LITRG: Is guidance reform high on HMRC's agenda?

Management of taxes General Features

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24 May 2023

A new report from the CIOT's Low Incomes Tax Reform Group (LITRG), 'Good guidance: the importance of effective guidance for unrepresented taxpayers' puts forward 40 recommendations to improve HMRC's guidance.

Key Points

What is the issue?

HMRC's guidance for taxpayers plays a critical role in a well-functioning tax system. A new report from LITRG explains how HMRC's existing guidance provision falls short and suggests what can be done to fix it.

What does it mean for me?

Poor guidance can be misleading for taxpayers and advisers alike. If you have noticed any recent examples of poor guidance on gov.uk that might mislead or otherwise impact low-income, unrepresented taxpayers, please get in touch.

What can I take away?

Guidance is high on HMRC's agenda, as they work with external stakeholders for continuous improvement. LITRG's report sets out practical recommendations to assist HMRC in that work.

HMRC's public-facing guidance moved to gov.uk in 2014, as the Government Digital Service took charge of the government's public facing digital content. At that time, the CIOT's Low Incomes Tax Reform Group (LITRG) commented on the large degree to which tax guidance had been simplified and abridged – 'to the extent that some of it is incomplete or even misleading'. We have continued to press these points over time and have now consolidated all of the issues in a new report which highlights the attributes of good guidance and provides extensive recommendations (see bit.ly/3MO5VXA).

While the report outlines what more we think can be done to improve guidance, we recognise that progress has been made since 2014. The Office of Tax Simplification's 2018 report 'Guidance for taxpayers' (see bit.ly/2IFUxug) set out a strategic 'vision for the future' for HMRC's guidance provision. It ambitiously called for 'a truly modern 21st century product, underpinned by modern information technology', focusing on how guidance is delivered and managed, as well as calling for greater clarity about the reliance which taxpayers can place on guidance.

In its ‘Guidance update paper’ which followed in April 2021 (see bit.ly/3Ih6Gpn), the OTS acknowledged the progress that HMRC had made. In particular, HMRC created an external Guidance Strategy Forum and appointed a senior Strategic Head of Guidance to lead this work. This demonstrated HMRC’s commitment to treating its guidance provision as an important workstream in its own right. The forum also provides a useful nexus for external stakeholders to provide input into HMRC’s guidance strategy and to hold HMRC to account for its guidance objectives.

As HMRC continues with its Tax Administration Framework Review, taxpayer guidance remains close to the top of its agenda. In the recently published discussion document, ‘Simplifying and modernising HMRC’s Income Tax services through the tax administration framework’, HMRC directly acknowledges the ‘considerable scope’ to reduce contact demand by improving the content on gov.uk. HMRC has also been successful in demonstrating the business case for increased resources in this area, recognising that investment in guidance pays off in the long run.

LITRG’s latest report is therefore a timely contribution. It focuses on the importance of effective guidance for *unrepresented* taxpayers, for whom clear guidance is critical for the proper functioning of the tax system. Without it, aside from the financial consequences to both the Exchequer and the individual as a result of non-compliance (or unclaimed reliefs), one finds confusion, frustration and erosion of trust.

The role of guidance

It is useful to start with an understanding of why guidance is necessary and what it is for. At the most basic level, guidance is needed to help the population understand what they need to do in relation to their tax obligations. It is unrealistic to expect lay taxpayers to read and understand legislation, so they rely on clear guidance to communicate what they need to do to comply, as well as the consequences of a potential action or inaction.

Alongside explaining the law effectively, another aspect of the function of guidance is in raising awareness. This is particularly relevant to unrepresented taxpayers, who do not have someone to point out that their circumstances might trigger a tax compliance obligation or an opportunity to claim a relief.

