussed from paragraph 2.16.
- 2.11. Schedule 36 was subject to very extensive debate in Public Bill Committee and Ministers made assurances about how parts of the Schedule would be used. The Government therefore proposes to make only the minimum changes necessary to comply with the international standard.

Safeguards: international exchange of information

- 2.12. Strong safeguards are already in place where the UK is asked to provide information to another country:
 - A notice will only be issued to a person who can be expected to be able to identify the taxpayer from the information provided by HMRC in the notice.
 - The request must fall within the scope of the relevant agreement and any request must be foreseeably relevant to the assessment, collection or enforcement of a tax covered by the agreement; it cannot be a ‘fishing expedition’.
 - Requests for information or documents will be made only through a specialist team who will examine documentation rigorously to ensure it is within scope and that there are no opportunities for “fishing expeditions”.
 - To obtain information from the UK an overseas authority must be able to show it can, if asked, provide reciprocal information corresponding to what the UK can request; if it cannot do so the UK will refuse the request.
 - the overseas authority must keep the information or documents confidential and secure and use them only for the purposes allowed for under the relevant agreement.
 - Information must not be used in any way that might breach a taxpayer’s human rights.

- The normal rules within Schedule 36 FA 2008 apply to guarantee that information requests must be reasonable and proportionate.
 - A person may appeal against a notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.
- 2.13. It should be borne in mind that the process of proving that the request is “foreseeably relevant to the assessment, collection or enforcement of a tax” is not a rubber-stamping exercise. Meeting this test will be inherently more difficult if the requesting authority is unable to name the person in question.
- 2.14. In exchanging any information, the UK is mindful of its obligations under human rights law. The practices in place must not breach the obligations in the Human Rights Act. All agreements entered into by the UK contain strict rules on the use and disclosure of the information. If any misuse came to light, HMRC would take appropriate action.
- 2.15. HMRC would welcome suggestions for further safeguards providing they would not breach the international standard for exchange of information.

Question 1: Could additional safeguards be introduced for taxpayers who are the subject of an information request from another country without causing the UK to be non-compliant with international standards?

Domestic use of the power

- 2.16. HMRC already has an effective and modernised suite of information powers for domestic use. In addition, it can obtain information from public sources and through legal information gateways. It also has specific powers to trace debtors in Schedule 49 FA 2009.
- 2.17. Given that it considers the existing powers to be effective, it is not the Government’s intention to use this power on a large scale, nor to short circuit the safeguards built into the existing Schedule 36. It is being introduced in order to meet international standards. However, for the reasons set out above, the power must apply domestically.

Safeguards: domestic use

- 2.18. Some of the safeguards applicable in the international context apply equally here:
- A notice will only be issued to a person who can be expected to be able to identify the taxpayer from the information provided by HMRC in the notice.
 - Information must not be used in any way that might breach a taxpayer’s human rights.
 - The normal rules within Schedule 36 FA 2008 apply to guarantee that information requests must be reasonable and proportionate.
 - A person may appeal against a notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.
 - The information should not be readily available from another source.

2.19. Specific safeguards are discussed alongside the options in the following chapter, and HMRC accepts the need for strong safeguards to restrict the circumstances when a new information power could be used. We would welcome further suggestions for safeguards for domestic use of the power.

Question 2: Should additional safeguards be introduced to help control the domestic use of any new power?

Implementing the changes

2.20. This is a relatively minor extension to the wide range of information notices already issued by HMRC, and it is envisaged that, where possible, any requests would be handled through existing channels of communication between HMRC and data-holders. However, HMRC will want to engage early with institutions likely to be affected by any changes and to mitigate the impact as far as possible.

2.21. Comments on how the implementation impact of the proposed changes could be mitigated are welcomed in responses to this consultation.

Question 3: What implementation challenges would these proposals pose? How could the impact on data holders be mitigated?

3 Possible solutions

- 3.1. We start from the premise that HMRC has information (which may have been supplied by an overseas fiscal authority) from which the (full) identity of a person ('the taxpayer') can be ascertained. The information that may be sought from the third party would no doubt include the taxpayer's name and address and, as confirmation of identity, the date of birth in the case of an individual. But it could also be further information about transactions in which HMRC knows that a person has been involved.
- 3.2. In essence there appear to be three possible ways to allow Schedule 36 to be used. They are:
 - Amend paragraphs 2 to 4 to accommodate cases in which identifying information is held, but full identity is not known,
 - Amend or add to paragraph 5 to construct an alternative basis for use of the paragraph 5 power in cases where identifying information is held, but full identity is not known, or
 - Provide a new power solely to establish full identity; and once identity is known use the existing powers in paragraphs 1 and 2 where necessary.

