

The Information Commissioner's response to the public consultation from Her Majesty's Revenue and Customs (HMRC): *Digitalising Business Rates: connecting business rates and tax data*

About the ICO

1. The Information Commissioner's Office (ICO) has responsibility for promoting and enforcing data protection and information rights. This includes responsibilities under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA), the Freedom of Information Act 2000 (FOIA), the Network and Information Systems Regulations 2018 (NIS), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). The ICO is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO provides guidance and support to individuals and organisations, aimed at helping organisations to comply, and it takes appropriate action when needed.
2. The ICO supports the responsible use and sharing of personal data, particularly where this drives innovation and economic growth. We also aim to influence high standards of data protection and good information practices in the public sector.
3. The ICO welcomes the opportunity to respond to the HMRC consultation *Digitalising Business Rates: connecting business rates and tax data* (the consultation).
4. The consultation seeks views on options for government's Digitalising Business Rates (DBR) project. The data within scope of the proposals is likely to include some information that does not relate to individuals. Our comments are limited to issues relating to personal data and not to issues outside our remit.
5. HMRC's final position on the various options in DBR project will affect the data protection issues that arise and the potential for risk. We have therefore confined most of our comments at this time to overarching principles. We will welcome further engagement with HMRC to discuss

specific data protection issues in more detail, once it has reached a settled position on how it will deliver the DBR project.

Summary

6. We recognise that improving the business rates system to make it easier to manage taxpayers' business rates will have benefits for taxpayers. We also acknowledge the important role of HMRC in connecting business rates data with tax information to facilitate government's DBR project, which includes providing taxpayers with the ability to view information about business rates and their tax liability in one place.
7. Public trust and confidence are important factors in successful public sector initiatives involving personal data. Developing a framework for the DBR that integrates high standards for privacy and a positive approach to data protection when handling personal data is more likely to secure and maintain that trust and confidence. A data protection by design and default approach will support HMRC in achieving these aims. This approach should include:
 - undertaking a mapping exercise of the data flows involved
 - establishing and deploying a framework for responsible data sharing between participating organisations
 - using anonymous information when personal data is not required
 - establishing the necessity and proportionality of the processing of personal data, including building on the fundamental principles of data protection such as security
 - ensuring a fair and transparent approach that upholds and maintains individuals' rights
 - ensuring that appropriate protections are in place for any international transfers of personal data.

Data protection by design and default

8. Responsible use of personal data has an important part to play in supporting government as it carries out its responsibilities. It also helps deliver benefits to individuals, business and the wider economy. Organisations, including government and the public sector, play a crucial role in shaping attitudes to information use. People need to trust that their

information rights will be respected if they are to have confidence in the organisations which power our economy and society.

9. Adopting a data protection by design and default approach will therefore be essential in the development of the DBR project. Data protection by design and default is an overarching requirement of data protection law¹ and is vital when planning and investing in the responsible use of information. Data protection by design means considering privacy and data protection requirements at the earliest design stage of any system or service that will process personal data. This is particularly important for the DBR project, where there will be new data sharing initiatives and organisations might use personal data for new purposes.
10. Keeping a data protection by design approach in focus throughout the DBR project will ensure that HMRC develops it in a privacy enhancing way. This will not only help ensure compliance with the fundamental principles and requirements of data protection legislation, but will also assist HMRC and other organisations involved in the DBR project, including wider government, in demonstrating their accountability for their processing of personal data.

Data protection impact assessment

11. A data protection impact assessment (DPIA) is a useful tool to help organisations identify risk and assess potential mitigating steps as part of a data protection by design approach. We therefore welcome HMRC's approach in commencing work on a DPIA and its acknowledgement that this work will evolve as the DBR project develops. It will be particularly important to revisit the DPIA when reaching significant decision points, for example, when selecting the best option for receiving relevant business rates 'data in', as discussed in the consultation, to ensure that HMRC's assessment of risk and the appropriateness of any mitigating steps reflect any change.

Data mapping and data sharing

12. Efficient sharing of data in the public sector can improve insights and outcomes, and increase options for recipients. Data protection law provides

¹ Article 25 UK GDPR

a framework to enable processing of personal data to be fair, lawful and transparent.

13. Data sharing is an important aspect of the DBR project, with the aim of delivering a system that will allow taxpayers to see their tax information and business rates billing information in one place. The options discussed in the consultation include data collection and sharing by the Valuation Office Agency (VAO), by billing authorities for business rates (BAs) or by HMRC itself. Following data matching, HMRC may then share personal data and other information with BAs, perhaps for the targeting of reliefs. The consultation also suggests that HMRC will supply information to government that might assist in future policy design.
14. The potential for differing data sharing relationships between the various organisations concerned in the DBR project suggests the need for a comprehensive data mapping exercise to plot out the proposed data flows, as part of a data protection by design approach, and discussed in the DPIA. HMRC will also need to carefully scope out with greater clarity the specific fields of personal data that it might require for each of these purposes. This approach will clarify specific areas of challenge and opportunity. More specifically, a mapping exercise is likely to highlight interdependencies and complexities that HMRC will need to address, including areas which might present risks to individuals. It is also likely to highlight where HMRC or wider government might usefully play a part, for example, by signposting guidance to help organisations comply with their obligations under data protection legislation.
15. Any data mapping exercise will feed into the DPIA and will form part of the overall assessment it contains. It should also be kept under review and reflect any changes as the project develops.
16. Before sharing data, HMRC will also need to ensure that it has established a clear framework for data sharing with the other organisations concerned. Data sharing agreements set out the purpose of data sharing, including what happens to the data at each stage. They also help everyone participating in the data sharing to be clear about their roles and responsibilities. As a public authority, HMRC will also need to include in its data sharing agreements details of the types of information it includes in its freedom of information publication scheme. The ICO's data sharing

information hub, which includes the ICO's data sharing code, provides valuable resources² in this context.

