

7 November 2014

Dear Chancellor,

As part of its final report, published in May last year, the Parliamentary Commission for Banking Standards' ("the Commission's") recommended that:

- the Prudential Regulation Authority ("the PRA") and Financial Conduct Authority ("the FCA") (collectively "the Regulators") and HM Revenue & Customs ("HMRC") jointly publish a paper setting out how they intend to bring about sharing of information and expertise within the existing rules;
- the PRA considers using its powers to commission reports on a specific function of a bank's business on behalf of HMRC; and
- the National Audit Office ("NAO") undertakes a periodic review of how effectively the PRA uses its powers to promote information sharing.

The Government, in its published response to the Commission in July 2013, asked us - HMRC, the PRA and the FCA - jointly to investigate where there is scope for usefully extending the dialogue between the Regulators and HMRC, and to report our findings to you.

Since then, we have been working together to identify how we can better share information between ourselves. The PRA has also considered the Commission's recommendations on using its powers to commission reports on behalf of HMRC and on a periodic review by the NAO. A summary of our findings are annexed to this letter.

We will of course keep these arrangements under review to ensure they provide the benefits the Commission were seeking.

We are copying this letter to Andrew Tyrie MP, chair of the Commission, and Lord Lawson of Blaby, chair of the Commission's Tax, Audit and Accounting Panel.

Yours sincerely



Jim Harra
On behalf of HMRC



Andrew Bailey
On behalf of the PRA



Martin Wheatley
On behalf of the FCA

Annex 1

Information and expertise sharing

HMRC, the PRA and the FCA (collectively, “the organisations”) already exchange and share some information and expertise in fulfilling our relevant functions. However, this is on an ad hoc basis and is reliant on individual contacts within the organisations. In response to the Commission’s first recommendation, the organisations have agreed a number of operational changes designed to provide each of us with better access to information and expertise.

We believe the changes agreed will help us to identify on a timely basis any significant issues that might have an impact on our objectives, and to enhance our understanding of banks and of their behavioural responses to regulatory, tax and other changes. They will also, we believe, enable necessary action to be taken to address such issues more quickly and on a more coordinated basis.

We have agreed to establish clear lines of contact in each organisation to provide technical assistance (on, for example, the application of taxation, prudential (eg regulatory capital) and firm conduct rules) in response to specific requests from one of the other organisations that would help the latter organisation to advance its objectives.

We will hold regular joint meetings to enable us to consider on a timely basis any taxation, regulatory, prudential and consumer implications that may arise as a result of our policy work.

We have agreed that each of the organisations put in place arrangements to ensure that they bring to the attention of the other organisations emerging trends/issues that might have an impact on their objectives.

A Memorandum of Understanding between HMRC and the FCA and another between HMRC and the PRA has been put in place. These set out the high-level agreements and principles governing the exchange of information between HMRC and the FCA, and between HMRC and the PRA, which would help to promote information sharing between HMRC and the Regulators.

Annex 2 sets out details of the types of information that will, as a result, be shared between the organisations.

We believe that these changes will enable us to meet the needs that each of us currently has for increased information exchange and technical assistance, whilst continuing to respect the restrictions on Regulators in sharing confidential information obtained under EU Directives with HMRC. Annex 2 also contains some details on these restrictions.

We have agreed furthermore that we will continue to explore ways in which we can further improve the sharing of information and providing technical assistance expertise amongst the organisations in ways that will enable each of us to ensure that we fulfil our relevant functions as effectively as possible.

Proposal that the PRA commission reports on behalf of HMRC

The PRA has considered the Commission's suggestion that the PRA commission reports on a specific function of a bank's business on behalf of HMRC.

The PRA was created by the Financial Services Act 2012 as a focussed micro-prudential regulator and supervisor of banks, building societies, credit unions, insurers and major investment firms.

