

Good guidance

The importance of effective guidance for unrepresented taxpayers



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About us

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often, the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

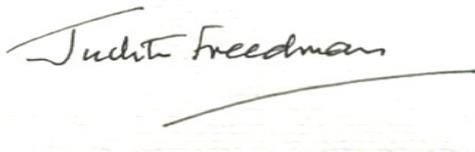
The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

Forewords

The complexity of the UK tax system means that published guidance is a necessity in order to enable the system to operate. Unrepresented taxpayers have a particular need for clear and accessible guidance upon which they can rely, since they cannot be expected to consult the frequently voluminous legislation and case law.

There is a large volume of material issued by HMRC at various levels of detail and technicality. Technological developments open up possibilities for helpful new forms of guidance and interaction with taxpayers, but the task of managing that guidance, and ensuring it is up to date and consistent, becomes greater as the volume and range of available material increases. The question of extent to which different types of guidance can be relied upon also becomes increasingly complex.

This report, based on the wide experience and knowledge of the Low Incomes Tax Reform Group, and illustrated by specific examples, identifies a number of key attributes of good guidance and uses those as a benchmark to evaluate the current state of HMRC guidance. The report makes 40 valuable and practical recommendations for improving clarity, accessibility and reliability, ranging from an improved search function and better links and cross references, to greater consistency and accuracy and speedier updating of guidance. The final recommendation follows that of the former Office of Tax Simplification in proposing a public consultation on the issue of reliance on guidance. Consideration of the scope and management of guidance and the degree to which it binds HMRC should be a significant element of the ongoing HMRC Tax Administration Framework Review and this report makes an important contribution to that work and to the public debate.



Judith Freedman CBE FBA

Oxford Emeritus Professor of Tax Law



Unrepresented taxpayers need plainly-worded guidance to help them understand what is expected of them and the implications of their actions or inactions. Those who cannot afford professional representation to navigate the tax system on their behalf rely on such guidance. Where it does not exist, or where it falls short, the tax system cannot function effectively: in the gaps one finds not just non-compliance but also confusion, frustration and erosion of trust. Too often, unrepresented taxpayers find themselves in these gaps. It does not need to be this way.

HMRC's current programme of work in this area does demonstrate a commitment for continuous improvement which recognises the above. In particular, HMRC created an external Guidance Strategy Forum in 2021 and appointed a senior Strategic Head of Guidance to lead this work. So far, HMRC have focused on improving internal and external guidance and have made some progress. We welcome these achievements, but there is still much more that can be done.

To support HMRC with this endeavour, this report sets out 40 general recommendations for the improvement of taxpayer guidance on GOV.UK, which collectively aim to improve the experience of unrepresented taxpayers trying to comply with their obligations and ultimately strengthen the relationship between taxpayer and the state.

We hope that the recommendations in this report are seriously considered by those responsible for the public-facing guidance available on GOV.UK, in the spirit of ensuring that this guidance is as effective as possible and its reputation and reliability is upheld.

Specific examples are given of where guidance fails (or has recently failed), often in one or more areas. We have already highlighted many of these to HMRC, and some have been addressed prior to the publication of this report. We hope that, at the very least, the remaining examples are similarly addressed. But making isolated changes to specific pages is just the start: systemic and process-led change is likely to have much more impact in the longer term. We therefore urge those writing and designing guidance to have our attributes of good guidance at the forefront of their minds at all times.



Victoria Todd

Head of the Low Incomes Tax Reform Group



Executive summary

“The importance of the extent to which thousands of taxpayers may rely on guidance, of great significance as to how they will manage their lives, cannot be doubted. It goes to the heart of the relationship between the Revenue and taxpayer.”¹

- Lord Justice Moses

The above quote from Lord Justice Moses neatly sets the scene for this report – that good guidance is critical to taxpayers and perhaps especially so for those who are not represented by professional tax advisers.

We expand on the role of guidance in the introductory chapter. We explain how good guidance is an essential part of any tax system, because it has functions which are distinct from the law itself. These functions include raising awareness and understanding of the law and explaining how it applies in practice. Good guidance also allows us to enjoy the benefits of a precise and fair tax system by making underlying complexity more manageable. We explain that good guidance benefits all parties to a tax system – including the taxpayer, HMRC, and the Exchequer. By contrast, poor guidance can damage public understanding and trust, leading to problems for HMRC and the Exchequer in dealing with the consequences.

The report then goes on to look at how guidance on GOV.UK is structured and developed, explaining the three tiers of guidance on GOV.UK and how the philosophy is centred on the user. We look at three examples of this: user testing, user need and user feedback, explaining some of the disadvantages of taking this approach too far.

