HMRC guidance: difficulties with out-of-date, inaccurate and hard to find guidance

General Features

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The impact of unclear and out-of-date guidance can be a significant barrier to the smooth and fair operation of the tax system. This is an issue that our members regularly contact us about. What can be done to improve the current situation?

The role of guidance is crucial in communicating to self-assessing taxpayers, and their agents, what HMRC's interpretation of the law is, particularly when dealing with areas of complexity. The CIOT's view is that HMRC's guidance and manuals should enable individuals and businesses to understand their rights and obligations in relation to taxation, enabling them to comply without risk of error or penalty.

There are many issues relating to HMRC guidance but they can largely be distilled into three categories:

Quality and accuracy of content: widespread inaccurate, out-of-date, unclear guidance prevents access to current HMRC policy, leading to legal uncertainty, errors, penalties, misrepresentation and disputes.

1. Availability, timing and processes: GOV.UK rules of engagement are sometimes restrictive. It can be excessively difficult to find HMRC's latest policy position; for taxpayers, advisers and HMRC staff. Timely guidance needs to be prepared and available in anticipation of future changes, not afterwards (recently, for example, for the Trust Registration Scheme).
2. Reliance and status: it is unclear to what extent taxpayers and the courts can rely on different types of guidance

What is the CIOT doing about this?

The CIOT has a cross-tax project underway (linking with ATT and LITRG). These issues affect most sub-committees and the CIOT receives regular reports from members about difficulties they face with guidance. The CIOT project seeks to join up some dots (both within the CIOT and in HMRC/ HMT), collate the wide variety of issues (using a working log) and identify themes and priorities. We have shared these findings with HMRC, HMT and the Office of Tax simplification (as well as our Technical Committee members) and continue to follow up activity in the key areas.

In March, CIOT representatives met with the Rt Hon Mel Stride MP, Financial Secretary to the Treasury (FST) and the project leads for HMRC's own internal guidance project and agent strategy review. We discussed this variety of issues and provided the FST with examples of guidance issues that we would like to see addressed.

We now have a greater understanding of HMRC's own internal guidance project (ongoing to 2020) and the factors which are driving decisions. It is clear that the CIOT's work can positively contribute to this and the FST and HMRC are keen to support and promote initiatives to improve guidance including engagement with the CIOT and other bodies. We plan to liaise further in May/June.

Prior to meeting with the FST, there have been many meetings with CIOT, ATT, LITRG and HMRC and Government Digital Services (GDS) on a range of issues, as well as correspondence and discussion on guidance at many forums where we have CIOT representatives, for example, HMRC's Joint VAT Consultative Committee.

The Office of Tax Simplification recently made recommendations on improving guidance in its VAT review, which were accepted by the Chancellor. We met with the OTS in April to explore this further.

What can taxpayers and advisers do to help?

Please continue to send brief examples of issues with guidance to technical@ciot.org.uk, including examples of the impact these have. Your experience is invaluable.

For Indirect Tax issues, HMRC have a dedicated email address to report guidance issues to: customerexperience.indirecttaxes@hmrc.gsi.gov.uk. We encourage our members to use this and should be grateful if you would copy in technical@ciot.org.uk so that we can monitor progress with HMRC.

The beta versions of the Property Income Manual and Business Income Manual now have a feedback loop directly to the technical specialists – see PIM feedback and BIM feedback.

We would also encourage use of the ‘Is this page useful?’ link at the bottom of every GOV.UK page. Responses via this route automatically feed-in to management information that HMRC are closely monitoring to identify deficient guidance and will play a key part in prioritising decisions.

We anticipate that guidance will become even more important with the pace of change and increase in secondary legislation that will come with Brexit and Making Tax Digital.