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Help yourself

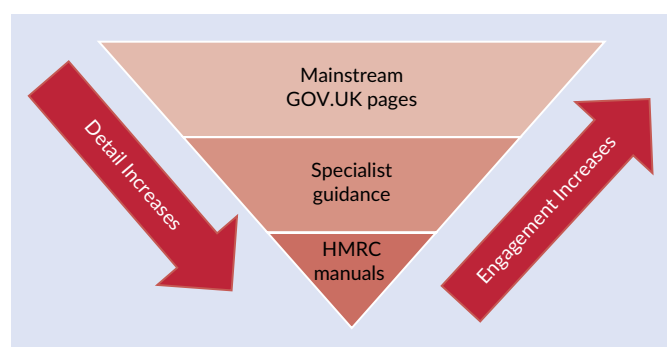
Amy Lawton and David Massey discuss ways that taxpayers can help improve HMRC's guidance.

In *Guidance for Taxpayers: a vision for the future*, the Office of Tax Simplification (OTS) offered 'a strategic review of the general approach to providing guidance for taxpayers' (see tinyurl.com/otsgftpoc18).

One of the OTS's recommendations was: 'HMRC should form an "advice and guidance panel" to advise and support HMRC in this endeavour. The panel could consist of senior HMRC officers, respected tax specialists and academics.'

“On the wider GOV.UK pages, HMRC receives around 25,000 items of feedback a year.”

Partly as a response to this recommendation HMRC has established the guidance strategy forum. From its perspective: 'Delivering top quality guidance that gives customers and their representatives what they need plays a vital role in building a trusted and modern tax system. HMRC is committed to listening to our customers and acting on their feedback. We wholeheartedly encourage people to let us know if we can improve our guidance' (HMRC spokesperson, 2021).



Key points

- HMRC makes changes to its guidance following user feedback.
- HMRC's reliance statement is more than ten years old and is not easy to find.
- Its visibility needs to be improved and it will need updating as more taxpayers and advisers shift to using the online services.
- HMRC is in the process of updating online guidance for Brexit.
- Let HMRC know about errors in its guidance or thoughts on how to improve it.



The forum is part of that commitment to improving its guidance but there are also other routes through which readers can contribute.

There are several forums and feedback mechanisms to pick up on specific guidance issues, which provide the opportunity for taxpayers to have their say on HMRC guidance – we have listed these in *Ways to provide feedback on HMRC guidance* (page 11). HMRC has given the assurance that it reviews every item of user feedback. Since April 2019, the 1,055 instances of feedback from users of its manuals have resulted in 591 changes. On the wider GOV.UK pages, HMRC receives around 25,000 items of feedback a year. While a lot of this feedback involves a commentary on policy, HMRC does identify opportunities to improve GOV.UK content from it.

We were two of a small number of academics at the meeting on 15 January 2021. HMRC provided presentations on three main areas: the online HMRC guidance structure; HMRC's reliance statement; and its guidance update processes (including updates in the light of Brexit). As well as providing thoughts on areas for the forum to consider in the future, this article will also equip readers with the pathways for providing feedback to HMRC on its guidance.

Structure of online guidance

HMRC's online guidance works on three levels (as shown in the chart aside):

- mainstream GOV.UK pages. These follow the structure and design requirements of the government digital service (GDS). These pages are not HMRC-specific but have to apply the common standards GDS sets for all governmental departments;
- the department and policy guidance (specialist guidance); and
- the HMRC manuals.

HMRC is responsible for providing the content in all three tiers but the GOV.UK mainstream pages are under the control of the GDS.

Each tier is more detailed than its previous tier with mainstream GOV.UK pages targeting members of the public and the manuals targeting the tax profession. The levels of

engagement within the three tiers are accordingly different. The mainstream GOV.UK pages attracted around 470 million views last year, while the internal manuals received 24 million views.

In an ideal world, users would be able to travel seamlessly between the guidance tiers, depending on the level of information that they needed. This is something that HMRC hopes to work on and achieve in the future.

