Third Party Data Reporting Review - Call for Evidence

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1. UK Finance is the collective voice for the banking and finance industry.

2. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation. Our members include businesses that are large and small, national and regional, corporate and mutual, retail and wholesale.

General Comments

3. We welcome the opportunity to respond to the Office of Tax Simplification's ('OTS') 'Third Party Data Reporting Review - Call for Evidence' ('the Call for Evidence'). We are also grateful for having had the opportunity to meet with the OTS team and to exchange views and perspectives on the Call for Evidence.

4. We support the overarching aim of the Third Party Data Reporting Review, of looking at the potential for third party data to contribute to improving the taxpayer experience, and examining the principles that should apply in relation to third-party data and taxpayers generally.

5. We have provided detailed responses to the specific questions in the Call for Evidence below.

6. We note that this Call for Evidence is part of a wider tax information and third party data reporting landscape which includes other initiatives such as HMRC's recently published Call for Evidence on 'The tax administration framework: Supporting a 21st century tax system', Making Tax Digital ('MTD') and Real Time Information ('RTI'). UK Finance has set out six overarching considerations for third party data reporting:

    1. A clear legal framework. Under the Common Law, banks owe a duty of confidentiality to their customers, based on the decision of the Court of Appeal in *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461. In accordance with that decision, it is an implied term of the contract between a banker and a customer that the banker will keep the customer's information confidential except "(a) where disclosure is under compulsion of law; (b) where there is a duty to the public to disclose; (c) where the interests of the bank require disclosure; (d) where the disclosure is made by the express or implied consent of the customer". Financial Institutions (FIs) are also bound by the Data Protection Act 1998 and the Data Protection Act 2018, and must have regard to the data protection principles, such as the purpose limitation principle. As such, any data required by HMRC needs to be mandated, by law, often as part of a notice, potentially on a 'report if you hold it' basis. If any new mandatory requirements to

report information are introduced, it may be necessary to consider not only a mirror requirement to collect certain information but also some consideration about the ability of FIs to collect that information in the absence of any legal compulsion on customers to supply it.

2. Balancing the needs of customers and HMRC. UK Finance members are fully committed to helping customers to ensure that they have easy and ready access to the information necessary to understand their tax position. They are also fully supportive of measures to ensure that the right tax is paid, at the right time, to support vital public services. We also understand that customers and citizens want HMRC and FIs to strike the right balance between convenience and their personal privacy. There is, therefore, a need to consider the extent to which changes might fundamentally alter the perception of personal responsibility and self-assessment. This would be of concern if it were to result in displacing the onus of responsibility, and exposure to risks, onto FIs. We are reassured that HMRC acknowledges that new safeguards and legislation may be required, and that they intend to provide taxpayers with opportunities to correct inaccuracies on their tax accounts directly with HMRC. However, we are concerned by the suggestion that HMRC may seek real-time information from multiple sources, so as ‘to construct a more comprehensive view of taxpayers and their activities’. In practice, this may mean that HMRC will be making connections and drawing conclusions from data which has a considerably higher risk of reporting errors, due to FIs having inadequate time to check information on a return before it is submitted, compared to the existing annual reporting approach which allows almost three months from the end of the reporting period (5 April) to the deadline for submission (30 June).

3. Data security. Aligned with the needs of customers, the data security environment for both the exchange of information and the provision of information through digital tax accounts will need to meet high standards for data security, given the potential for increased exposure to financial crime, particularly in support of protection from social engineering attacks. FIs need to be confident that stringent data security safeguards are met in order to meet their own requirements under applicable regulations, and we encourage early engagement by HMRC digital teams to discuss their intended approach.

4. Proportionality. It is important that there is some cost-benefit analysis performed in the process of deciding on an expansion of the reporting obligations falling to FIs. This cost-benefit analysis would need to consider all FIs, ranging from large multi-national banks to small local building societies. In some cases, FIs are already required to report data to HMRC for their entire customer base holding a particular product or products, even though only a very small percentage of them may actually have any further tax to pay. For instance, HMRC’s MTD consultation document stated in 2016 that fewer than 5% of taxpayers will have additional tax to pay on interest received from banks, a figure which presumably would have fallen in the intervening years. There is therefore a need to make sure that measures introduced are proportionate to the benefit gained by HMRC and by taxpayers. At the same time, any changes in the provision of data are likely to result in significant costs for industry to implement. Many banks will have the current reporting regime built into core customer systems, and changes to those systems require a significant degree of development, lead time and testing. Depending on the scope of changes, many banks will also need to make changes to multiple

systems, with millions of customers spread across several platforms and products, alongside changes to processes and procedures, staff training and customer communications.