Each of these three options is examined below.

Changing paragraphs 2 to 4 of Schedule 36

- 3.3. The first option would involve adapting these paragraphs to provide for cases where identifying information is held, but full identity is not known. For example, a bank branch and account number or a credit card number might be known, but the account holder's name and address is not. At present, it is clear that paragraph 2 is reserved for those cases where we can identify the taxpayer precisely and tell that person what is going on.
- 3.4. The paragraph 2 notice would be issued to a person who can be expected to identify the taxpayer from the information held by HMRC and set out in the notice. Accommodating the cases being considered within paragraph 2 would require several amendments to the existing provisions:
 - Paragraph 2(1) would have to be amended so that 'identity is known' includes a case where the person can be identified without that person's name being known.
 - Paragraph 2(2) would have to be amended so that it only applies in a case where the name of the taxpayer is known.
 - Paragraph 3(3)(e) would have to be disapplied in cases where HMRC cannot fully identify the taxpayer.
 - Paragraph 3(5) may need attention.
 - Paragraph 4 would have to be disapplied in cases where HMRC cannot fully identify the taxpayer.
 - Amendments would also be necessary to paragraph 5 to clarify that the cases being considered are now dealt with under paragraph 2.
- 3.5. From the above it is clear that significant changes to the existing provisions would be necessary. The existing major safeguard is for the taxpayer to be told about the issue of the notice, which presently can only be disapplied by the tribunal if satisfied that copying the notice to the taxpayer might prejudice the assessment or collection of tax. But this becomes meaningless if HMRC cannot identify the taxpayer. Any solution that involves the removal of this key safeguard for a class of cases would be unattractive.

- 3.6. As the full identity of the taxpayer is not known, information might be included in a notice that HMRC would not need if HMRC knew who the taxpayer is, which suggests potential difficulties in showing that the information is reasonably required. Or not knowing the identity of the taxpayer may mean that insufficient or the wrong information is asked for, leading possibly to a second application on the same case.
- 3.7. In short, the main disadvantage of this option is that it undermines the current structure of Schedule 36 under which paragraph 2 is only concerned with, and only works for, cases in which the taxpayer's full identity is known.

Changing or adding to paragraph 5 of Schedule 36

- 3.8. The second option would involve introducing alternative conditions applying to the use of paragraph 5 notices in a case where identifying information is held. The existing requirement in paragraph 5 that tribunal approval is needed on an application made by an authorised officer would be retained.
- 3.9. The conditions in sub-paragraph (4)(b) and (c) of paragraph 5 would present too high a hurdle for HMRC to demonstrate satisfaction where there is evidence of some transactions that need checking for tax purposes, but it is not yet clear if there is likely to be a significant tax irregularity. Therefore an alternative benchmark for use of the power would need to be established in law. The international standard of 'foreseeable relevance' referred to at 1.4 above, together with the requirement that sufficient other identifying information is available to HMRC, may provide a basis for such a test. As with the first option, a notice would be issued to a person who can be expected to identify the taxpayer from the information held by HMRC and set out in the notice. The authority to seek the notice could sit within either paragraph 5 or in a new, self-standing paragraph within Schedule 36.
- 3.10. As with the first option, however, there is still a concern that the notice may be asking for incorrect, insufficient or too much information. Moreover, successive Governments have always taken the view that the 'unnamed taxpayer' power in what is now paragraph 5 of Schedule 36 is reserved for serious cases. HMRC acknowledges that it may be preferable not to lose that integrity.

