The Scottish Tax Clinic: assisting low-income individuals

General Features | Personal tax

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After the first two years of operation, we reflect on the Scottish Tax Clinic and how to support low income individuals to navigate the UK tax system.

The Scottish Tax Clinic is an experiential learning environment (learning through experience), exposing our students to how tax works in the real world. By working in the clinic, they develop soft skills that they would not necessarily work on in the classroom. Talking to clients, HMRC and their supervisor means that they work on their written and oral communication skills. It is a working environment where they develop time management, professionalism and independence.

The Scottish Tax Clinic launched in September 2021 as the first tax clinic in Scotland, and drew from the success of the North West Tax Clinic, the first tax clinic in the UK – see ‘Opening our doors’, *Tax Adviser* (October 2020). Now finishing its second year of operation, it is a useful point to reflect on some of the impacts that the UK tax system has on low-income individuals.

The clinic works in partnership with Edinburgh Law School and TaxAid UK, a national charity that provides income tax advice to those who cannot afford to pay for a professional tax adviser. The clinic is an undergraduate course at the Law School with 14 students working in the clinic each academic year. The students take the lead in the clinic and retain responsibility over their own cases, which requires students to communicate with the clinic’s clients, research their tax issues and draft tax advice.

Local tax professionals are also a key part of the clinic and volunteer their time to supervise the students. This supervision ensures that all of the advice that is prepared by the students is accurate and appropriate for the clinic’s clients.

The values and remit of the clinic and TaxAid align, meaning that the clinic provides means-tested, free, confidential tax advice to individuals based in Scotland on matters of income tax. Common issue of the clinic include:

- explaining PAYE tax codes and working with P800s;
- educating self-employed individuals (or those thinking of setting up a business) on their tax obligations;
- preparing and submitting self-assessment tax returns; and
- appealing late-filing penalties.

Since opening, the clinic has engaged with well over 100 individuals and provided over 1,000 pro bono hours to the community it serves. The clinic has also successfully appealed almost £30,000 in late-filing penalties. The work of the clinic has been reported in the Scottish Legal News (see tinyurl.com/39bvc7mc) and has been more widely recognised with an Outstanding Course Award from the Edinburgh University Students’ Association (see tinyurl.com/bdfch89m), as well as winning a Community Impact Award from the university in June 2023.

Common tax issues affecting low-income individuals

The clinic has seen a broad range of tax issues come through its doors, including some that it cannot help with, such as the consequences of selling a house for capital gains tax or how to submit a return for inheritance tax.

Within the realms of income tax, there is also an array of issues for the clients, many of whom have additional vulnerabilities and challenges, such as mental health difficulties, neurodiversity, physical disability, bereavement or low levels of education. Some of the most common self-employment issues will be explored below in the interests of furthering the discussions in this field (and do not constitute advice). Whilst these may not be generalisable to the whole population, they do provide an insight into the impacts our tax system has on the most marginalised in society.

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1. What is self-employment?

There is a confusion over what self-employment is, particularly where there are short periods of work for small amounts of money. This results in a confusion around the next steps and particularly the distinction between notifying HMRC about the self-employment and submitting a tax return.

The Taxes Management Act (TMA) 1970 s 7(1C)(a) requires a person to notify HMRC within six months of the end of the year of assessment if they have not already received a notice from HMRC to submit a tax return. As stated in gov.uk guidance, this equates to notification by the 5 October following the end of the tax year in which the business started (see www.gov.uk/register-for-self-assessment).

Our clients were sometimes (but not always) aware of the deadline to submit a tax return. However, a significant number of clients would come to the clinic without HMRC knowing that they were self-employed and who were unaware of the notification deadline. Whilst it is beneficial for HMRC to know who is self-employed before the self-assessment tax return is due, the messaging around the 5 October deadline is not trickling down to the public.

There are also misunderstandings and difficulties for Construction Industry Scheme (CIS) contractors – specifically, that CIS contractors are self-employed for the purposes of tax and that they also need to complete a tax return.

The CIS scheme covers most construction work in the UK and deducts money from a contractor's payments to send to HMRC as a withholding tax. (There are thus echoes of the PAYE system in CIS scheme for CIS contractors.) The clinic has encountered a number of clients who have been involved in the CIS scheme and who do not appreciate that they have to submit a tax return – primarily because, in their eyes, the tax has already been sent to HMRC.

Finally, it also translates to the confusion that students who are on a student visa (previously known as a tier 4 visa) are not able to be self-employed. This is particularly problematic as students are often engaged in 'gig economy' work, where the lines between employed and self-employed are particularly blurred. University students are intelligent people, yet there is a lack of awareness around what constitutes self-employment.

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2. Notification of self-employment

Linked to the above, very low-income individuals may not need to notify or submit a return at all. Currently, HMRC guidance requires individuals to submit a tax return when they have self-employment income of over £1,000 (see tinyurl.com/ms93db5n). This maps out on to trading allowance, introduced in the 2017/18 tax year that is also set at £1,000.

However, HMRC's guidance is at odds with the statutory obligations of individuals. Here, TMA 1970 s 7(3) states:

> 'A person **shall not be required to give notice** under subsection (1) above in respect of a year of assessment if for that year:(a) **the person's total income consists of income from sources falling within subsections (4) to (7) below'** (emphasis added)

Of note for those on a low income is TMA 1970 s 7(7), which states that where the person would not be *liable* to tax on all their income from that source for any year of assessment, then the source of income falls within that subsection.

The subsection specifically uses the word liable rather than chargeable, meaning that where someone would not be liable to tax on their self-employed income, then there should be no need to notify HMRC; i.e. those with a low enough income that none of the self-employment income would attract tax (but which could be higher than £1,000). This is in stark contrast to the guidance, which informs people that they ‘must send a tax return’, and potentially brings people into self-assessment unnecessarily.

On the other hand, notification of self-employment to HMRC is required ‘immediately’ for National Insurance contributions under the Social Security (Contributions) Regulations 2001/1004 Reg 87AA. The legislation around notifying HMRC is therefore convoluted and confusing, with mixed messages on when to notify HMRC and submit a tax return. This area would be very difficult for most laypeople to follow.

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3. Brown envelope anxiety and late filing penalties

Brown envelope anxiety exists and has been a pervasive issue in the clinic. One of the biggest impacts we have seen is how the tax system treats those who stick their heads in the sand.

A tax return that is more than 12 months late currently attracts a minimum late filing penalty of £1,600 under the Finance Act 2009 Schedule 55.

It is not uncommon to see clients with two, three or four tax returns outstanding, which means that the late filing penalties very quickly add up to a significant liability to HMRC – even if they would have no tax to pay on their income for those years.

This is a finding that was corroborated by Tax Policy Associates, which published a report that highlighted the extent of the impact of late filing penalties on low income individuals (see tinyurl.com/yy2pc849). They found that 400,000 late filing penalties were issued to individuals with an annual income of less than £13,000 between 2018 and 2020.

With a change to points-based system for late filing penalties, it remains unclear whether this system will be any better for those the clinic helps. Brown envelope anxiety will still accrue enough points over time for penalties to be applied.

Get involved

The Scottish Tax Clinic will reopen its doors in September 2023 for the new academic year and a new cohort of students.

If you are based in Scotland and would be interested in getting involved with the Scottish Tax Clinic, then please email alawton@ed.ac.uk. Professional supervisors are also TaxAid volunteers and covered by their professional indemnity insurance. All supervision can take place online.