A vital bridge

Management of taxes | Personal tax



01 November 2018

Bill Dodwell looks at the recent OTS report on HMRC guidance

The Office of Tax Simplification has just published its first report which looks at HMRC guidance. It is widely acknowledged that the UK's tax system is complex. It is equally clear that, despite the aspirations of the Tax Law Rewrite project, only tax experts are ever likely to read UK tax legislation.

Guidance should thus provide a vital bridge between taxpayers and the UK tax system. The Supreme Court has acknowledged that providing guidance for taxpayers is both within HMRC's statutory remit and a vital part of tax

administration. The court quoted Lord Justice Moses in Gaines-Cooper:

> ‘The importance of the extent to which thousands of taxpayers may rely upon guidance, of great significance as to how they will manage their lives, cannot be doubted. It goes to the heart of the relationship between the Revenue and taxpayer. It is trite to recall that it is for the Revenue to determine the best way of facilitating collection of the tax it is under a statutory obligation to collect. But it should not be forgotten that the Revenue itself has long acknowledged that the best way is by encouraging co-operation between the Revenue and the public…’

Many tax advisers will probably think immediately of HMRC’s technical manuals, once they consider guidance. However, members of the public are much more likely to encounter some 6,000 pages of help aimed at non-specialists. For them it is important that they can understand their tax obligations, especially around providing information to HMRC. Individuals also need help with the choices provided by the tax system – although the OTS acknowledged that it’s not HMRC’s role to give advice on which choice is best, or even the pros and cons of different approaches.

The Government Digital Service and HMRC’s own digital content writers take responsibility for this type of guidance. When it’s done well, it can be excellent. However, there’s also evidence that sometimes simple advice doesn’t work (or is incorrect) for those in more complicated situations. There need to be more links to more advanced guidance. One of the clear findings is that the online guidance produced by the CIOT’s Low Incomes Tax Reform Group is frequently used to fill in gaps in the ‘official’ guidance.

HMRC is developing its own new approaches to guidance, with experiments in decision-led guidance. For example, instead of asking a taxpayer to read lots of complicated stuff about cars and car benefits, asking the taxpayer a few questions about the car and its use could lead to a simple answer. The Government Digital Service is making progress with step-by-step plans e.g. 'Get your business ready to employ staff: step by step' which aim to cover more than just tax issues. Provided the tax references are clear and accurate, this type of guidance can be very useful.

One of the important recommendations is that the Government Digital Service and HMRC should be explicit in categorising guidance into three levels. The lower two are aimed at individuals and are split between basic and advanced levels. The top

level of guidance is HMRC's 219 technical manuals - today published to aid taxpayers, advisers and HMRC officers understand HMRC's view of the law. Historically, the manuals were instructions to HMRC (actually Inland Revenue) officers; today they have a much wider role. Indeed, on occasion, HMRC have argued that returns filed which take a different view to that published in the manuals should draw attention to the apparent conflict.

A second important recommendation is that HMRC should appoint a Head of Guidance, which should be a senior role. The Head of guidance should lead on HMRC's strategy and resolve possible different approaches within the Department. This appointment would send a clear signal about the importance of guidance in the UK tax system.

Adopting modern approaches to making guidance available will be important. Those with a Business Tax Account may see links to YouTube videos on record-keeping and to HMRC webinars. HMRC now has a YouTube channel. HMRC also gives some help on completing Self-Assessment returns with short, pop-up videos, instead of text. It's based on the theory that many of us turn to the internet – and often to video – where help with a problem is needed. it's all part of the idea put forward in the report – that guidance should be user-focussed and tailored to different users.

An interesting idea is that professional and industry bodies should support HMRC by contributing guidance to the Department. Currently such bodies may review guidance and offer comment – but many bodies were prepared to take up the pen. Writing guidance is a resource-intensive task and it is important to bring in outside contributors. The guidance would remain HMRC's responsibility, naturally, and HMRC officers would need to approve whatever is published. Outside contributors could bring in knowledge of commercial scenarios, where guidance would be especially helpful.

The report also has some thoughts on whether guidance is binding on HMRC should it prove incorrect. It notes that Australian position – where guidance isn't binding except in clearly specified circumstances, but incorrect guidance means that the taxpayer escapes interest and penalties. The UK position is that reliance no guidance is based on the 'legitimate expectation' doctrine and is broader than the Australian position. It is less clear, though.

The OTS report is on the GOV.UK website.