A new power to establish full identity

- 3.11. The third option would insert a new power in Schedule 36 allowing HMRC to issue a notice limited to obtaining some or all of name, address and date of birth in order to identify the taxpayer. As with the other options, the notice would be issued to a person who can be expected to identify the taxpayer from the information held by HMRC and set out in the notice. Once the taxpayer has been identified it may well be that the concerns previously held by HMRC (or the overseas authority) disappear. But if more information is required then the formal powers in paragraph 1 and 2 are available with all the existing safeguards (or in an exchange of information case the powers available to the overseas authority).
- 3.12. The length of time required to allow for two tribunal applications, one to establish identity and another to obtain any supplementary information needed, would not allow the UK to respond in a timely fashion to information requests from overseas. Timeliness of responses is part of the international standard for tax information exchange and this aspect is also monitored by the Global Forum as part of the peer review process. Accordingly we propose that no tribunal approval would be needed to use the new power.

The safeguards contained in the Human Rights Act 1998 and the Data Protection Act 1998 in respect of the processing and disclosure of information would continue to apply in the normal way. So too would the requirements running through Schedule 36 for HMRC's requests for information to be reasonable.

- 3.13. There are already two circumstances in which similar details may be required by notice not requiring tribunal approval. These are to obtain contact details for the taxpayer in relation to unpaid debts under Schedule 49 FA 2009 and to obtain details of the owner of securities from a nominee. There are several examples of the latter power in the Taxes Acts (of which one is section 26 TMA 1970) which are being replaced from 1 April 2012 by a power under Schedule 23 of the current Finance Bill (see paragraph 14).
- 3.14. But we are conscious that the use of a new power of the type described needs to be closely controlled:
- It would be a requirement that identity details are needed in relation to a tax check, not for any more general purpose;
 - It would be reasonable to specify that the information should not be readily available from another source;
 - A notice should only be issued to a person who can be expected to have obtained the identity details in the course of business, as defined in Schedule 36; and
 - Importantly, the main control on the use of the new power would be that it could only be exercised by an authorised officer of HMRC, as is the case for paragraph 5. And like paragraph 5, we envisage that only a handful of senior officers would be authorised for this purpose.
- 3.15. As things stand, this is the option preferred by HMRC. If, following this consultation it is still the favoured option, then a possible draft of the clause to introduce the new power is shown in Chapter 4. We would be pleased to receive comments on the drafting.

Question 4: HMRC's preferred approach is to legislate for a new power to establish identity. Is this the correct conclusion? Are there arguments in favour of an alternative option which should be considered?

Question 5: Is there a better way to achieve our policy aim which is not discussed in this document?

4 Draft clause and Explanatory Note for the third option

4.1. The draft clause is:

(1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.

(2) After paragraph 5 of Schedule 36 to FA 2008 insert –

“Power to obtain information about persons whose identity can be ascertained

5A (1) An authorised officer of Revenue and Customs may by notice in writing require a person to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that -
(a) the taxpayer’s identity is not known to the officer, but
(b) the officer holds information from which the taxpayer’s identity can be ascertained.

(4) Condition C is that the officer has reason to believe that.
(a) the person will be able to ascertain the taxpayer’s identity from the information held by the officer, and
(b) the person obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “Relevant information” means all or any of the following -
(a) name,
(b) last known address, and
(c) date of birth (in the case of an individual)”.
.

(3) In paragraph 6 (notices), in sub-paragraph (1), for “or 5” substitute “, 5 or 5A”.

(4) In paragraph 31 (right of appeal against notice given under paragraph 5), after “paragraph 5” insert “or 5A”.

(5) Accordingly, in the heading immediately before that paragraph, at the end insert “or 5A”.

(6) The amendments made by this section apply in relation to tax regardless of when the tax became due (whether before, on or after this provision comes into force).’

4.2. The draft Explanatory Note is:

1. Clause [x] inserts a new paragraph 5A into Schedule 36 to Finance Act 2008. It provides a power for HMRC to require a third party to provide the name, address and date of birth (if known) of a person for whom HMRC has information from which that person's identity can be ascertained. A notice will only be issued to a person who can be expected to be able to identify the taxpayer from the information provided by HMRC in the notice.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for amendments to Schedule 36 FA 2008.
3. Subsection (2) inserts the new power into Schedule 36.
4. Sub-paragraph (1) of new paragraph 5A provides that an authorised officer of Revenue and Customs may issue a notice requiring a third party to provide relevant information about a person, subject to conditions A to D.
5. Sub-paragraph (2) of new paragraph 5A states condition A: that the information is reasonably required in connection with a tax check.
6. Sub-paragraph (3) of new paragraph 5A states condition B: that the officer does not know the identity of the person, but has information from which the identity can be ascertained.
7. Sub-paragraph (4) of new paragraph 5A states condition C: that the officer has reason to believe that the third party will be able to identify the person from information obtained in the course of carrying on a business.
8. Sub-paragraph (5) of new paragraph 5A states condition D: that the person's identity cannot readily be established by other means.
9. Sub-paragraph (6) of new paragraph 5A defines relevant information as the name, address and date of birth of the person.
10. Subsections (3) to (5) make consequential amendments to Schedule 36 including ensuring that the same rights of appeal apply as for a notice under paragraph 5 of Schedule 36.
11. Subsection (6) provides that the new power, which will come into effect on Royal Assent, will apply to tax whenever due.