5. Timing. Following provision of detailed requirements, core financial systems typically need a minimum of 18 to 24 months development time in order to successfully deliver change programmes. That timeframe represents the need to secure a budget and resources for the project, assess changes, design and deliver the necessary infrastructure developments, test changes to ensure they perform as expected and do not have unintended consequences. Proposed implementation dates for any changes to third party data reporting must reflect these timeframes.

6. Coherence and consistency. We would strongly urge more emphasis on developing a holistic and coherent approach, that identifies and manages interdependencies as well as resolving inconsistency, for instance between UK domestic and Automatic Exchange of Information regimes. In particular, we would support the development of a road map to an end state with clearly defined steps along the way, that would allow the possibility of staggering the introduction of reporting in line with the complexity of the requirements. This would give UK Finance members the opportunity to implement changes in an agile way, which would be appreciated by those members who may be in a position to 'go live' with changes earlier than others. We would additionally urge HMRC to resist introducing interim, piecemeal changes that add to the cost, complexity and fragmentation of the reporting landscape ahead of any large-scale change project. We appreciate that in a constantly evolving environment HMRC favours an incremental approach to change, but this approach needs to be balanced with our members' need to plan ahead. We think it would also be essential for HMRC to involve change management subject matter experts to support the development of a formal project plan and timetable of activity for any large-scale change project.

7. We have also established an indicative project plan for the implementation of changes to third party data reporting. The plan sets out five key areas that we would expect to see when implementing such an initiative, which are relevant in respect of the Review's aim of examining the principles that should apply in relation to third-party data. These areas are as follows:

   a. Defining the dependencies:

      1. *Format for reporting*
         There are several existing reporting standards in use. Given the Call for Evidence states that "The review will consider alternative ways for HMRC to receive and use information that is already provided in some form either by individuals or third parties, rather than considering the provision of new types of information," reusing existing formats would be the most cost-efficient delivery method.
      2. *Data requirements*
         FIs already exchange customer data with HMRC under several different regimes. Requirements for new data fields, or the reformatting of existing data fields, would add cost and complexity. Careful consideration is needed for changes, including any changes to the frequency of reporting.

3. *Data Transfer mechanism*
   Any changes to existing mechanisms for data exchange mechanisms need to be defined early in the process to allow development work to happen in conjunction with other developments.
4. *Timeline for delivery*
   A realistic timeline for delivery is critical, and communication with taxpayers needs to be central to the delivery timeline.
5. *Data security standards*
   The move to digital tax accounts and pre-population of taxpayer information represents a shift in the volume, quality and use of data and for the transfer and storage of data. FIs need to be sure that customer data is protected before they can report.
6. *Customer experience*
   Accurate data matching and easy query resolution are key to customers' experiences.
7. *Customer engagement details*
   The nature and aims of any changes to the use of customer tax data need to be communicated clearly and prominently to customers, prior to their implementation.

b. Mapping the flow of information and the need for changes
   The current flow of customer data should be mapped in order to determine whether the proposals will require changes.

c. Gap analysis of dependencies to existing requirements
   FIs already exchange customer data with HMRC under several different regimes. A gap analysis between this data and the proposals would help align the new third party information requirements with FIs' current circumstances.

d. Minimum viable timeline for implementation
   Typically core financial systems need a minimum of 18 months development time in order to successfully deliver change programmes.

e. Practical timeline for implementation
   A realistic implementation timeline which considers the relevant circumstances is important.

8. The British Banker's Association ('BBA'), a predecessor organisation to UK Finance, submitted a response[1] to HMRC's 2016 consultation on 'Making Tax Digital: Transforming the tax system through the better use of information'. This document is attached in the Appendix. In this response, the above principles were applied to the proposed changes to Bank and Building Society Interest ('BBSI') reporting. See pages 4 to 10 and 17 to 24 for further details.