Under section 166 of the Financial Services and Markets Act 2000 ("FSMA"), the PRA has the power to require any regulated firm or a member of its group ("PRA-authorised persons") to provide the PRA with a report by a skilled person on any matter. This power covers the situation where the PRA has or could have required a PRA-authorised person to provide information or produce documents. This means inter alia that the information or evaluations in the skilled person report must be reasonably required in connection with the discharge by the PRA of its functions under FSMA.

The PRA discharges its functions under FSMA, so far as is reasonably possible, in light of its general objective of promoting the safety and soundness of PRA-authorised persons. Commissioning a report on behalf of an organisation that does not have functions and objectives similar to those of the PRA would involve the PRA acting outside its remit under FSMA. It follows that the PRA does not have the ability under FSMA to commission reports by skilled persons in relation to a bank's business on behalf of HMRC, in order to advance HMRC objectives as a tax authority.

The PRA and HMRC have considered the operational implications of this. HMRC's view is that it already has a range of information gathering and investigation powers to address the majority of tax and regulatory risks to enable it to achieve its objectives. As well as those mentioned elsewhere in these annexes, Schedule 36 to the Finance Act 2008 enables HMRC to get information about specific taxpayers where an issue has been identified or as part of a check. This includes information required from the taxpayer or (with approval of the taxpayer or a tribunal) information from a third party in relation to a taxpayer known to HMRC, or from a third party in relation to a class of taxpayers where the identities may not be known to HMRC. HMRC therefore believes its powers are sufficient for it to require the information it needs to meet its objectives, including in areas highlighted by the Commission such as tax risk management and financial transfer pricing. However HMRC will continue to keep its powers under review.

Periodic review by the NAO

The PRA agrees with the recommendation that the NAO should carry out a periodic review of how effectively the PRA uses its powers to promote information sharing with HMRC. HMRC and the FCA suggest that the review scope be extended to include information sharing between both the Regulators and HMRC.

Annex 2

Information and technical assistance to be shared

The paragraphs below set out the specific information and technical assistance HMRC agreed to provide to the Regulators, and vice versa. These shall be provided within the scope of the current legal framework at the end of this Annex.

Information and technical assistance to be provided by HMRC to the Regulators

The Regulators will be provided with the following information and technical assistance by HMRC:

- The opportunity to discuss the tax implications of ad-hoc transactions or capital structures of firms and the tax treatments of new or complex products of firms.
- The highlighting of changes in the tax regime and their implementation, where this might cause prudential or conduct issues in firms.
- Raising the Regulators' awareness of 'tax avoidance' schemes and the motivations for such structures as well as the risks therein.
- Providing early warning of significant tax liabilities, disputes, or tax investigations underway.

In addition, for tax products that are within the FCA's regulatory framework, HMRC will provide the FCA with its views on how realistic the tax-savings claimed are (particularly in light of the General Anti-Abuse Rule in the 2013 Finance Act).

Information and technical assistance to be provided by the Regulators to HMRC

HMRC will be provided with the following information and technical assistance by the Regulators:

- The opportunity to discuss significant proposed changes to prudential or conduct requirements in advance.
- The highlighting of emerging trends or issues in relation to prudential or conduct motivated structuring of transactions that the relevant Regulators think might have tax implications for the firms.
- Technical support to enable HMRC to gain a better understanding of the regulatory or conduct requirements underlying certain tax structures.

It is envisaged that, to the extent that the Regulators may disclose confidential information to HMRC, most of these disclosures would be in connection with a related criminal investigation.

Legal gateways for information sharing

We can share information between our organisations unless restricted by the relevant confidentiality rules set out in the relevant UK legislation. Those rules restrict both what we are able to share and the manner in which confidential information can be exchanged, specifically:

- The Commissioners for Revenue and Customs Act 2005 ("CRCA") provides a general prohibition on the disclosure by HMRC of information to third parties unless they have lawful authority to do so¹.
- The Financial Services and Markets Act 2000 ("FSMA") prevents the Regulators from disclosing confidential information² (and persons obtaining confidential information directly or indirectly from the Regulators from disclosing that information) other than in very limited circumstances.

