# The tax mountain

General Features




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*Patrick King* considers how to cope with the abundance of the UK tax code

## Key Points

### What is the issue?

Tax is too complex an area for any single individual tax adviser or general practitioner to know it all

### What does it mean to me?

You will need to know when to engage tax specialists and ensure your CPD keeps up with the demands of your clients

### What can I take away?

To paraphrase Donald Rumsfeld, it is important to know what you don't know. So seek specialist advice if in doubt and make sure you have the appropriate level of CPD for your client base

As an entry in the record books Britain's tax code is not, perhaps, the outstanding achievement we might want to claim. At an exasperating 18,000 pages, the tax code is claimed to be the longest in the world, whereas, say, Hong Kong's tax compendium is, by comparison, the embodiment of brevity at just under 300 pages.

Indeed, even the mainstream press has taken notice. Last year, *Guardian* columnist Marina Hyde wrote: 'We can crap out tax legislation like no other nation on earth.' Not the most elegant appraisal, but no less true for being blunt.

With a code requiring the endurance of a trained athlete to master, advisers are presented with a document that is enormously challenging, if not intimidating, to work with. Trainee tax advisers might wonder whether they have chosen the right profession. Clients would be forgiven for being reduced to tears.

This does not mean the code is insurmountable. But it does mean, as professionals, that we have to take a rational approach; acknowledging the implications it has for the way we deliver tax advice, the way we manage our practices, and how we tackle the documents themselves.

# Front lines

There have been earlier efforts to make the tax system easier. In the mid-1990s, politicians thought the answer lay in the way legislation was written, which gave birth to the Tax Law Rewrite Project. Perhaps, though, attempting to clarify the tax code was always doomed to failure. Even Kenneth Clarke, then chancellor, said the work was ‘as ambitious as translating the whole of War and Peace into lucid Swahili’.

Time was called on the project’s work in 2010 when it became clear to many that the intellectual front line should shift to simplification rather than redrafting parliamentary legalese.

That brought about the founding of the Office of Tax Simplification (OTS) – to do just that, simplify tax.

The OTS has been illuminating, especially when trying to clarify the state of the code.

A survey found that since 2009 the code has gone from 11,520 pages (then claimed to be the longest in the world) to 17,795 today. Further digging produced a count of 1,156 tax reliefs. As the OTS wrote, ‘…how can any single taxpayer know them all and so decide which one(s) to go for?’.

The ever-growing size of successive finance bills is the killer element. Finance Bill 1965 was about 250 pages long; in 2004 the bill ran to almost 650 pages. Now it averages about 400.

But this is not the whole story for the code. If you take out duplicated and repealed legislation, according to the OTS, it reduces to 6,960 pages. Smaller, though still a daunting read. The OTS concludes that complexity is not a good thing, but the length of the code is not necessarily the sole measure of complexity. In any case, it rightly says that what advisers seek is clarity.

## Whole story

Some comfort can be drawn from the OTS’s focus on understanding the scale and composition of the code, but the truth for advisers is not so simple. Indeed, the quantity of pages is only the starting point for a tax adviser.

Not only will advisers need to refer to the tax code, but also the statutory instruments, guidance from HMRC and independent providers and case law. A full understanding of a client’s needs involves a potentially large research effort, linking

these elements together as well as perhaps more than one act of parliament.

There is no single way of beginning to research a client's tax matter. For many, the places to begin are the online sources offered by LexisNexis and CCH.

These enable one to read around the subject, cross-referencing to guidance and the legislation. For advisers of a certain generation (me included) books on the shelf will be the first port of call, but the new generation of digitally proficient advisers will feel more at home with online sources.

Whatever the medium, the key to successful research is never to accept the first answer. It will seldom be entirely right and can often be wrong.

## Practicalities of volume

For those managing practices as well as advising clients there is an inevitable conclusion to be drawn from the volume of material to be mastered: no single adviser can keep up to date with every piece of tax law. This leads to sobering conclusions that take us away from the reference materials to the way we manage our practices.

Put simply, a substantial practice needs specialists. Even though there remain successful generalists in practice, the expert eye of specialists, who spend all their time in a particular key area of tax, is now a necessity.

Where you appoint those specialists depends on where you want your practice to concentrate, which is a function of your business model. This does not, however, preclude small practitioners, or generalists, functioning in the modern era of tax complexity. They must, however, take great care about how they approach a client's needs. Small and sole practitioners may be competent in some areas, but they will also need a professional's acute awareness of what they do not know.

Former US defense secretary Donald Rumsfeld's comment about 'known unknowns' rings as true for tax advisers as it did in 2002 for national security policy makers.

This is such a critical element of the professional tax adviser's working life and such a reflection of the increasing complexity of the tax code, one professional I know refers to it as being 'knowingly incompetent'. You simply have to know when to seek advice elsewhere. *Hurlingham Estates Ltd v Wilde & Partners* [1997] STC 627 best illustrates this problem. In his ruling, the judge concluded that solicitors firm Wilde &

Partners had been negligent because of its failure to advise that the tax liability in a property transaction could have been reduced.

In an age in which tax avoidance regularly makes newspaper headlines, *Hurlingham* ironically brings home the risks of failing to help clients reduce a tax bill, but it also painfully illustrates the implications of an adviser failing to spot their own knowledge gap. It is the stuff of professional indemnity nightmares.

Coping with knowledge gaps places a premium on training and ensuring that continuing professional development (CPD) is well targeted and focused on the needs of individual tax advisers. Good CPD is as much about bringing home the lessons of knowing what you do not know as it is about expertise in any particular field. A thorough general background in tax will support this.

## Value of generalists

Which brings us back to the well-informed generalist. Well-informed, astute practitioners who maintain their CPD assiduously will always be valuable as level-headed advisers, able to identify when a specialist is needed for a client.

An adviser with an acute awareness of what they do not know will build networks to ensure they can tap into expertise when they need it.

But their role is not just about referring clients to another adviser. Clients who have already put faith in their relationship in a generalist accountant will be reassured by having their adviser on hand to help understand the expert’s advice. That makes the generalist a key intermediary aiding with communication skills.

Explanations are a key part of the client relationship. This is where the generalist can make a difference – by taking a complex explanation from an expert and turning it into accessible language for the client.

That leaves us with the need to know what you do not know. And keep up the training regularly. Build those elements into the fibre of your practice and they will become the bedrock to a successful business.

Image

## CASE STUDY

A few years ago, MHA MacIntyre Hudson worked on an issue involving a non-UK domiciled individual who was claiming the remittance basis. It proved an exhausting research effort to bring together all the elements needed to provide the client with the correct outcome.

The remittance basis is a known area of complexity, but the client paid tax in the UK only on foreign income that was brought to the UK (remitted here). The income was from a business source so it was not simply a case of declaring interest from a bank. What we needed to do was determine how much was regarded as remitted and how much was taxable.

Surely that couldn't be too hard?

We started at the relevant parts of the Income Tax Act 2007 (ITA 2007). This directed us to a part of the Income tax (Trading and Other Income) Act 2005 (ITTOIA 2005). Having moved between various parts of this, we were directed back to ITA 2007 which then directed us to the Taxation (International and other Provisions) Act 2010 (TIOPA 2010).

Each stage was necessary to identify each required part in the process to determine the answer. The only problem was that the Revenue manual then contradicted it.

While the above is a complex area, it is not unusual to find it necessary to move between several parts of an Act, and sometimes more than one Act, to answer relatively simple questions about tax matters. This is before looking into guidance and interpretation that can often change the apparent meaning from an initial read. Cool heads are essential.