9. One potential area of improvement in the taxpayer experience that we could not see included in the Call for Evidence is the difference in the taxation of savings interest and compensatory interest. We believe customers are confused regarding why the former is paid gross, without the deduction of any withholding tax, but the latter is not, being subject to 20% withholding.

[1] This document is included in the Appendix.

10. In addition, this is likely to mean that for a significant proportion of taxpayers receiving compensatory interest, because the amount of such interest is within their PSA, are required to go through a tax refund process to end up in the correct tax position.

11. The taxpayer experience could be improved by abolishing the withholding tax on compensatory interest thus aligning it with interest and other annual interest payable to individuals by Financial Institutions on savings accounts. This would return to the position in place prior to 2013 when banks could usually pay compensatory interest gross.

12. We believe the requirement for banks to withhold tax from compensatory interest was introduced in 2013 to align it with the treatment of savings account interest in force at that time as it was subject to withholding under the Tax Deduction Scheme for Interest (TDSI) legislation. The TDSI requirements were subsequently abolished from April 2016, but the obligation to withhold on compensatory interest was not, thus meaning they are once more no longer aligned.

Specific Questions

Potential Third-Party Data Providers

14. Does your business provide its customers with tax related data to help them fulfil their tax obligations, and how is this provided? Do you currently have a method for individuals to query the information provided if they believe it is inaccurate?

13. FIs provide customers with a wide variety of tax-related information, including that related to bank accounts, pension savings, annuities, share acquisitions and disposals and rectification of policy errors. We expand on some of these below.

<u>Credit interest on savings accounts and compensatory interest</u>

14. This can include statements regarding the amount of interest credited gross to a savings account during the year. This is relevant where an individual's interest from all sources exceeds their Personal Savings Allowance ('PSA').

15. Additionally, members also provide customers with a breakdown of any compensatory interest paid to them. As compensatory interest is subject to withholding tax at 20%, the breakdown provided includes details of the amount of tax withheld, and the resulting amount of net interest being paid. Please see paragraphs 9 to 12 above for further comments regarding the difference in taxation of savings interest and compensatory interest.

<u>Income tax and CGT-related information relating to investment products.</u>

16. To assist customers with their own self-assessment tax return obligations, under the terms and conditions of some wealth products and propositions, customers are automatically provided with a consolidated tax certificate each year after tax year end. These certificates give a summary and more detailed breakdown of income (by type, e.g. interest, dividend etc) paid in relation to the wealth product concerned during the previous tax year.

17. In addition, for some products, customers are also provided with Capital Gains Tax ('CGT') related information as part of an annual customer 'tax pack', e.g. some members may offer a discretionary investment management service as part of the customer agreement, and agree with the customer the extent to which CGT might be incurred as a result of trading within the portfolio, and an annual summary of CGT related information is provided.

Life assurance

18. Life assurance FIs provide policyholders with chargeable event certificates as required by relevant legislation.

Provision of information

19. The method of providing tax-related data varies depending on how FIs engage with their customers, but includes such methods as a secure online portal, paper mail out, and on request.

20. It should be noted that there are instances where there is no regulatory requirement at present for customers to be provided with documentation relating to their tax affairs automatically. However, this information can be provided upon request.

Customer queries

21. There are a variety of methods that individuals can use to query the information provided, including in branch, via telephone, letter, email and webchat.

15. Does your business already provide data on a regular basis to HMRC or to another government department? How is this done and what format does it take? Are there any particular positives or negatives with the current method of data provision? If you ever need to correct the customer information you hold, how do you update an earlier submission to HMRC or other government department?

22. UK Finance members provide HMRC with periodic data in respect of a variety of information reporting requirements. These include:

i. **Bank & Building Society Interest** ('**BBSI'**) returns. These primarily relate to credit interest earned on deposit accounts (paid gross) and compensatory interest payments made to customers (paid net of 20% withholding tax when paid to an individual). Please see paragraphs 9 to 12 above about our suggestions for the potential alignment of the taxation of savings and compensatory interest;

ii. **Other Interest** ('**OI'**) returns. These primarily relate to wealth products where the FI is acting in a nominee capacity holding the legal ownership of interest paying/distributing investments (e.g. corporate bond funds), but their customer is the beneficial owner;

