



ICAEW REPRESENTATION 119/14

SHARING AND PUBLISHING EXPORT DATA FOR PUBLIC BENEFIT

ICAEW welcomes the opportunity to comment on the consultation document *Sharing and publishing export data for public benefit* published by HM Revenue and Customs on 25 June 2014, a copy of which is available from this [link](#).

This ICAEW response, issued on 19 September 2014, reflects consultation with the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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MAJOR POINTS

1. HMRC's proposal to publish export data is in line with the UK Government's commitment to the G8's Open Data Charter which presumes that data held by Governments will be publicly available unless there is good reason to withhold it. This is an admirable principle, and in itself provides an adequate reason for the export data gathered by HMRC to be made more widely available, provided that the costs and the potential reductions in private and commercial confidentiality can be justified and the safeguards are sufficient.
2. We note that much information on exports can already be gleaned from other sources, such as the quarterly statistical bulletin produced by the Office for National Statistics, 'UK Trade in Goods by Classification of Product by Activity' which is derived from HMRC data.
3. HMRC argues in the consultation paper that as specific data in respect of importers and the products they import is published, the same principle should be applied to exporters and export products. Such an argument overlooks the fact that the publication of limited import data was first allowed by the Customs and Excise Management Act 1979 (and then the Finance Act 1988) as part of the then government's attempt to reduce the UK's trade deficit by monitoring imports. Furthermore, the 1979 Act allowed such disclosure only if it could be seen to be in the national interest. This explains why export data was originally excluded and also highlights why the publishing of import data can be seen to be beneficial to the UK economy as a whole. We think that it is important that HMRC can demonstrate good reason why this decision, made by Parliament, should be overturned. We do not think that this has been done as part of this consultation process.
4. In summary, if this proposal is to be implemented, the reasons why import and export information should be treated identically (overturning previous policy) and the additional costs to both HMRC and to the private sector should be justified. The cost to the private sector, of reviewing information for content which on reflection they do not need or would find more usefully supplied elsewhere, should not be assumed to be negligible.
5. Further, given the adverse implications for commercial confidentiality, we think that it is essential that any individual company or person who can be identified from this published data (including in combination with other publicly available data) should be allowed the opportunity to request an opt out from the publication of that data, with a full appeals process if that request is rejected. Further, HMRC should implement a complaints process by which a company or individual can seek redress if they can prove harm.
6. Finally, the release of data by HMRC is more sensitive than that released by other government departments due to the overall sensitivity of information on taxation and the need to maintain taxpayer confidence and confidentiality. HMRC needs to be extremely careful about any undermining of this general principle.

RESPONSES TO SPECIFIC QUESTIONS

Q1: What potential uses and benefits do you think would arise from publishing the proposed set of export data items?

7. The proposal to publish export data is premised on the basis that more information is always useful. But as Stephan Shakespeare pointed out 'it is not enough to gather and publish data; it must be made useful.'¹The consultation suggests that the additional information will chiefly be useful to exporters, but it is not clear to us what the tangible benefits would be to them. It might be hoped that potential exporters could use the information to see if there was a gap in the market but there are other, more effective ways of achieving the same result. We would suggest that as potential exporters are less likely to seek business advice from HMRC and are

¹ Shakespeare Review. An Independent Review of Public Sector Information. May 2013, p.9-10

more likely to seek such advice from other government bodies such as BIS (on, for example, the need for export licenses) the Foreign Office or British Council (on, for example, social or economic conditions in the target market) it would be more useful for HMRC to provide export data to other government departments, rather than publish it themselves. Potential exporters would therefore be able to access all the information they need from one source. This would save time and money as well as providing a valuable resource to potential exporters. Existing exporters are likely to be aware of the competition from both UK and foreign companies.

8. It seems to us that publishing export data might prove harmful to UK exports by providing too much information to global competitors. We would suggest that any publication of such data is in line with that published by other countries to ensure a level playing field.
9. The consultation suggests that if HMRC were to publish exporter data, it 'would be a comprehensive source of up to date and accurate information' superior to any such information provided by the private sector. This may be so but the potential cost to the public purse would outweigh the benefits. We are not aware of any demand from the private sector for such information. If the aim is to enable foreign businesses to identify potential UK suppliers, we would argue that there are other more efficient ways of achieving the same end.

Q2: Do you think that the safeguards proposed are sufficient to mitigate any risks arising from publication?

10. Although the consultation argues that the main risk from publishing export data is the increase in the potential for fraud either against HMRC or exporters, it concludes that this risk is low and is covered by existing principles and processes. We agree with this assessment of the risk of fraud but do not agree that it is the only risk arising from publication.
11. We are concerned that as a result of publishing export data, some companies (such as those exporting arms, animals or drugs) may become a target for protesters. Other companies that produce high value items could be the target of thieves if their address was made freely available. The proposed safeguards do not address these risks.

Q3: What, if any additional impacts and risks do you think may arise and what further safeguards should be considered?

12. Although the data that HMRC proposes to publish may be considered as less private than details about individuals, HMRC still owes a duty of care to the owners and directors of exporting companies. It is therefore extremely important that safeguards are introduced to ensure that the data could not be disaggregated to reveal details of individual taxpayers. The safeguards should also be backed up with a complaints system, with the availability of redress for those who have been disadvantaged by publication of specific export information.

Q4: Do you agree with the core proposal (option 1) to publish exporter's name and address, the commodity code and description of the goods they export and month/year of export? Please give reasons for your answer.

13. We do not agree with the core proposal. Specifically, it seems unnecessary and potentially damaging to publish the name and address of the exporter. Similarly the month of export seems irrelevant though the year of export may be useful for monitoring trends.

Q5: What are your views on the proposal (option 2) to allow exceptions or opt-outs to publication?

14. Exceptions would be necessary, for the type of companies referred to in paragraph 11 above and should be permitted for all other companies. Opt-outs may reduce the value of the information published