Good guidance: one year on from LITRG's report

General Features | Management of taxes

24 April 2024

A year after the publication of the report, 'Good guidance: the importance of effective guidance for unrepresented taxpayers', the CIOT's Low Incomes Tax Reform Group reviews the progress made to date on its recommendations.

Key Points

What is the issue?

On the anniversary of LITRG's report on what makes good guidance, LITRG considers how far HMRC has come over the past year in improving their guidance offering.

What does it mean for me?

Poor guidance is an issue for both taxpayers and advisers alike.

What can I take away?

HMRC appears to be heading in the right direction with its guidance provision. It has made improvements in some areas, but progress is slower in others. More work is needed to ensure HMRC's guidance can support taxpayers more fully.

The CIOT's Low Incomes Tax Reform Group (LITRG) published a report in April 2023 – 'Good guidance: the importance of effective guidance for unrepresented taxpayers' (see tinyurl.com/kuubet6t) – in which it set out to answer the question of what makes good guidance, identifying several attributes which every piece of taxpayer guidance should exhibit and 40 general recommendations for the improvement of taxpayer guidance on GOV.UK.

The report was well received by HMRC. Its publication coincided with an internal recognition within HMRC that investment in guidance pays off, and guidance has since remained high on HMRC's agenda.

A focus for HMRC's guidance team over the past year has been delivery of the Spring 2023 Budget commitment to undertake a systematic review of tax guidance and forms for small businesses. LITRG has been involved as a stakeholder for this review, which has provided a valuable opportunity to put some of the themes of the report into practice.

In addition, HMRC's guidance strategy forum has met quarterly, and LITRG has met monthly with representatives of HMRC's guidance team. These monthly meetings have been a particularly productive means through which LITRG has been able to raise more specific guidance issues with HMRC and, in return, gain a better understanding of the internal mechanics behind HMRC's guidance provision. HMRC has responded to many of the specific issues raised by making improvements to its guidance tools.

LITRG's report divided its recommendations into five areas. This article provides some selected observations on the progress that has been made in the past 12 months.

GOV.UK structure and development

The initial set of recommendations made by LITRG considered the architecture and navigability of guidance on GOV.UK, as well as how guidance is built and then maintained. Our recommendations on this were based on the principles that good guidance should exist, be easily found, be easily navigable and be presented in a suitable format.

Improvements are in train to the lamentable GOV.UK search function (Recommendation 8). LITRG was told through the guidance strategy forum in January 2024 that the Government Digital Service (GDS) is integrating a new search engine within GOV.UK. This function appears to return results of much improved relevance. For example, at the time our report was published, a search for ‘claim tax back’ returned as the top two results information on phishing and Statutory Off Road Notifications. Now, the top result is the more appropriate ‘Check how to claim a tax refund’. Similarly, a search for ‘tax on interest’ now brings up the page ‘Tax on savings interest’ as its first result, rather than the irrelevant page on inheritance tax thresholds.

HMRC has also undertaken a lot of work in the past year on its ‘coherent document’ concept. This is a new format of guidance on GOV.UK which is intended to bring together all relevant guidance on a particular topic, replacing some collections which might have previously been published in PDF format.

A PDF is not considered to be an accessible format, especially for those looking at guidance on mobile devices (now the majority of internet users). HMRC is therefore keen to find a replacement format for guidance like ‘Booklet 490’ (see tinyurl.com/24zb9dfh), which as far as possible retains the benefits of a PDF (in relation to searchability, for example) and allows taxpayers to view the whole guidance at once at the same time as being able to easily navigate it (Recommendation 15).

For an example of the ‘coherent document’ might look like, see the GOV.UK content design manual (see tinyurl.com/ms3r4d3d). Advisers will note the resemblance to HMRC’s manuals. LITRG has commented in its engagement with HMRC that the coherent document has some benefits; however, it seems to depart from LITRG’s suggestion that the level of technical detail offered by a page of guidance should be immediately clear when landing on a page (Recommendation 1). It is therefore hoped that when this format is finalised, clear links to guidance in both greater and lesser detail should be included. However, we understand HMRC’s goal is that the taxpayer lands on the most suitable ‘Tier’ of guidance without needing to worry how it fits within the wider GOV.UK structure.