The purpose of the top two tiers is to 'define *who* has to do *what* and instruct *how*'. It is only at the third level that there is an attempt to explain HMRC's interpretation of the law. At these levels, the general public is presented only with HMRC's view of who has to do what and how they must do it. However, at times this may not reflect the underlying legislation (see *Illustration 1*).

The GOV.UK service includes interactive guidance which leads the individual through a journey to reach a bespoke outcome based on their selections. An example of this is guidance on the submission of self-assessment income tax returns – as shown in *Illustration 1*.

As well as the interactive guidance, GOV.UK offers webinars and a virtual assistant to supplement the basic web pages and provide wider support to taxpayers. The overall goal is clear: to keep taxpayers online without the need for human assistance. The online guidance is therefore shifting to become HMRC's self-service checkout. But life and tax are complicated and there will always be 'unexpected items in the bagging area' that will require some human intervention.

For those who do need human assistance, social media such as Twitter and the community forums provide a middle ground for taxpayer support. HMRC's research shows that, generally, people no longer wish to physically speak to HMRC, and that there is an increasing preference for questions to be answered online. However, with this move towards online customer service comes an increased challenge to provide a coherent and trustworthy service.

If we follow through the link on HMRC customer support Twitter profile (@HMRCcustomers), we are told that we can expect: 'Help with general queries relating to HMRC's products and services. Signposting to advice, support, guidance and forms. If your question can't be answered directly, you'll be directed to further help.'

This is the equivalent of the supermarket greeter or the assistant who confirms the purchaser looks comfortably over 25 as they self-scan the prosecco. That is a worthwhile service and HMRC is to be commended for engaging with the public in this way.

However, it comes with a danger. In the desire to be helpful, it may drift away from the tax foyer and into the equivalent of the pharmacy, where advice, like drugs, should be dispensed only by those with the correct training and experience. It is one thing to signpost a taxpayer to, say, form 17 (the declaration available to spouses where they hold assets in unequal shares, ITA 2007, s 837) but any follow up question can quickly stray into the specialist area of the settlements legislation (ITTOIA 2005, Pt 5 ch 5), on which HMRC says it will not give advice (*Trusts Settlements and Estates Manual*, TSEM1602).

GOV.UK assures the user that: 'Our customer forum is for you, with all the help, support and guidance you need. You can

Illustration 1

Interactive guidance giving the wrong answer?

Charlie has a pension of £6,000 and rental income of £3,000 – total income well below the personal allowance. Charlie has not yet notified HMRC of the rents and is unsure whether it is necessary to complete a tax return. If Charlie goes to GOV.UK, he will be directed not to TMA 1970, s 7 and s 8 where the definitive answer lies, instead, he will be taken to HMRC interactive guidance (www.gov.uk/check-if-you-need-tax-return) and be asked a series of questions. Charlie will get to a question that asks whether he has property income of more than £2,500 to which he will answer 'yes'. The guidance will then incorrectly tell Charlie that he needs to submit a return.

Charlie has not received a notice under TMA 1970, s 8 nor does he have a liability to tax which must be notified under TMA 1970, s 7. This interactive guidance appears to be answering the wrong question. If Charlie had come with the query 'HMRC has sent me a notice to file, do you really need me to complete a return when I owe no tax?', then the interactive guidance presumably correctly reflects HMRC's policy in this situation which in full would be: 'No, we will not exercise our discretion under TMA 1970, s 8B to withdraw our notice. You need to send in a tax return (and we will charge you penalties if you don't).'

No explanation is provided as to the grounds on which GOV.UK is giving this instruction. There is no link provided to deeper guidance on its reasoning. We acknowledge that too much detail may start to confuse customers who just want and need a quick answer, but by failing to provide links in cases like this, HMRC could open itself up to accusations that it is trying to confound the obligations imposed by parliament with its own preferences.

ask questions, see what others are asking and get the answers and top tips on a range of topics including VAT, self-employment, self assessment or being an employer.'