iii. **Automatic Exchange Of Information** ('**AEOI'**) returns. These are Foreign Account Tax Compliance Act ('FATCA') and Common Reporting Standard ('CRS') returns which report the account balance and transactional data of certain accounts of an investment nature such as interest income, dividends, cash value insurance redemptions and gross proceeds of disposals for overseas tax residents. As such the scope is broader than the traditional domestic information returns for similar products allowing for greater analysis in the hands of the recipient.";

iv. **Personal pension product** returns. Many of these relate to the accumulation period during which the general exemption from income tax and Capital Gains Tax ('CGT') on income and gains within the pension fund applies, e.g. information relating to contributions made etc. But once customers start taking their benefits, FIs need to report details of such amounts to HMRC. This is largely achieved by the pension product provider being treated as if it is an 'employer' under the HMRC Pay As You Earn ('PAYE') Real Time Information ('RTI') reporting requirements. There have been issues in this area, as highlighted in some of the HMRC Pension Schemes Newsletters in recent years, in some respects complicated by the 'pensions freedoms' introduced a few years ago.

v. **Chargeable events** reporting. Life insurance manufacturers report details of certain chargeable events directly to HMRC in line with relevant legislation.

vi. **Individual Savings Accounts ('ISA') and Child Trust Fund ('CTF')** reporting. FIs report details of these accounts to HMRC in accordance with the requirements of the ISA Regulations and CTF Regulations respectively. As both of these products are exempt from UK income tax and CGT, the data primarily relates to subscription amounts to enable HMRC to check that annual limits are not being exceeded across multiple products/providers, as well as aggregate statistical data about volumes of accounts, funds under management, aggregate income amounts (by income type) etc, which helps HMRC to establish the amount of tax relief being given.

vii. **HMRC notice** response. FIs provide customer data to HMRC in response to specific notices served by HMRC, for example using their powers under the Direct Recovery of Debt ('DRD') legislation or under Schedule 36 of the Finance Act 2008.

Reporting format

23. Generally, data is provided electronically where there is a regulatory requirement to do so, however, there are certain data submissions that can be done using paper such as chargeable event reporting. It is also worth noting that following the reporting of pension contributions that have received Relief at Source, a residency file is received back from HMRC.

24. How the above are reported (and the required format) varies, but each information type has its own reporting requirements, typically covered in detail in HMRC guidance and supporting reporting specifications outlining the schema rules that FIs must follow. There are a number of different ways that FIs currently exchange information with HMRC, including Secure Data Exchange Service ('SDES'), XML file, and Excel spreadsheet submissions. This is symptomatic of the evolution and improvements in technology over time when reporting has been implemented. We believe that any future solution should be based on a holistic view, which either supports a single method or allows conversion of existing practices.

Correcting returns

25. In general, if there is a need to update customer information, it results in a full re-submission of the file to HMRC, although based on the circumstances, HMRC may also

accept supplementary returns being filed in order to rectify certain errors. For FATCA/CRS, a customer's individual account record in a prior return can be voided if no longer correct, with a subsequent filing of the amended record. However, it is not clear whether currently any corrections FIs make to prior year BBSI returns are also amended on a customer's digital tax account.

26. The preparation of returns for submission to HMRC is very time consuming and there may be instances where, due to data quality issues, and despite a high degree of testing, the returns are rejected thereby requiring analysis, amendment and re-verification before resubmission. Elements of the returns process require manual intervention and so can be time consuming.

27. On the evidence and experience to date from BBSI, OI, and AEOI returns, we anticipate that in future, should more information be made available to HMRC, it is likely that the number of queries from customers will increase. This is based on members' experience of receiving queries from their customers who do not recognise the information that HMRC has presented to them in their outreach activities based on HMRC's matching and use of information provided in the returns mentioned above. See the response to question 26 for further details.

16. Is your customers' identification and relevant financial data currently held digitally in a database? What is your primary reference for your customers (e.g. National Insurance number)?

28. FIs are required to collect Know Your Customer ('KYC') data as part of customer onboarding processes. The required data differs depending on the specific requirements of the regulations covering the product in question. New KYC data is primarily (but not always) held digitally, while KYC data collected historically can be held in a variety of media. Depending on the way FI's systems are built, KYC data collected for a customer for one product may not necessarily be linked to KYC data collected for that same customer for a different product.