17. If HMRC does not need personal data to achieve its objectives, then it should seek to use anonymous information instead. We have published a call for views on our draft guidance on anonymisation³ which is likely to be of assistance in this respect.

Necessity and proportionality

18. Most of the potential lawful bases for processing⁴ under UK GDPR require the processing to be necessary. Necessity in this context is closely linked to the need for proportionality, and together, these principles help to establish that the processing is fair and results in fair outcomes. Controllers need to be satisfied that the processing is a targeted and proportionate way to achieve the aim and that the aim cannot be achieved in a less intrusive way.
19. The principles of necessity and proportionality are closely linked to the data protection principles of purpose limitation,⁵ data minimisation⁶ and accuracy⁷. As part of a data protection by default approach, HMRC will need to ensure, for example, that in the context of the DBR project it will only process the personal data that is necessary to achieve its specific purposes and that the personal data it collects and shares is adequate for those purposes. It will be for HMRC to decide on the most appropriate option out of those discussed for 'data in', but giving consideration to such matters will assist in identifying areas of potential risk, or opportunities for pursuing more privacy-focused options.
20. HMRC will need to scope out how each of the data protection principles will apply in each instance of processing and data sharing in the design of the DBR project to ensure that it builds in the necessary protections for personal data.

² Data sharing information hub | ICO

³ ICO call for views: Anonymisation, pseudonymisation and privacy enhancing technologies guidance | ICO

⁴ Article 6 UK GDPR

⁵ Principle (b): Purpose limitation | ICO

⁶ Principle (c): Data minimisation | ICO

⁷ Principle (d): Accuracy | ICO

21. In this respect, we welcome HMRC's focus on verifying the information it receives to ensure accuracy and thus mitigating risks about, for example, displaying personal data on a customer account to the incorrect person, or linking a tax account to incorrect information. We also welcome HMRC's intention to avoid asking for the same data through multiple entries, as well as its ambition to streamline existing processes and reduce burdens on ratepayers. These factors are likely to minimise the amount of personal data that HMRC and other organisations will need to process and limit the risks arising.

Security and automated processing

22. HMRC will need to ensure that it has the appropriate technological and organisational measures in place to protect the personal data and other information which it processes for the DBR project, as part of compliance with the security principle⁸. These measures will need to encompass the collection of personal data, as well as the transmission methods or processes for any onward sharing by HMRC with BAs and others.
23. Using privacy enhancing technologies (PETs) where appropriate as part of a data protection by design approach will minimise personal data use, as well as maximising security and empowering individuals.
24. In addition, HMRC will need to consider whether the implementation of the DBR project might introduce automated decision making. In such cases, UK GDPR contains additional protections for individuals and organisations can only carry out solely automated decision making which results in a legal or similarly significant effects on individuals in certain limited circumstances.⁹ Processing of this nature is considered high risk. If this type of processing is envisaged, HMRC will need to satisfy itself that the processing is permitted and identify and assess the risks to individuals that arise, as well as the steps it can take to address them. HMRC will need to discuss these issues in detail in its DPIA.

Transparency and fairness

25. Making clear at the outset why HMRC and other organisations will collect personal data and how and why they will share it are, as mentioned above,

⁸ Security | ICO

⁹ Article 22 UK GDPR - Rights related to automated decision making including profiling | ICO

vital elements of a data protection by design and default approach. Being clear, open and honest about the processing is also likely to promote public trust and confidence. Taking this approach will therefore help to ensure that the processing is fair and transparent. This approach also means that data protection issues can be addressed and factored into the DBR project design at the earliest possible stage.

26. The journey of an individual's personal data through the DBR project and then on to other organisations may be complex. For example, in the lead option (Option A), there is discussion about how HMRC might obtain a relevant tax reference 'behind the scenes', including the potential for 'invisible processing' where organisations do not collect personal data direct from the individual. One way in which this might take place is by HMRC using verified credentials from when individuals access government services in the Government Gateway or One Login (currently in development). In such a situation, the taxpayer would not need to take any steps in order for HMRC to receive the tax reference, but there might be risks that they might also be unaware of how HMRC would use their personal data in that context.
27. In all cases, HMRC and the other relevant organisations will need to adopt a coordinated approach to ensure that the processing and sharing of personal data is transparent and fair. This will include considering how they can provide meaningful privacy information to individuals in ways that will be clear and understandable.
28. In the same vein, HMRC will also need to provide clear frameworks as part of the DBR project so that the organisations involved can support individuals' rights and individuals will know how to exercise them.
29. All transparency measures will need regular review to ensure that they are fit for purpose as the policy develops.

International transfers

30. It is not clear at present whether there will be any international transfers of personal data by HMRC as a consequence of the DBR project, for example, by reason of the hosting arrangements for any systems HMRC might procure and use. HMRC should therefore keep this issue in mind to ensure

that, if this becomes a relevant factor, it is able to undertake any restricted transfers compliantly and transparently.¹⁰

Consultation

24. HMRC has already approached the ICO with a request for consultation under article 36(4) UK GDPR in relation to these proposals. We welcome the opportunity for further engagement with HMRC, reflecting the continuing nature of that obligation.

¹⁰ International transfers after the UK exit from the EU Implementation Period | ICO