BACKGROUND NOTE

12. This new power is added to the range of information powers in Schedule 36 FA 2008 which may be used in carrying out a check of a person's tax position. In a case where the full identity of the taxpayer is not known but information is required from a third party, the existing powers can only be used where a serious loss of tax is suspected.

The new power allows HMRC to issue an information notice in a case where identifying information is held (for example a bank branch and account number) in order to find out relevant information.

13. Relevant information is narrowly defined and only consists of the name, address and date of birth (if known) of the person to whom the identifying information relates. Once the taxpayer is fully identified in this way any further enquiries that are necessary will be made using the existing powers in Schedule 36.
14. This new power is necessary in order to bring the UK's powers into line with the international standard for exchange of information in tax matters as determined by the OECD and monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Question 6: Do you have any comments on this early draft legislation?

5 Impact

It is not considered that this measure will have significant impact on data-holders. The circumstances in which HMRC or any overseas fiscal authority wishes to check a tax position based on identifying information but without knowing the identity of the taxpayer will only rarely arise. And it is not the Government's intention to use this power domestically on a large scale, nor to short circuit the safeguards built into the existing Schedule 36. Nevertheless, HMRC welcome views on any possible impacts under the headings below.

Summary of Impacts

Exchequer impact	The assumption is that there will be a negligible UK exchequer impact for all years. The measure is not designed to raise revenue but rather is being introduced to meet international commitments.
Economic impact	None anticipated.
Impact on individuals and households	There will be no direct impact on compliant UK individuals and householders.
Equalities impact	None anticipated.
Impact on businesses and Civil Society groups	The only direct impact on businesses will be the provision of the name, address and, if known, date of birth of a person from identifying information provided by HMRC. A notice will only be issued to a person who can be expected to have that information readily available. The cost is expected to be negligible.
Operational impact (£m) – HMRC	As it is anticipated that few additional notices will be issued, the costs incurred by HMRC will be negligible.
Other impacts	None anticipated. A Privacy impact Assessment will be made in due course, but a preliminary assessment suggests that the strict procedures that will be in place demonstrate that the interference with privacy is proportional and justified, and thus lawful.

Evaluation and Monitoring: if the option of a new power not needing tribunal approval is taken forward, then its use will be closely controlled. The implementation oversight forum will consider changes brought about by this measure. The forum, with a majority of external members, was established to consider the changes brought about by the Review of Powers, Deterrents and Safeguards.

6 Summary of Consultation Questions

Question 1: Could additional safeguards be introduced for taxpayers who are the subject of an information request from another country without causing the UK to be non-compliant with international standards?

Question 2: Should additional safeguards be introduced to help control the domestic use of any new power?

Question 3: What implementation challenges would these proposals pose? How could the impact on data holders be mitigated?

Question 4: HMRC's preferred approach is to legislate for a new power to establish identity. Is this the correct conclusion? Are there arguments in favour of an alternative option which should be considered?

Question 5: Is there a better way to achieve our policy aim which is not discussed in this document?

Question 6: Do you have any comments on this early draft legislation?

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 for **stages 1 and 2** of the process. The purpose of the consultation is to seek views on how best to bring HMRC's powers into line with the international standard.

How to respond

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

Responses should be sent by 29 September 2011, by e-mail to Powers.review-of-hmrc@hmrc.gsi.gov.uk or by post to: Review of Powers, Room 1.72, 100 Parliament Street, London, SW1A 2BQ

Telephone enquiries: 0207 147 0096 (from a text phone prefix this number with 18001)

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 the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. 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.

