



# Taxing Matters

## What can HMRC do with your information?

<b>Alice</b>	Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alice Kemp and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at <a href="http://www.rpc.co.uk/taxingmatters">www.rpc.co.uk/taxingmatters</a> .
<b>Alice</b>	<p>Listeners may recall previously discussing the myriad ways HMRC can collect information about taxpayers in order to perform its functions. Whether from international agreements, from information provided by financial institutions – here or overseas – or by using its own information gathering powers to acquire information about targeted individuals but, having received this information, what can HMRC do with it. What are the powers and restrictions on HMRC when dealing with information?</p> <p>Here to break this question down for us is Keziah Mastin. Keziah is an associate in RPC's tax disputes team where she specialises in complex tax customs litigation and disputes. Having recently joined from HMRC's solicitor's office where she specialised in a variety of things including strategic litigation, international trade and customs policy.</p> <p>Keziah, welcome to Taxing Matters!</p>
<b>Keziah</b>	Thank you, Alice.
<b>Alice</b>	<p>So, there have been a number of episodes of <i>Taxing Matters</i> dedicated to how HMRC acquires information and what businesses, or individuals, should do when faced with a request for information. HMRC has a number of broad functions: it's responsible for the assessment and collection of taxes, it's responsible for the inward and outward flow of goods and technology, it's a regulator – responsible for ensuring compliance with anti-money laundering regulations – and it's an enforcement agency, responsible for investigating and prosecuting breaches. So, how does the flow of information work among all of these functions?</p>
<b>Keziah</b>	<p>The starting point is that the Commissioners for Revenue and Customs Act 2005 governs HMRC's information powers and restrictions alongside other general data protection regulations and also general public law principles.</p> <p>Importantly section 17 of the CRCA, as it's referred to, says that information acquired by HMRC in connection with one function can be used by them in connection with another function. In practice we have seen that this power is interpreted broadly by HMRC</p>
<b>Alice</b>	<p>And is there any restriction on how this information flow can work?</p>
<b>Keziah</b>	<p>Section 17 does provide for some restrictions in that, if there is another enactment or international agreement, for instance, that restricts, or prohibits the use of information internally within HMRC, then that would do so, but otherwise as I say, HMRC interpret this power quite broadly.</p>
<b>Alice</b>	<p>And what kinds of things are we talking about in terms of the acts or restrictions that might be applying?</p>
<b>Keziah</b>	<p>Well, there may be instances, for example, in the Police and Criminal Evidence Act, 1984. I'm thinking, in particular, of section 22 which provides an express statutory limitation on the right of retention. It's arguable that this limits the operation of section 17 CRCA and, therefore, limits the extent to which HMRC can share information between the criminal and civil functions, for example.</p>
<b>Alice</b>	<p>And so, if that is all of the things that happen internally, I'm sure that a lot of listeners out there are thinking, "does it matter, HMRC can just share that information can't they?" Why might that be a problem?</p>
<b>Keziah</b>	<p>Taxpayers might think, 'well, I've got nothing to hide, there's no harm in HMRC sharing that information', but there could be some concerns for a number of reasons. For example, taxpayers might be unaware that the information has been shared in that way, they may not have the opportunity to object to the sharing of</p>

