Welcome to February’s Technical Newsdesk

Welcomes

01 February 2018

We need to talk about guidance

Particularly eagle-eyed readers of Technical Newsdesk will see that, although we normally provide a summary of the submissions we have made (as set out in the list in the table at the end), there is no summary this month of the joint CIOT, ATT and LITRG submission ‘What is good guidance?’. That’s not because it is an issue we feel can ignore. Indeed, we need to talk about guidance!

Our joint submission arose through the Welsh Revenue Authority’s engagement with Welsh taxpayers and stakeholders on the development of tax guidance and digital systems ready for its devolved taxes going ‘live’ April 2018. We seized this opportunity to set out the attributes of good guidance, which we believe should include the following:

- It should not be a substitute for drafting good law in the first place. It should be there, where necessary, to explain or amplify the tax authority’s view of the law where it is within its collection and management powers to do so.
- It should be tailored to the audience for which it is intended. So, simpler guidance for non-tax specialists or unrepresented taxpayers may provide an overview of the way the taxes operate, whilst specialist technical guidance would inform tax practitioners (whether acting within or outside the tax authority), of the way it interprets tax legislation.
- Taxpayers and their advisers should generally be able to rely on published guidance.
- Guidance should be regularly updated for changes to legislation and for decisions or judgments of a tribunal or court.

- Guidance should be dated, and where changes to guidance are made the date and the reason for the change should be given.
- Examples, particularly those derived from actual experience, should be used, especially to cover ‘grey’ or nuanced areas.
- Where online calculators are used, as well as being simple to use, and without error or bias, users must be able to rely on the result – such as printing off the results of an online decision or calculation tool in support of the filing of a return.
- Guidance in the form of Frequently Asked Questions (FAQs) can be very useful, particularly where new legislation is introduced, provided that the questions being answered are those the taxpayer is likely to be asking themselves.

Do take a look at the full submission for a fuller picture. So where are we in practice? Well, most of the guidance on non-devolved taxes is held on GOV.UK. But that’s not all: the websites of 25 Ministerial departments (including HM Treasury), 20 Non-Ministerial departments (including HM Revenue & Customs) and 388 other agencies and public bodies have been merged onto GOV.UK. So, tax content is also presented alongside information and functionality around driving licences, flood defences, becoming a British citizen, and even how to bring your ferret into the UK! And there’s more to come – take a look at the Government Transformation Strategy (see https://tinyurl.com/transform-strat for more information).

Just in terms of taxation, the quantity of content on GOV.UK is vast. We know from meetings with HMRC and the Government Digital Service (GDS) that there are over 500 pages of ‘mainstream’ content, over 6,000 pages of ‘specialist’ content, as well as over 80,000 pages of HMRC Manuals. Mainstream content is ‘owned’ by GDS (rather than HMRC) and is designed to give an overview of an area. It is written in a way that it can be understood by a person with a reading age of eight. Specialist content is, as you would imagine, more detailed, and is written by HMRC, although it must adhere to certain styles imposed by GDS, which excludes (for example) FAQs. As a rule of thumb, if the page does not say ‘From: HM Revenue & Customs’ at the top of the page, then it is mainstream content.

So is this current approach to guidance working? Well, it’s fair to say we have concerns on a number of levels:

1. Updating of guidance – often guidance is out of date and will therefore be misleading and inaccurate.

2. Status of guidance – to what extent can it be relied on, by whom, and in what circumstances.
3. Accuracy /completeness of guidance – in particular, mainstream guidance often over-simplifies what is quite complex legislation.

By way of examples, in relation to 1 above, the specialist guidance entitled 'Income Tax when you rent out a property: working out your rental income', until 28 October 2016, referred to claiming the wear and tear allowance, even though it was repealed with effect from 6 April 2016. So, the guidance was over six months out of date before it was updated on GOV.UK. In relation to 3 above, the mainstream guidance 'Marriage Allowance' states 'To benefit as a couple, you (as the lower earner) must have an income of £11,500 or less' and 'you don't earn anything or your income is £11,500 or less'. These statements are incorrect. The (four and a half pages of) legislation which introduced the Marriage Allowance (and more in the current Finance (No. 2) Bill) allows it to be claimed provided neither spouse nor civil partner is liable to income tax at the higher or additional rate. It is not a requirement that the lower earner has income under £11,500. The distinction is important.

Guidance is, therefore, an area which continues to be a focus of the CIOT, ATT and LITRG's technical work. We'd be keen to hear your views, and especially any areas of concern, to technical@ciot.org.uk, atttechnical@att.org.uk or LITRG@ciot.org.uk).

And though I'm pretty much out of space, I would just like to highlight the briefings which the CIOT, ATT and LITRG submitted on Finance Bill 2017-18. These can be found on the submissions pages of our websites, and are part of our work towards a legislative process which translates policy intentions accurately and effectively into statute.