An important example here is the high income child benefit charge. Taxpayers who are liable to the charge, including PAYE taxpayers who have never filed a tax return before, usually need to file a tax return for any year in which they are liable. However, large numbers of taxpayers failed to notify their liability to the charge because of a lack of awareness, leading HMRC to charge nearly £20 million in ‘failure to notify’ penalties for tax years up to 2019/20.

Accelerated capital gains tax reporting on UK residential property (or on all UK land and property, if non-resident) is another frequently missed compliance obligation. Meanwhile, reliefs, like the marriage allowance, can go unclaimed.

Guidance needs to do more than just explain what needs to be done. It should ‘guide’ in a more active sense, so that the user ends up on the right page on gov.uk in the first place. This is not just about ensuring that guidance is well-publicised (and not just on gov.uk itself), but also things like:

- having an effective search function;
- improving navigability between related and more detailed content; and

- 'holistic' guidance that links to other pages which are likely to be relevant to a person's situation. For example, a page that discusses the tax treatment of an income source might also link to relevant guidance for means-tested benefits.

Guidance as advice?

There is much debate about the dividing line between 'guidance' and 'advice' – despite the reality that there is some degree of overlap between the terms. In recent years, HMRC's guidance provision appears to be straying towards the latter, with the proliferation of interactive tools, nudges and prompts in HMRC's online software, as well as in third-party software, through the use of application programming interfaces (APIs). It has also answered questions posed on Twitter, and in forums and webinars.

On one level, this kind of interaction with the taxpayer should be welcomed – but there must be a clear and consistent framework for it. For example, it is not clear how taxpayers should interpret gov.uk's general disclaimer (bit.ly/3BMZbmp). This states that:

- there is no guarantee that the information is accurate, current or complete;
- 'advice' (which is undefined) is *not* published on gov.uk; and
- taxpayers should 'get professional or specialist advice before doing anything on the basis of the content'.

Not only is this unhelpful, but it seems to contradict the first standard of HMRC's Charter, which commits to providing 'accurate, consistent and clear information'.

More broadly, what happens if HMRC's response (or output, or prompt) is misleading or simply incorrect? HMRC's progress on the issue of reliance on guidance has been slower than hoped, although we understand at the time of writing that it is close to being able to publish an updated version of its public-facing statement on gov.uk.

Good guidance

The first finding of the report is that guidance should, of course, exist. For that guidance to be 'good', it should also be easily found, clear in scope, easily navigable and presented in a suitable format, be accurate, up to date, clear and unambiguous, holistic, consistent, accessible and timely; and should also use examples.

It is not possible in this article to discuss each of these attributes in detail. The full report contains a number of examples from gov.uk which are, or have recently been, lacking in one or more of these attributes, with suggestions for how they might be avoided in future. It is, however, worth discussing a couple of the most important attributes in this list.

'Check if you need to use a Self Assessment Tax Return' tool

This tool conflates the concepts of the legal obligation to notify chargeability with the legal obligation to file a return. HMRC's non-statutory Self Assessment criteria are also layered on top. The result is that the tool's output can suggest a taxpayer needs to file a tax return when in fact they have no legal obligation to do so.

For example, someone whose only taxable income is £3,000 gross income from self-employment would generally not have any tax (or other) liability on that income, and thus they would not have a legal obligation to notify chargeability under Taxes Management Act 1970 s 7. If that person had not been issued a notice to file a tax return under s 8 of that Act, they would have no legal obligation to notify chargeability and consequently in no legal sense would they 'need' to file a tax return for the year.
However, the tool suggests otherwise – leading to unnecessary burdens on that taxpayer to submit that return and on HMRC to process it.

Accuracy

Probably the most important attribute of good guidance is also the one on which it seems to fall down most frequently: accuracy. In attempting to fulfil the role of explaining the law clearly and simply, it can be tempting for guidance writers to omit certain detail that is not relevant to most people, or to swap technical terms for more everyday ones, or to paraphrase legal conditions so that they are easier to read.