29. FIs only collect customer data where there is a requirement by law to do so. They may therefore collect one "unique identifier" in the form of National Insurance Number ('NINO') for Pensions and ISAs, but not for everyday current or savings accounts which do not require a NINO as they are not required for UK tax residents under AEOI. Additionally, a NINO may be held on one system, for instance for an ISA product, but that data may not be linked with non-ISA products held on other systems, such as depository accounts.

30. Each customer is likely to have an internal digital ID, but that would be unique to the FI and not one that would be used universally, especially where a customer holds products with more than one FI. Where there is no single digital ID held, the customer reference number will depend on which company the contract is with and will range from account number for banks to policy number for pensions or insurance contracts. There is no standard format for customer reference as FIs have many platforms, unique designs for certain customer references and differing arrangements with its customers.

31. Some but not necessarily all customers' identification and financial data will be held digitally. Even where it is, in some cases it may 'merely' be a scanned (e.g. PDF) copy of a document (e.g. a passport or driving license), rather than all the separate data items on

those documents being held in separate and electronically searchable fields, e.g. passport number.

32. A single customer unique identifier, for example a digital ID or use of the NINO (made available for all ages), would be required to ensure accurate matching. However, the collection of this unique ID would remain a significant challenge. As long as this unique identifier is common across all data providers (i.e. government issued), this would facilitate a customer with a bank account held with Bank "A" being correctly matched due to having the same unique identifier as a pension policy with Provider "Z".

33. From 2010, the Deposit Guarantee Schemes Directive ('DGSD') required deposit guarantee schemes, such as the Financial Services Compensation Scheme ('FSCS') in the UK, to pay out compensation within 20 business days of the default of a deposit taker. In order to meet this requirement, UK deposit takers are required to maintain a Single Customer View ('SCV'). The provision of an SCV provides the FSCS with the information required to make a faster pay-out, with a target of seven days. The SCV requirement is restricted to eligible deposits only. If an FI is required to maintain an SCV it does not follow that all customer data is held digitally in a single database.

17. What do you consider would be the main difficulties of the introduction of data reporting to HMRC? Are there any types of business or charity which would have particular difficulties or disproportionate costs in reporting customer data to HMRC?

34. It should be noted that FIs already comply with several data reporting requirements to HMRC. As such, we have assumed that this question relates to the difficulties that may arise in relation to new or changed reporting obligations, for instance extending reporting to capture dividends or increasing the frequency of reporting.

35. It is challenging to answer this question comprehensibly and specifically without knowing more granular details of the types of additional reporting types or other changes in contemplation. However, there are several high-level considerations:
    - Ensuring HMRC can match the records reported to the correct taxpayer.
    - In some cases, the customer, who is the legal 'account holder' with an FI, is not the beneficial owner and may not therefore be the person subject to tax on income/gains arising in relation to the account.
    - FIs may not hold certain items of data for some or all of their customers.
    - Some information that is currently held may not be held under easily electronically searchable data field, e.g. data only held on a scanned copy of a document.
    - Any requirement to obtain additional data from customers would impact account opening processes, potentially across multiple products and systems and may necessitate the development of automated and/or digital data capture processes in addition to postal outreach. In addition, if any requirement was imposed to collect new data from existing customers, i.e. some sort of 'backfill' exercise, this would take time, be costly and depend on customers responding voluntarily, in the absence of any legal compulsion. In our experience a fair proportion of customers do not voluntarily respond to follow up requests for additional information. Also, most FIs have existing customers where records are marked 'gone-away' as they no longer hold up to date contact details for them (e.g. address) as a result of customers not updating their FI following a change of details.