The core of the report then discusses what we believe makes good guidance for unrepresented taxpayers, by considering several attributes. These attributes are not tax-specific; they have general application to any government-issued guidance on any topic. Good guidance should:

- exist,
- be easily found,
- be clear in scope,
- be easily navigable,

¹ *Davies & Anor, R (on the application of) v HM Revenue & Customs* [2010] EWCA Civ 83 [12]

- be presented in a suitable format,
- be accurate,
- be up-to-date,
- be clear and unambiguous,
- be holistic,
- use examples,
- be consistent,
- be accessible, and
- be timely.

In considering what makes good guidance, we examine examples of poor guidance (for example, guidance which is misleading, incorrect or simply missing). The report aims to do this in a constructive way, to demonstrate how pitfalls can be avoided.

We then turn to more recent trends in HMRC's guidance provision, looking at interactive tools and considering the 'advice' which HMRC provides on platforms such as Twitter and in their own webinars. This leads us to consider the distinction between guidance and advice. We look at the question of the extent to which taxpayers can rely on guidance and the concept of 'legitimate expectation'. Being capable of being relied on is a further important attribute of good guidance. We look at how this is communicated to taxpayers on GOV.UK, the legal position and how this works in practice.

Throughout, our points aim to encompass our principles of an effective tax system as detailed in our paper, 'A better deal for the low-income taxpayer',² which are that the tax system should be:

- clear and up-to-date,
- simple,
- equitable,
- just,
- accessible and responsive,
- joined-up, and
- inclusive.

Changes to guidance made after 31 January 2023 may not be reflected in this report.

² <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

List of recommendations

GOV.UK structure and development

Recommendation 1: The level of technical detail offered by a page of guidance should be immediately clear when landing on a page.

Recommendation 2: HMRC should publish guidelines to help guidance writers decide what matters and circumstances to include and exclude.

Recommendation 3: HMRC should consider how their user testing can be expanded to determine whether users get to the right answer, not just whether they find guidance easy to use.

Recommendation 4: HMRC and GDS should review 'user need' requirements from the perspective of unrepresented taxpayers, to ensure they do not represent a barrier to effective guidance being published for this group.

Recommendation 5: The GOV.UK feedback route which offers a reply to the user should be easier to find.

Recommendation 6: HMRC should design and implement an ongoing process to help proactively identify areas where guidance is missing, and rectify these areas as soon as they are identified.

Recommendation 7: Whenever any changes or new policies are introduced, there should be a published guidance assessment to ensure that any associated guidance is as complete as possible.

Recommendation 8: The search function on GOV.UK should be much improved to ensure users are directed to the most appropriate pages, potentially by working with commercial search engines to improve underlying technologies behind it.

Attributes of good guidance

Recommendation 9: Guidance should always clearly state its intended audience and scope.

Recommendation 10: Where exceptions apply, links should be provided to more information on those exceptions.

Recommendation 11: Links between tiers of guidance should be given at the top of the page so that taxpayers can navigate easily between them without having to read the body text.

Recommendation 12: Links between tiers of guidance should be consistently present, including from the more detailed to the simpler.

Recommendation 13: Links between related guidance on GOV.UK should be provided whenever it is helpful to do so, including between guidance 'owned' by different government departments.

Recommendation 14: HMRC should consider how to better identify circular user journeys. Once identified, they should be addressed as soon as possible.

Recommendation 15: It should always be possible to view all the guidance at a given level on a single topic together on a single page or document so that taxpayers can easily search, navigate and print it as required.

Recommendation 16: When writing guidance, simplicity should not compromise on accuracy. Factually incorrect or subjective statements should always be avoided.

Recommendation 17: Though it may require additional resources, HMRC should ensure pages on GOV.UK are reviewed at least annually and as soon as possible after each fiscal event.

Recommendation 18: Each page of guidance should be dated, including mainstream guidance.

Recommendation 19: Previous versions of guidance should be more easily accessible.

Recommendation 20: Changes to guidance should be summarised and dated at the bottom of each page, including for mainstream guidance.

Recommendation 21: If bullet points are used to list conditions, it should always be clear whether all conditions are necessary.

Recommendation 22: Potential taxpayer misunderstandings should be anticipated and clarified in guidance.

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Recommendation 23: Links to related content should include guidance on means-tested benefits and other parts of the tax system, where relevant.

Recommendation 24: Guidance should include examples to help explain concepts. The examples should not be limited to the straightforward cases, and should also be used to explain more complex interactions.

Recommendation 25: Potentially ambiguous, non-statutory terms such as 'income' and 'taxable income' should be defined and used consistently.

Recommendation 26: Guidance on GOV.UK should retain the benefits of the PDF format where alternative formats are used, especially in relation to searchability.