However, there are exceptions to these general rules that allow HMRC and the Regulators to share certain confidential information between them. For example:

- From 1st April 2013, HMRC may disclose *Revenue information*³ to the Regulators for the purposes of assisting or enabling the Regulators to discharge any of the Regulators' functions under FSMA or any other Act of Parliament (as provided by section 350(1) FSMA). In relation to the points made in the Commission's Report at paragraph 1044⁴, this new information gateway represents an important change in HMRC's ability where legally appropriate to assist or enable the Regulators to discharge their relevant functions as a part of the more formalised and co-ordinated information and expertise sharing set out and described in this annex.
- Subject to certain restrictions, HMRC may disclose information held pursuant to the exercise of its functions under the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994 to the Regulators for the purposes of facilitating the exercise of any function they have by virtue of FSMA (as provided by section 241 of the Enterprise Act 2002).

¹ Section 18(1) CRCA prohibits the disclosure of information held by HMRC in connection with its functions except in limited circumstances set out in legislation. This prohibition applies to all information held by HMRC not only information that relates to an identifiable person or corporate entity.

² In summary, under section 348(2) of FSMA, information is confidential if all of the following applies:

- It relates to the business or other affairs of any person;
- It was received by the Regulators in the course of their functions under FSMA; and
- It is not otherwise publicly available.

Information is not protected by FSMA if it is aggregated or anonymised in such a way that it is not possible to tell from it the person to whom it relates.

³ Under section 350(7) FSMA, "Revenue information" means information held by a person which it would be an offence under section 182 of the Finance Act 1989 for him to disclose. Furthermore, para 18 of Part 2, Schedule 2 CRCA provides that the Commissioners may only supply information in accordance with section 350 FSMA if the information was obtained or is held in the exercise of a "former Inland Revenue" function.

⁴ Paragraph 1044 to the Commission's report: "Currently, there is an information gateway between HMRC and the regulator but the range of information which they are allowed to share is narrow."

- Section 18(2)(a) CRCA allows HMRC to disclose information for the purposes of HMRC's functions i.e. when disclosure enables or assists HMRC to carry out its own functions.
- Regulation 49A of the Money Laundering Regulations 2007, SI 2007/2157 allows HMRC to disclose information held in connection with its functions under the Regulations (as a supervisory authority) to the FCA to enable or assist the FCA to discharge any of its functions under the Payment Services Regulations 2009.
- Section 19 of the Anti-terrorism, Crime and Security Act 2001 allows HMRC to disclose any information for the purposes of any criminal investigation which is being or may be carried out by any other law enforcement agency.
- The Regulators can share confidential *non-Directive information*⁵ with HMRC if there is a related criminal investigation, or if such sharing is to enable or assist HMRC to carry out its functions under any enactment, or if it would enable or assist the Regulators in carrying out their own public functions (under FSMA 2000 (Disclosure of Confidential Information) Regulations 2001, SI 2001/2188 (as amended)).

In addition, certain EU directives⁶ impose restrictions on the Regulators on the disclosure of *Directive information*⁷. For example, article 53 in connection with article 59 of the Capital Requirements Directive prevents the PRA from disclosing Directive information to government departments that are not responsible for law on the supervision of banks, investment firms or insurers. As HMRC has, in our view, no such responsibility, sharing of *Directive information* with HMRC is not permitted, unless there is a related criminal investigation.

⁵ See footnote 7 on explanation of Directive information.

⁶ EU Directives include, but not limited to, Capital Requirements Directive, Life and Non-Life Insurance Directives, Reinsurance Directive, UCITS Directive, MiFID (for information received from an overseas regulator) and Insurance Mediation Directive.

⁷ Directive information is confidential information received by the Regulators in the course of discharging their functions as the competent authority under any of the European legislation as set out in footnote 6, as well as information received under the Regulations which establish the EBA, EIOPA, ESMA and the ESRB.