We do not object to any of these techniques, but they must be carried out with utmost care so that the accuracy of the information is not compromised. Where accuracy *is* compromised, given the number of users of HMRC content on gov.uk (which gets a billion clicks a year), the likelihood of an individual or group of individuals being affected by that inaccuracy can be unacceptably high.

For example, HMRC's inheritance tax checker tool provides misleading conclusions in the case where the transferor is domiciled in the UK but their spouse or civil partner is not, where the inheritance tax exemption which applies on transfer to the latter is restricted to the nil-rate band.

Such a situation is not just relevant to the very wealthy or represented taxpayers. Yet the tool clearly states: 'Assets passed on to [the] surviving husband, wife or civil partner do not count towards the value of [the deceased's] estate' – with no caveat. We raised this issue with HMRC, but it advised us that it would not be making any changes to the page because the number of estates involved would be very small.

Inaccuracies: marriage allowance

One example where gov.uk is consistently inaccurate is in relation to the operation of the marriage allowance. The main guidance page at www.gov.uk/income-tax-rates states: 'Your personal allowance may be bigger if you claim marriage allowance.' This is incorrect: instead of an increase to the personal allowance, the receiving partner gets a tax reducer.

The point may seem pernickety. But what may seem like a technicality led (in at least one case we are aware of) to an unexpected tax bill for thousands of pounds. This is because the tax rate on a pre-6 April 2016 deferred state pension lump sum depends on the rate of tax that a person pays on their other income. In this particular case, the person had income just over the personal allowance, and therefore owed 20% tax on the whole lump sum. However, they thought that because their net liability to income tax on their other income was nil (on account of the marriage allowance claim), the rate of tax on the lump sum would also be nil.

The misleading guidance is repeated in HMRC's 'Report and pay your capital gains tax' service. During the process of reporting a gain, the service invites the user to input their personal allowance for the year, stating again that a marriage allowance claim would increase the figure. However, inputting 110% of the personal allowance might lead the system to incorrectly calculate the amount of capital gains tax payable at the lower rate.

Clarity

A further attribute of good guidance worth highlighting is clarity: how easy guidance is to understand. One particular source of confusion resulting from gov.uk editorial guidelines relates to the use of bullet points. The gov.uk style guide prohibits the use of 'or' or 'and' after bullet points, so when bullet points are used to list conditions the user is often left confused as to whether just one, or all, are required.

There are examples galore. For instance, the gov.uk guidance on reporting property income (bit.ly/3OrebOw) states that:

'You must report [income from property] on a Self Assessment tax return if it's:

- £2,500 to £9,999 after allowable expenses
- £10,000 or more before allowable expenses.'

This might leave someone with gross property income of £12,000 and deductible expenses of £10,000 confused as to whether they need to report it on a tax return. Insertion of the word 'or' at the end of the first bullet would put the matter beyond doubt.

And regarding payments on account (bit.ly/3Ow9gfb):

'You have to make two payments on account every year unless:

- your last Self Assessment tax bill was less than £1,000
- you paid more than 80% of the previous year's tax you owed, for example through your tax code or because your bank had already deducted interest on your savings.'

Aside from the reference to banks deducting 'interest on your savings' being nonsense ('tax on savings income' being meant instead), and that reference being seven years out of date, this is an especially confusing formulation because of the word 'unless'. Among our recommendations in the report is a call for HMRC to eliminate this kind of logical ambiguity.

Final thoughts

It has only been possible to skim the surface of the report in this article. The full report contains 40 general recommendations covering:

- gov.uk structure and development;
- attributes of good guidance;
- interactive tools; and
- guidance as advice.

We hope that these recommendations are practical steps which HMRC can take to implement systematic and process-led change, with a view to long term improvement. So far, HMRC has been receptive and positive to these recommendations and we look forward to continuing to work with it to help with their implementation.

To help us with this work, please do get in touch if you have noticed any recent examples of poor guidance on gov.uk that might mislead or otherwise impact low-income, unrepresented taxpayers.