- Many legacy systems are old and were not built to record the data or support the types of reporting and data interrogation that would be needed. The costs involved would be significant as would the lead times needed to adapt systems, if it would be possible. Increasingly organisations are using external parties for the provision of their operating platforms, and therefore we would recommend early engagement with that sector.
- Data frequency is an important consideration. Real time or monthly reporting may require the use of Application Programming Interfaces (‘APIs’) which inevitably would require significant lead times. Annual reporting may provide flexibility for manual intervention/reporting, which whilst less efficient, may not have the same impact on lead times.
- It should be clear that data is reported by the source payer/receiver only and not based on transactional activity. For example, amounts of interest paid by a bank from an in-scope bank account would be reported by the bank, they would not report a dividend received from a third party into that same bank account, nor would they be in a position where they could legally or accurately do so.
- Data security and confidentiality would need to be fully considered, including ensuring that FIs only provide customer data to a third party (HMRC in this case) where they are legally obliged to do so, otherwise the FI would be in breach of their common law duty of confidentiality as well as other statutory provisions, e.g. the General Data Protection Regulations (‘GDPR’), by providing the data.
- Reporting certain new types of information (e.g. CGT-related, dividends, fund distributions etc.) may require banks to undertake a resource intensive process to ensure transactions are categorised correctly. Not all banks provide an assets management service. There would be an unwelcome risk that such categorisation may not be entirely accurate in all circumstances and would give rise to legal and reputational consequences. Where banks currently provide tax packs (covering CGT etc they are prepared on a best-efforts basis and typically caveated to reflect the fact that FIs will not have complete information regarding their customer’s investments. Market analysis of various tax packs (for instance by KPMG) shows that these packs are not perfect and accountants still have to apply their own judgement to ensure returns are correct.

18. How long would it take to adapt your systems in order to be able to effectively report to HMRC? What additional administrative costs would there be for your type of business? Is there anything HMRC could do to support delivery?

36. This question is difficult to answer without knowing exactly what would be required, but broadly speaking a minimum lead time of around 18 to 24 months would be needed, starting from when detailed requirements are known.

37. Depending on exactly what was required in terms of amended and/or new reporting requirements the costs to banks and other FIs could be significant.

38. It would be helpful if an overarching roadmap of what changes were going to be implemented, and when, could be agreed between HMRC and relevant FIs, with a view to ensuring the number of times changes need to be made is joined up, sensible and proportionate.

39. We note that in some cases FIs already need to report data to HMRC for their entire customer base holding a particular product or products, even though only a very small percentage of them may actually have any tax to pay. Therefore, before imposing new reporting requirements on FIs we believe it is essential that a thorough impact assessment is undertaken of the likely costs for the industry versus the likely additional tax that will be collected as a result of such new reporting.

19. Do you currently usually hold customers National Insurance numbers?

40. Most FIs only hold National Insurance Numbers (NINOs) in some cases. For example, the collection of a NINO is specifically required under the tax legislation for some products, notably tax-exempt products like ISAs and personal pensions.

41. A NINO also needs to be obtained in some situations under non-tax related requirements. For example, under MiFID regulatory requirements, customers holding certain UK share dealing products that some banks offer need to provide their tax identification number or social security number relevant to their nationality, which is then included as part of regulatory reporting submissions. For UK nationals, the NINO is collected and used for this purpose.

42. Following the introduction of CRS reporting, the NINO may be obtained by some FIs as part of the account opening process, but not always. The UK regulations permit but do not require the NINO to be collected for all new accounts opened, for example those relating to UK residents opening a UK based account would be out of scope for CRS reporting (unless they subsequently move abroad to a jurisdiction that's in scope for CRS).

43. There is a significant part of the customer base for whom FIs may not hold a NINO, particularly for those accounts opened prior to the introduction of the CRS. Or even where an FI holds a NINO for some customers, it may have been obtained for a specific purpose under, for example, the ISA Regulations or MiFID requirements mentioned above. Therefore, any potential need to use it for another purpose (e.g. in relation to reporting it to HMRC regarding interest credited to a non-ISA related (taxable) savings account) would need to be considered alongside other obligations under GDPR and confidentiality requirements.

20. If your type of business were required to collect additional data from your customers in order to facilitate reporting, how easy or difficult would this be, and what would be the timescales involved?

44. Any requirement to obtain additional data from customers would impact account opening processes, potentially across multiple products and systems. In addition, if any requirement was imposed to collect new data from existing customers, i.e. a 'backfill' exercise, this would take time and depend on customers responding and some may not respond. Most FIs have a number of existing customers where records are marked 'gone-away' as they no longer hold up to date contact details for them (e.g. address) as a result of customers not updating their FI following a change of details and it should be noted that customers can be reluctant to provide information that they do not see as relevant to the provision of banking services. It should also be borne in mind that, regardless of the success of a 'backfill' exercise, not all customers will have unique identification information such as a NINO.