However, GOV.UK's underlying terms and conditions may make any aspiration to provide 'all the help, support and guidance' needed hard to achieve in practice. They carry the following disclaimer:

'While we make every effort to keep GOV.UK up to date, we do not provide any guarantees, conditions or warranties that the information will be:

- current
- secure
- accurate
- complete
- free from bugs or viruses

'We do not publish advice on GOV.UK. You should get professional or specialist advice before doing anything on the basis of the content.'

When a taxpayer is directed from the forum (or other channel) to that third layer of guidance – the HMRC manuals – there is a danger that they will fail to appreciate that the manuals are aimed primarily at HMRC's own staff. They are no substitute for professional legal advice. But the taxpayer may not be alert to the limitations. So, for example, it is essential that HMRC officers are equipped with the

HMRC reliance statement

When you can rely on information or advice provided by HM Revenue and Customs

Why HMRC provides information or advice

Information or advice from HMRC gives you certainty on your obligations, liabilities, entitlements and the consequences of your transactions. You aren't required to act on the advice.

Limitations

The information or advice applies to the applicant – even where the application has been made by the applicant's adviser. It only applies to the particular matter that was the subject of the request. Where it takes the form of guidance or public notices, the information applies as stated within those documents.

Right of appeal

There is no general right of appeal against the advice or information HMRC provides, except where rights of appeal are set out in law.

Advice or information considered binding

To make sure that HMRC's information or advice can be considered binding, you must set out all the relevant facts and draw attention to all the issues. For example, HMRC expects you to provide information on any relevant and related transactions.

When advice or information may not be binding

HMRC has a duty to collect the correct amount of tax as required by law at the time the transaction takes place. It remains your responsibility to take account of any changes in the law following the advice being given and the transaction taking place.

Advice is based on the understanding of the law at the time it is given. Where this understanding is changed by the courts, HMRC must collect the correct amount of tax as required by the new understanding of the law. This means that there are some circumstances in which HMRC's primary duty to collect tax according to law may mean that it can no longer be bound by advice it has given.

Examples

Examples of when advice or information may not be binding include:

- when the nature of the transaction on which advice is given changes in a way that has a material impact on the transaction as a whole;
- when you provide incorrect or incomplete information when requesting advice;
- when the law relevant to the transaction for which the advice was given changes;
- when a court or tribunal judgment changes the established understanding of the law on which the advice was based and your liability to tax for that period has not been finalised (an example might be where you haven't yet submitted your return or, if you've submitted your return, the opportunity to amend that return remains) – HMRC will, however, consider whether or not the original understanding should be taken into account.

Where HMRC provides incorrect information or advice

HMRC will be bound by incorrect information or advice it gives, provided that it's clear and you can demonstrate that:

- you reasonably relied on the advice;
- you made full disclosure of all the relevant facts;
- applying the law would result in your financial detriment.

Where HMRC gives advice and later tells you that it's wrong, you'll have to start working out your tax the correct way from then on.

Published 4 March 2009 (tinyurl.com/hmrcrelstmar2009)

background to the relevant non-tax law (see, for example, TSEM6000) but a member of the public may need cautioning that these web pages are not a do-it-yourself guide to writing a will or establishing a trust.

We would be interested to hear whether readers have any thoughts about the point at which HMRC customers should perhaps be explicitly encouraged to seek professional advice. We appreciate why the catch-all conditions are there but we imagine that advisers probably do not want to be bothered every five minutes by clients double-checking the rates of mileage allowance.

However, we might be concerned if they were trying to determine the meaning of 'temporary workplace' without aid from someone with full knowledge both of their situation and the relevant legislation.

How far can we rely on HMRC guidance?

In March 2009, HMRC published online its own reliance statement (see **HMRC reliance statement**) (tinyurl.com/hmrcrelstmar2009). It applies to all of the guidance levels and channels and can be hard to find. Its inaccessibility means that few will be aware of the HMRC position and the level of caution they should adopt when following HMRC's advice.