In terms of how guidance is maintained and improved, LITRG has had conversations with HMRC about feedback routes on GOV.UK, and how that feedback should be analysed and interpreted. HMRC acknowledges that existing multiple feedback routes are not ideal – we note the route which offers a reply to the user is still as difficult to find as it was 12 months ago (Recommendation 5).

HMRC has spoken to other tax authorities to understand best practice to analyse feedback. It informed us that it received around 20,000 comments last year on GOV.UK pages – too many to review manually – so it is considering how artificial intelligence can help to synthesise those comments so that they can be actioned more efficiently. This seems to be an intelligent use of resource.

Attributes of good guidance

One of LITRG’s starting attributes of what makes good guidance is that it must be clear in scope. The report gave the example of HMRC’s inheritance tax checker tool not making any reference to the domicile of a transferee spouse or civil partner. Although the landing page has been updated in this respect, the tool itself still states quite clearly that ‘You do not need to pay inheritance tax’ in the case where, say, a property worth £500,000 is left to a surviving spouse or civil partner who may not be domiciled in the UK.

HMRC appears to be maintaining the position that no change is necessary because the number of estates for whom the point is relevant would be very small. However, those for whom the point is relevant might continue to be misled. HMRC tell us that it has been adding a new page type for its interactive guidance products to try and clarify the scope of these tools (Recommendation 35), so we look forward to seeing continued improvement in this area.

Sadly, this is not the only inaccuracy which was highlighted by the report and which still remains on GOV.UK. At the time of writing, the page www.gov.uk/income-tax-rates still speaks of one’s personal allowance being ‘bigger’ if you claim marriage allowance (a false and potentially misleading description of how the allowance operates). HMRC says that there is no evidence of it causing any confusion but that it is in discussions to get the page updated. The same page also continues to use the phrase ‘taxable income’ in an inconsistent way with other parts of GOV.UK. And the Tier 2 guidance on the trading and property allowances (see tinyurl.com/2ajtzshy) continues to have out of date references to the 2018/19 tax year.

Opportunities for improved clarity and reduced ambiguity also remain. This is especially the case where bullet points are used to list conditions and it is not clear whether one or all of the conditions are required (Recommendation 21). For example, www.gov.uk/renting-out-a-property/paying-tax is still unclear on the self assessment criteria in relation to property income, as is www.gov.uk/understand-self-assessment-bill/payments-on-account on the triggers for needing to make payments on account. But, at least, the GOV.UK style guide has been updated to instruct guidance writers to avoid this kind of ambiguity in new pieces of guidance.

HMRC has made some improvements to its ‘Check if you need to send a self assessment tax return’ tool (see tinyurl.com/5dfje6hx). This has been part of a wider focus on HMRC’s interactive guidance offering, which we discuss further below. The improvements are welcome, given that the tool has become increasingly referenced from other parts of GOV.UK (and in HMRC correspondence) as the ‘definitive’ assessment of whether the self assessment criteria have been met.

For example, the question on child benefit has been improved to make reference to the possibility that the high income child benefit charge can transfer in the case where contributions towards a child’s upkeep are being made. Simplifications in the way adjusted net income is described for this purpose have been addressed by the conclusion now saying that a tax return ‘may’ be required – and the taxpayer is then sent off to the (more accurate) child benefit tax calculator to confirm the point.

However, there is still scope for improvement in the tool. For example, the question on savings and dividend income isn’t especially clear about what is or isn’t in scope (for example, it isn’t clear that tax-free interest and property income are *not* included), and there is no link to any guidance to help taxpayers understand whether tax is due on income from outside the UK (Recommendation 34).

More broadly, the tool is in some sense set up to confuse taxpayers from the outset, by using the phrase ‘need to send a … return’ to refer to whether or not the self assessment criteria are met, rather than whether the taxpayer has a legal obligation to file (which would only be the case if they have been issued a notice under the

Taxes Management Act 1970 s 8).

An issue which cropped up last autumn concerned taxpayers who had savings interest in excess of their personal savings allowance. Several taxpayers in such a position who did not file self assessment tax returns wondered whether they 'needed' to file a return and, if not, what they needed to do in order to declare and pay that liability.