	<p>information in that way, or to object to the scope, or nature of the information that is being shared. Also, in a civil enquiry, for example – in the case of information sharing amongst criminal and civil arms of HMRC – the civil arm of HMRC may then make use of that information, either concerning the tax payer, or any third parties again who may or may not be aware that their information is being processed in that way. HMRC may, otherwise, have not had the power to obtain information through the civil route they may have done through the criminal route, for example.</p> <p>Another concern that the taxpayer might have is where they don't have the opportunity to correct information shared internally, within HMRC, and, possibly, shared without any context or further information. This might lead HMRC to start to investigate avenues which would involve taxpayers having to go to great expense and time to satisfy HMRC's concerns when there was no substance to those concerns.</p>
<b>Alice</b>	<p>I can see that being a real concern for businesses! So, what about the outward flow of information from HMRC, are there any regulations around that?</p>
<b>Keziah</b>	<p>The starting point, again, is the 'Commissioners for Revenue and Customs Act'. Section 18 says that HMRC officials cannot disclose information which is held by HMRC in connection with one of their functions. There is a criminal offence for wrongful disclosure that attaches to any HMRC officer.</p> <p>There are some exceptions to that in section 18., those include things like disclosure for the purposes of civil proceedings, or a criminal investigation or following an order from a court. There's also a defence to wrongful disclosure, which is that the disclosure was reasonably believed by that person to have been lawful, or that the information had already, lawfully, been made available to the public.</p> <p>So section 18 is the starting point there and then, alongside those sections in CRCA, an HMRC officer will also need to have regard to other data protection regulations and general public law principles.</p>
<b>Alice</b>	<p>You mentioned there that there was an exception to allow disclosure in the context of a civil litigation, what does that allow HMRC to do?</p>
<b>Keziah</b>	<p>It allows HMRC to disclose information, for example, during the process of civil litigation that might be relevant to that particular case. It might allow HMRC to disclose information to third parties. In short, it allows HMRC to share, or disclose information, for example, with other parties, with the tribunal, or court, and with third parties, occasionally, for example, with members of the press.</p>
<b>Alice</b>	<p>And you've described that section 17 has given a rather broad interpretation by HMRC, is the same true for section 18?</p>
<b>Keziah</b>	<p>Generally, we have seen that HMRC interprets section 18 more restrictively in terms of how it interprets section 17.</p> <p>With regards to section 18 HMRC will need to take a view on a case-by-case basis. So, from the perspective of a taxpayer, it might appear as if they are taking different views on different cases that may potentially contradict. So, in one case HMRC may appear to be very liberal in terms of the information that they will disclose to another party, for example, whereas in another case they may take a much firmer view against disclosure of certain documents or information.</p>
<b>Alice</b>	<p>So, taking these both into consideration what should businesses be doing?</p>
<b>Keziah</b>	<p>In the case of criminal investigations it may be wise to seek confirmation from HMRC as to what they are doing with the information that they have acquired throughout the criminal investigation. If it is appropriate, or necessary, you may wish to object to the use of your information in that way or to seek to limit the extent, or scope, of the information that they are sharing internally.</p> <p>In a civil context you may apply to the tribunal for a direction requiring HMRC to disclose specific information or documentation. Sometimes just the threat of an application might cause HMRC to reconsider their decision. For example, if they are reluctant to disclose information to you, in some instances we have seen that disclosure appears to be a particularly sensitive issue and this may prompt them to settle the substantive case – if it's of particular importance to them, for some unknown reason.</p>
<b>Alice</b>	<p>So how does CRCA interact with other access to information provisions?</p>
<b>Keziah</b>	<p>Well, taxpayers can still make use of usual freedom of information requests [and] subject access requests. CRCA doesn't restrict the operation of freedom of information and subject access requests. However, where s18 CRCA would prohibit the disclosure information that is held by HMRC, that information counts as exempt information under the Freedom of Information Act 2000 if disclosure would identify a person, or would enable the identity of a person to be deduced.</p>

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**Alice**

Perfect! Unfortunately that's all we've got time for in this week's episode.

Thank you again Keziah for joining us. You can find Keziah through LinkedIn or on RPC's website. If you have any questions for me or Keziah, or any topics you'd like us to cover in a future episode, please do email us on [taxingmatters@rpc.co.uk](mailto:taxingmatters@rpc.co.uk) – We'd love to hear from you!

RPC would like to thank Josh McDonald. Our original score is composed by *Inciter Music* who also produce this podcast series. To hear a full, uninterrupted version of our podcast theme go to Instagram @incitermusic and follow the link in bio.

And, of course, a big thank you to all of our listeners for joining us.

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Thank you all for listening and talk to you again in two weeks!

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**Alice**

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If you have any questions for me or for Harry or any topics you would like us to cover in a future episode, please do email us on [taxingmatters@rpc.co.uk](mailto:taxingmatters@rpc.co.uk). We would love to hear from you.

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Thank you all for listening and talk to you again in two weeks.

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