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

Annex A: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, Better Regulation and Policy Team, H M Revenue & Customs, Room 3E13, 100 Parliament Street, London, SWA 2BQ

Telephone 020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Annex B – Part 1 Schedule 36 FA 2008

Powers to obtain information and documents

Power to obtain information and documents from taxpayer

1(1) An officer of Revenue and Customs may by notice in writing require a person ("the taxpayer")—

- (a) to provide information, or
- (b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

(2) In this Schedule, "taxpayer notice" means a notice under this paragraph.

Power to obtain information and documents from third party

2(1) An officer of Revenue and Customs may by notice in writing require a person—

- (a) to provide information, or
- (b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer ("the taxpayer").

(2) A third party notice must name the taxpayer to whom it relates, unless the tribunal has approved the giving of the notice and disapplied this requirement under paragraph 3.

(3) In this Schedule, "third party notice" means a notice under this paragraph.

Approval etc of taxpayer notices and third party notices

3(1) An officer of Revenue and Customs may not give a third party notice without—

- (a) the agreement of the taxpayer, or
- (b) the approval of the tribunal.

(2) An officer of Revenue and Customs may ask for the approval of the tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see paragraphs 29, 30 and 53 (appeals against notices and offence)).

(2A) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (3)).

(3) The tribunal may not approve the giving of a taxpayer notice or third party notice unless—

- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
 - (b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
 - (c) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to an officer of Revenue and Customs,
 - (d) the tribunal has been given a summary of any representations made by that person, and
 - (e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why an officer of Revenue and Customs requires the information and documents.
- (4) Paragraphs (c) to (e) of sub-paragraph (3) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.
- (5) Where the tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

Copying third party notice to taxpayer

- 4(1) An officer of Revenue and Customs who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the tribunal has disapplied this requirement.
- (2) The tribunal may not disapply that requirement unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs, and
 - (b) the tribunal is satisfied that the officer has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

Power to obtain information and documents about persons whose identity is not known

- 5(1) An authorised officer of Revenue and Customs may by notice in writing require a person—
- (a) to provide information, or
 - (b) to produce a document,
- if the condition in sub-paragraph (2) is met.
- (2) That condition is that the information or document is reasonably required by the officer for the purpose of checking the tax position of—

- (a) a person whose identity is not known to the officer, or
 - (b) a class of persons whose individual identities are not known to the officer.
- (3) An officer of Revenue and Customs may not give a notice under this paragraph without the approval of the tribunal.
- (3A) An application for approval under this paragraph may be made without notice.
- (4) The tribunal may not approve the giving of a notice under this paragraph unless it is satisfied that—
- (a) the notice would meet the condition in sub-paragraph (2),
 - (b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law (including the law of a territory outside the United Kingdom) relating to tax,
 - (c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax, and
 - (d) the information or document to which the notice relates is not readily available from another source.

Notices

- 6(1) In this Schedule, “information notice” means a notice under paragraph 1, 2 or 5.
- (2) An information notice may specify or describe the information or documents to be provided or produced.
- (3) If an information notice is given with the approval of the tribunal, it must state that it is given with that approval.
- (4) A decision of the tribunal under paragraph 3, 4 or 5 is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

Complying with notices

- 7(1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
- (a) within such period, and
 - (b) at such time, by such means and in such form (if any),
- as is reasonably specified or described in the notice.
- (2) Where an information notice requires a person to produce a document, it must be produced for inspection—
- (a) at a place agreed to by that person and an officer of Revenue and Customs, or
 - (b) at such place as an officer of Revenue and Customs may reasonably specify.

(3) An officer of Revenue and Customs must not specify a place that is used solely as a dwelling.

(4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

Producing copies of documents

8(1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Commissioners.

(2) Sub-paragraph (1) does not apply where—

(a) the notice requires the person to produce the original document, or

(b) an officer of Revenue and Customs subsequently makes a request in writing to the person for the original document.

(3) Where an officer of Revenue and Customs requests a document under sub-paragraph (2)(b), the person to whom the request is made must produce the document—

(a) within such period, and

(b) at such time and by such means (if any),

as is reasonably requested by the officer.

Restrictions and special cases

9 This Part of this Schedule has effect subject to Parts 4 and 6 of this Schedule.