45. There could also be problems and issues in relation to potentially reporting CGT related information. FIs will likely only hold data relating to the specific investments the customer holds with them. It is possible they may hold the same investment (e.g. a particular share or investment) with other FIs. We understand that in certain circumstances taxpayers need to apply various pooling requirements where they have purchased the same investment at different times (and potentially through different FIs). As a result, we think it may not be feasible for one FI to be in a position to provide details of gain/loss amounts that could be reliably used for pre-populating a taxpayer's digital tax account.

21. How often would it best fit with the way your business systems operate to provide HMRC with the relevant data (for example, in real time, monthly, quarterly, annually)?

46. The frequency of data transmission is dependent on several variables but primarily would be driven by the product in question and when the FI would normally provide the customer with the linked information. Any changes to frequency would need to be implemented in a considered, controlled and realistic timeframe to allow the adaptation of systems to take place after a thorough industry consultation. In particular, moving to reporting in real time, or close to real time, would be a huge exercise on a scale completely different from RTI for payroll, for example.

47. The variety of information that FIs report to HMRC at the moment (see answer to Q15) collectively covers information submitted in real time, monthly, quarterly, annually and ad-hoc on the occurrence of a specific event during the lifetime of a product or as a result of an information notice request from HMRC.

48. Under the MTD initiative HMRC consulted on changing the frequency of BBSI reporting from annual to monthly or even real time, as well as proposing numerous other potential changes to the data items required under BBSI with a view to improving tax administration. The BBA's conclusions[2] were as follows:

    1. That reporting should continue in the existing Electronic Flat Text File format, which provides structured data to HMRC and in widespread use across the industry.
    2. There should be no changes to the existing data reported by banks on individual customers; we believe the current data set provides all of the information needed by HMRC. The current data set should be provided for all joint accounts, recognising the limitations of current reporting in this respect.
    3. A full impact assessment to be carried out on the cost to industry once HMRC have determined the changes that are needed to ensure that changes are proportionate, including an assessment of the costs of more frequent reporting against the benefits to HMRC and taxpayers.
    4. Detailed discussions on the security of both the data transfer and HMRC's customer facing platform, to ensure that sensitive customer information is secure.
    5. A collaborative approach looking at the matching of data received to customer records and supporting customers with adopting the new Digital Tax Accounts.
    6. A campaign led by HMRC to raise awareness of the changing approach to taxes.

[2] Please see the Appendix for the full text of the BBA's response to HMRC's consultation.

22. Are there any legal or regulatory issues specific to your sector that could arise if your business were required to report customer data to HMRC?

49. It is crucial that the requirements are provided for in law, and not in guidance. Similarly, where HMRC guidance is created to outline how information should be reported from a tax technical or schema perspective, it is vital that the guidance is developed in conjunction with the industry to ensure consistency in approach across industry and to allow HMRC to use the data in the correct manner. Early engagement with industry is very important, because if the detail is not available up-front different parties may have their own interpretations on how to report some elements leading to aggregation challenges upon receipt.

23. Are there examples of the ways data reporting is carried out in practice that we could learn from (for example, Common Reporting Standard), either positively or negatively, whether within the UK or in other countries?

50. It might be useful for OTS to consider the data that currently gets reported to HMRC by UK FIs on their AEOI returns. Although such returns are submitted primarily in relation to overseas tax obligations the underlying account holders may have, some of the data items included in the reporting schema are also relevant to the account holder's UK tax position. For example, aggregate amounts of dividends are reported, as are aggregate amounts of the sale proceeds of investments.

51. It may also be worth considering if some of the AEOI reporting requirements could be merged or aligned with 'domestic' reporting obligations, albeit the difference in reporting period (calendar year versus UK tax year) might be problematic in that regard.

52. Real Time Information ('RTI') reporting for Pay as You Earn ('PAYE') is generally considered to work well. Whilst there were teething problems and there will be instances where errors are found, it has settled down relatively well with the pre-population of Self-Assessment ('SA') returns and information feeding into Personal Tax accounts generally a success. However, the number of employees of any single organisation is only a fraction of the number of customers of most FIs. Looking ahead the provision of a long term "road map" of the target end state would also help industry consider how best to approach these future challenges rather than a piecemeal delivery of requirements.

