Ref: STC

27 February 2015

Graham Bissell
via e-mail: NHSCRConsultation@scotland.gsi.gov.uk

Dear Mr Bissel

**Proposed amendments to the National Health Service Central Register (Scotland) Regulations 2006**

We are writing to respond to your consultation concerning proposed amendments to the National Health Service Central Register (Scotland) Regulations 2006.

As a tax body, our sole interest is in the taxation aspects of the consultation i.e the proposal to permit HMRC to access certain data concerning people who are on the NHS records for Scotland. The stated purpose of the proposal is to facilitate the correct identification of people in Scotland who will be Scottish taxpayers.

We note that what is proposed is sharing of individual’s data that falls within legislation protecting access to individual data and in particular EU legislation eg Directive 95/46. In essence, this legislation provides that public authorities must also protect individual’s data. There is an opt-out where the sharing of data is *necessary* in the public interest but that is a very high threshold. We emphasise that the threshold is one of necessity and not mere convenience. We do not think that threshold is met for the following reasons –

- The test of residence in the Scotland Act is in essence based on either
  
  i. having a close connection with Scotland; or
  
  ii. spending more days in Scotland than elsewhere in the UK.

Mere access to a residence in Scotland is not of itself a determining factor, except where that is the taxpayer’s only main residence. Where there are two or more residences the test is to count the time spent in each as a main residence. The ultimate determination of residence is where an individual is at the end of the day (i.e. where they spend the most “midnights”). Access to the NHS Central Register (NHSCR) will do nothing to assist in either regard.
For the vast majority of people, there will be Council tax records. Given that council tax is imposed at different rates and discounts are given depending on whether or not a home is the person’s principal residence or not, those records though possibly not as comprehensive as the NHSCR, would appear to provide far better information as to whether a taxpayer has either a ‘close connection’ through their place(s) of residence with Scotland or has spent more days in Scotland than elsewhere in the UK.

For the vast majority of taxpayers, they will have one residence and that will be the one that they have given to HMRC either indirectly as an employee or directly when registering for self-assessment. There may be problems with people not so registered but those will not be solved by allowing access to the NHSCR database.

We accordingly do not agree that the proposed access to the NHSCR will provide sufficient benefit to justify its use. We note that in some cases eg trying to trace a particular person who is wanted for fraud, there are specific exceptions that would allow a judicial body to order access so that extent the proposed changes would be otiose.

Yours sincerely

Moira Kelly
Chairman, Scottish Technical Committee

The Chartered Institute of Taxation

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