Scotland update – the Scottish rate of income tax: draft technical guidance on Scottish taxpayer status

Employment Tax | Personal tax

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CIOT, ATT and LITRG submit comments on the draft guidance

The Scottish Rate of Income Tax: draft technical guidance on Scottish taxpayer status HMRC published their first set of guidance in June on the Scottish rate of income tax (SRIT), which will take effect from 6 April 2016. This is draft technical guidance on Scottish taxpayer status aimed at HMRC officials, businesses and tax advisers. CIOT, ATT and LITRG have all submitted comments on the guidance, having attended stakeholder meetings arranged by HMRC. In particular, HMRC were seeking views on whether the guidance provides clarity on how the department will interpret the legislation.

HMRC have indicated that they are preparing a range of simpler, general guidance products aimed at taxpayers. These are likely to include decision trees and tools, as well as written guidance. They are also working with the Ministry of Defence on drawing up specific guidance for service personnel. These are likely to be published in the late autumn, around publication of the draft Scottish Budget 2016/17 – at which time the Scottish government will propose the initial rate for the SRIT.

The CIOT response, while welcoming the fact that HMRC have issued the draft technical guidance for comment, noted various concerns. In particular, the draft guidance omits any information on the action taxpayers should take if they disagree with HMRC about their Scottish taxpayer status. The CIOT noted that more emphasis should be given to the fact that it is necessary to be resident in the UK for tax purposes in order to be a Scottish taxpayer. In addition, the guidance is ambiguous and creates confusion in relation to day counting, rendering it unclear to a guidance

user whether to aggregate days spent in the other constituent parts of the UK when drawing a comparison with days spent in Scotland. By contrast, the legislation is clear on this point – it is necessary to consider the days spent in each constituent part of the UK separately.

When considering the examples, CIOT noted that it is disappointing that all the examples come under the heading of determining whether an individual has a close connection with Scotland – none of the examples explore day counting in detail, for example. In addition, CIOT noted that generally the examples are rather bald and could be usefully expanded, both in terms of additional facts and the reasoning behind the conclusions.

CIOT also raised concerns with the record-keeping section of the guidance, as well as the fact that the draft guidance does not reflect its audience. The response also points out a number of typographical errors and omissions, which could cause confusion.

The CIOT called on HMRC to view the guidance as a ‘rolling’ document, to be added to with further examples from time to time and also requested sight of HMRC’s own decision-making and procedural guides.

The ATT response focused on four key areas: problems with the examples; layout of the guidance; inconsistencies with terms used; and practical issues.
When considering the examples, the ATT suggested that it would be better to view university students as being only temporarily resident during their course, regardless of whether they return home during vacations. The ATT said the examples highlight the subjective nature of Scottish taxpayer status and asked whether HMRC had considered offering a clearance service or an online ‘Scottish taxpayer status indicator’ tool.

The ATT said the guidance would benefit from a clearer layout and made suggestions on how this might be achieved. The response also noted an inconsistency in the description of how to determine which is to be considered the ‘main place of residence’ if an individual has more than one place of residence in the UK.

The ATT drew attention to some other practical issues, in particular the interaction of Scottish taxpayer status with existing tax legislation, such as principal private residence for capital gains tax legislation and split-year treatment under the UK

statutory residence test, and day-to-day operational issues that may arise, such as when an individual moves house mid-year.

The LITRG response drew attention to the need for separate guidance for employers since they are likely to receive queries from employees concerning both SRIT in general and Scottish taxpayer status. LITRG emphasised the need for HMRC to provide clarity on where responsibility lies for determining Scottish taxpayer status, suggesting the insertion of a section entitled ‘obligations under SRIT’. In addition, LITRG specifically requested an opportunity to comment on the draft guidance and materials intended for taxpayers before it is published.

The CIOT submission is available on the CIOT website.
The ATT submission is available on the ATT website.
The LITRG submission is available on the LITRG website.