Dr Stephen Daly of King's College, London (another academic member of the forum and a specialist in the legal aspects of tax administration) has argued that the statement needs reviewing:

'HMRC's reliance statement, even accepting that it is not intended to be comprehensive, needs updating in several respects. First, it neglects to mention that while taxpayers

Ways to provide feedback on HMRC guidance

Provide detailed feedback on HMRC manuals: There is a link at the top right of each page inviting users to 'Give feedback about this page'. This will take the user to a form to provide details of the feedback in up to 1,500 characters. The user can provide their email address if they would like a reply. **Did you find the guidance useful?:** The bottom of each GOV.UK page asks 'is this page useful?'. A response of 'no' will invite the user to complete an eight-question survey. It asks for an email address, but it is possible to continue without it. It is much better than many online surveys. It does help structure the response and any of the questions can be skipped.

Reporting problems with a webpage: Again, at the bottom of each webpage is a link to report if 'there is something wrong with this page'. The options at the link are restricted to reporting what the user was doing and what went wrong. This may give the impression that it is just there for internet issues such as broken links, but we understand that it can also be used to report errors or gaps in the content of the guidance.

cannot appeal against HMRC advice or information, other avenues such as through the Adjudicators' Office, the Parliamentary Ombudsman and judicial review are available. Secondly, it is written from the perspective of reliance upon individual rulings rather than general guidance or similar generally promulgated advice. Thirdly, its position on when incorrect advice can be binding does not reflect the correct legal position, overstating as it does the role of detrimental reliance.'

The invitation given by the customer forum to look at what others have been asking – and presumably not repeating the same questions – is also in tension with the statement and its emphasis on bespoke advice.

It is entirely correct to insist that professional tax advisers 'make full disclosure of all the relevant facts'. But what of a newcomer to the UK tax system making an enquiry through Twitter? How are they to know all the relevant facts for an every day issue that is usually, but not always, straightforward? Should HMRC explore extending its willingness to be bound to include cases where advice has been sought in good faith and the facts presented were reasonable from the perspective of the user?

We understand that HMRC is considering its reliance statement in relation to the increased demand for, and provision of, online guidance. The existence of the forum already demonstrates that HMRC has been willing to embrace OTS's recommendation to introduce an 'advice and guidance panel'.

We look forward to this forum also forming a part of implementing one of OTS's other recommendations, that HMRC 'undertake a consultation on the circumstances in which a taxpayer can rely on published guidance and the extent to which a taxpayer will be subject to interest, penalties

Planning point

It is worth reporting problems with errors on HMRC's web pages because this can lead to corrections in the manuals.

and the tax in dispute where guidance is found to be incorrect'.

Although penalties may be downstream from the overall guidance strategy, it would help allay concerns about any absolute statements regarding reliance if there were a shared understanding as to how any revised policy would work in practice. Something certainly needs to be there to allow robust challenges to abuse by those shopping round the guidance until they find a carelessly phrased response that can be wilfully misinterpreted – the sort of cases where the checkout scanner shows £0.99 for an item that is clearly worth £99. But it would be helpful to be able to give some comfort to the busy taxpayer who is doing their best to get things right. How far do we want to penalise those who genuinely confuse their galia melon with a cantaloupe when presented with a fuzzy picture at the checkout?

“But what of a newcomer to the UK tax system making an enquiry through Twitter? How are they to know all the relevant facts?”

Give guidance feedback to HMRC

HMRC is in the process of updating its guidance in light of Brexit. It has prioritised the mainstream guidance, which is now up to date, and it is now working through the manuals.

Reporting to HMRC practical experience of using the online guidance is an important contribution we can all make to improving their reliability and usability. Any specific or general feedback on online guidance, should be sent to HMRC. The key ways to do this are outlined in *Ways to provide feedback on HMRC guidance*. ●

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- OTS review of HMRC guidance for taxpayers: tinyurl.com/394c9jd9
- GOV.UK When you can rely on information or advice provided by HMRC: tinyurl.com/86mcbvj2
- GOV.UK HMRC community forums: <https://community.hmrc.gov.uk>
- Stephen Daly, *Tax Authority Advice and the Public* (Hart Publishing) especially chapter 6: tinyurl.com/3av7h74v