But the GOV.UK page on savings interest (see tinyurl.com/3956ekwf) dissuades taxpayers from taking any action at all if the interest is less than the £10,000 threshold – arguably contrary to their legal obligation to notify chargeability under Taxes Management Act 1970 s 7 – suggesting that they simply need to wait for HMRC to assess it.

To add to the confusion, the 'Check if you need to send a tax return tool' makes no explicit reference to savings interest in the conclusion page – talking vaguely in terms of 'untaxed income … between £1,000 and £2,500'. When we raised this with HMRC, we were told this was not intended to refer to savings interest (it was not clear how it was considered that taxable interest paid gross was not 'untaxed income') – which, even if that were understood to be the case by a layman reading it, does not help clarify the position. HMRC says it is expecting the page to be updated based on our feedback.

Interactive guidance

HMRC has been very active over the past year in expanding and enhancing its suite of interactive guidance products, which is driven not only by a desire to make the guidance as useful as possible, but also to try and give taxpayers the tools to self-serve where possible to help with a reduction in contact demand and to facilitate a digital channel shift.

In our meetings with HMRC on interactive guidance, we have found that it has welcomed, and in many cases been receptive to, feedback on its interactive tools – though in some cases, basic improvement to tools (e.g. clarifying a definition, or making data entry easier or more intuitive) appears difficult without user evidence that it is causing any issue.

One recently published tool has been ‘Check when to appeal a Self Assessment penalty for late filing or late payment’ (see tinyurl.com/bddyj3e5). HMRC tell us that this tool is designed to help taxpayers check ‘when and how’ to appeal – yet it does not reference the 30-day deadline to appeal against a penalty notice. Though we find this bizarre, we understand this is because the tool’s purpose is to let taxpayers know that HMRC may not be able to progress an appeal before the relevant obligation has been met (presumably because a reasonable excuse claim requires the individual to demonstrate that the obligation has been met as soon as reasonable after that excuse ends).

Other new interactive tools have included a new ‘tax code checker’ (see tinyurl.com/4ye596e7) – originally launched towards the end of 2022, after our report was first drafted – which makes a laudable attempt to explain the ever-confusing jumble of numbers and letters which determines how much PAYE tax is deducted from employment or pension income. The tool is welcome, although stakeholders have concerns that it does not cover certain situations. We note that HMRC has not unnecessarily placed this tool behind a government gateway login (Recommendation 31), which would have reduced its accessibility.

While not strictly interactive guidance, HMRC also introduced an online form for individuals to deregister from self assessment (see tinyurl.com/mr2w7fs8), including for a particular year. This is welcome. It leads on nicely from the ‘Check if you need to send a tax return’ tool and means that taxpayers can now complete that journey digitally without needing to speak to an HMRC adviser on the phone.

Guidance as advice

HMRC’s guidance statement, ‘How HMRC advice and information can help you’, was updated in June 2023 and is now more user-friendly (Recommendation 39) – though we understand they will not be issuing a public consultation at this stage (Recommendation 40). The updated page makes it clear that it applies not just to static pages on GOV.UK but also communication from HMRC more widely, including webchat, posts on Twitter and HMRC’s community forums. It also expands on what is required – in layman’s terms – for HMRC to be bound by its advice because a legal legitimate expectation was created.

We do, however, have some concern that the page does not make clear that taxpayers may have grounds for complaint and, in HMRC’s eyes, be eligible for some form of redress – well before the high bar of legitimate expectation has been met.

It is regrettable that the GOV.UK general disclaimer (which states that there is no ‘advice’ on GOV.UK, and information which is published on it cannot be relied upon to be accurate) still conflicts with the reliance on guidance statement and the HMRC Charter. We urge HMRC to review this as part of its ongoing work in this area (Recommendation 38).

Being clear to taxpayers what they can do if they were misled is one thing – but not misleading them in the first place is another. In the case of HMRC providing direct answers to taxpayers in public forums, in an effort to be helpful and give a quick answer HMRC can sometimes neglect to ask pertinent questions and end up giving incorrect advice. Even worse, this incorrect advice can propagate, and is likely to come up when a taxpayer searches the internet for an answer to their question. HMRC therefore needs to urgently consider how it provides ‘advice’ in this way, to prevent this from happening.