53. The difficulties that FIs have experience in engaging with their 'back book' customers to cure indicia of non-UK tax residence for AEOI purposes show that not all customers choose to engage with their bank. Whatever changes are made to collect data at the time of onboarding, collecting additional information from the millions of existing customers poses a significant and possibly insurmountable challenge.

24. Are you aware of opportunities offered by emerging technology that could support the provision of third-party data to HMRC?

54. We have not considered specific solutions but believe that emerging technology will be key in delivering effective solutions. Software developers therefore need to be an active part of any consultation/solutions.

25. Do you have any suggestions on what additional legal powers would be necessary in order to facilitate reporting by third parties to HMRC?

55. FIs will continue to only collect information where there is a legal requirement to do so. Government departments, such as the Department of Work and Pensions and HMRC will, we would expect, have access to customer data that would allow accurate matching and enable us to have the correct customer identifier on file. We would expect other Government departments to be required to share the data that they hold with HMRC.

26. Is there any data that it could be useful for HMRC to be able to share with your business in order to aid tax compliance among your customers?

56. Creating the capability for FIs to confirm or enrich elements of our data to ensure that subsequent reporting is accurate, specifically in the context of the unique identifier would be helpful. The opportunity to work with HMRC in respect of tracing customer information, or other third parties such as credit rating agencies, would also be helpful.

57. A better understanding of what HMRC currently do with the data once they receive it from FIs would also be helpful. UK Finance members are already engaged in ongoing discussions with HMRC about this in relation to BBSI reporting and the potential changes HMRC are already considering regarding such reporting.

58. In addition, sometimes when customers contact FIs to verify what they have been told by HMRC, e.g. about the amount of interest reported to HMRC by a bank, it would be useful if FIs could contact HMRC to obtain a detailed breakdown of how the amount in question has been arrived at, including confirmation of which specific return/sub-return references the amounts were reported on. Large banks submit lots of different BBSI/OI sub-returns to HMRC each year relating to a multitude of legal entities, products and systems. In some years this can easily be 50-100 different sub-returns. As a result, it can sometimes be very difficult to check or validate the figure given to us by the customer. We appreciate that HMRC usually cannot share taxpayer information with a third party without a specific mandate from the individual concerned.

27. Are there any international issues specific to your type of business that need to be considered?

59. We note that foreign assets are harder to classify from a tax perspective and we may also need to consider non-UK data laws.

28. If reporting of data were to be introduced, would you consider this to be better as a phased approach (for example larger businesses and charities first) or across an entire industry in one go? What are the challenges that would arise with either of these approaches?

60. A potential downside of initially implementing a reporting requirement for some FIs but not others (e.g. large banks/building societies first, and smaller ones later) is that taxpayers may hold a range of accounts and products with both small and large organisations. If the data relating to some of them is pre-populated into their digital tax account, but not populated for others, there may be a risk that the taxpayer might assume that all of their relevant data would be included or forget to add the additional details.

61. Using a phased approach runs the risk of different solutions being implemented where a consistent approach to data gathering/reporting is required. However, using a "Big Bang"

approach will place unnecessary pressures on businesses to meet potentially unrealistic timescales in order to comply. Any proposed solution needs to be proportionate and allow adequate lead times for compliance. A pragmatic approach may be to prioritise areas where there is already a form of reporting thereby allowing time for new processes to be developed and embedded. Another option is to initially focus on core requirements. In a banking context this could be the introduction of reporting interest paid to personal (individual) accounts, before then layering up each year by adding joint accounts, sole traders and then intermediated accounts (such as designated accounts, partnerships or trusts) as fast followers over subsequent years. Any implementation should have a degree of flexibility building into the timescales but allow businesses to sign up and deliver as and when the capability exists. This sort of approach worked well for the implementation of PAYE Real Time Information.

62. Please see paragraph 7 above for an indicative project plan for changes to third party data reporting.

If you have any questions relating to this response, please contact Mark Schofield (mark.schofield@ukfinance.org.uk)

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Appendix
BBA response to ‘Making Tax Digital: Transforming the tax system through the better use of information’

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