Recommendation 27: HMRC should resume their work on ensuring guidance on certain key topics is available in an 'Easy Read' format.

Recommendation 28: Detailed guidance on GOV.UK should be published as soon as possible after a change in the law, and treated as a dynamic content which is expanded as practical experience of the law is gained.

Interactive tools

Recommendation 29: HMRC should review their range of interactive tools and calculators to ensure their scope and reliability is as clear as possible.

Recommendation 30: Taxpayers should always be given the opportunity to print or save their input to an interactive tool, as well as the tool's output, for their records.

Recommendation 31: Where possible, HMRC should ensure that tools can also be used without needing to enter Government Gateway credentials.

Recommendation 32: HMRC should allow external stakeholders to review a flowchart version (or similar) of interactive tools so that their technical accuracy can be scrutinised. HMRC should also consider whether to publish such a flowchart for taxpayers generally.

Recommendation 33: Tools which aim to let taxpayers know whether they have a particular legal obligation should be aligned more accurately with the law.

Recommendation 34: Tools should include links to further guidance, where relevant, so taxpayers can ensure they complete the tool correctly.

Recommendation 35: Tools should clearly state the assumptions used, to prevent taxpayers being misled.

Guidance as advice

Recommendation 36: GOV.UK guidance should highlight where certain claims may be beneficial.

Recommendation 37: HMRC should consider how nudges and prompts can be used to highlight beneficial claims and elections, rather than simply encouraging compliance.

Recommendation 38: HMRC should review the GOV.UK general disclaimer, their own guidance on relying on HMRC, and the HMRC Charter, to ensure they are consistent and state clearly that taxpayers can rely on guidance published on GOV.UK – or if not in some circumstances, explain why not.

Recommendation 39: HMRC's public-facing statement on legitimate expectation should be updated as soon as possible.

Recommendation 40: HMRC should follow the recommendation of the Office of Tax Simplification and issue a public consultation on the issue of reliance on guidance.

1 The role of guidance

1.1 The need for good guidance in a complex tax system

To understand the role played by good guidance, it is worth a brief look at the tax system and its complexity.

Guidance can be most effective and succinct if the underlying law is straightforward. However, the UK's tax code is undeniably long and complex. Indeed, some degree of complexity may have been inevitable, given that the tax and legal environment has developed over many years alongside (indeed often, behind) changes in society. There is also an argument to suggest that it is only through a degree of underlying complexity (or at least a longer tax code) that legislators can try to cater for the infinite variety of taxpayer circumstances, in an attempt to be precise and fair.

Even if the tax system were simpler, it is unrealistic to expect lay taxpayers to read and understand legislation: good guidance is therefore essential in either case, but it is more urgent and necessary when the underlying law is so intractable and ever-changing.

The Tax Law Review Committee³ agreed, acknowledging that “the complexity of the UK tax system means that it is unrealistic to expect individual unrepresented taxpayers, at least, to be aware of [changes in the law] and their consequences.”⁴

In a sense, good guidance could allow us to enjoy the benefits of precision and fairness (which are argued to make some complexity inevitable) while still making it easier to understand. There is a critical balance which needs to be struck between explaining the law in simple terms yet remaining faithful to it. Good guidance must not compromise on accuracy. When accuracy is compromised, taxpayers can be misled and end up not paying the right amount of tax (whether too much or too little). Taxpayers who underpay tax because of misleading guidance also potentially face penalties for that non-compliance, other than in very limited circumstances. This is distinct from other online processes, such as paying vehicle tax, in which penalties are unlikely if the system indicates (even if incorrectly) that the individual has met their obligations.

³ <https://ifs.org.uk/tax-law-review-committee>

⁴ The Institute for Fiscal Studies, Tax Law Review Committee, *HMRC's Discretion: The Application of the Ultra Vires Rule and the Legitimate Expectation Doctrine*, December 2014, paragraph 2.12 (<https://ifs.org.uk/publications/hmrcs-discretion-application-ultra-vires-rule-and-legitimate-expectation-doctrine>)

In addition, sometimes it is not so much the overall length or complexity of the law which is relevant, but rather the experience of an individual taxpayer trying to find and understand the parts which are relevant to them. Well-organised guidance and good search functionality can facilitate that.

Guidance can also do more than explain the law in simple terms. It should 'guide' in an active sense by:

- assisting unrepresented taxpayers through compliance processes,
- giving suitable prominence to important and relevant concepts,
- explaining how the law applies in practice,
- highlighting potential reliefs which are deliberately available to taxpayers as matters of policy,
- avoiding pitfalls such as penalties for non-compliance, and
- signposting to appropriate further help.

1.2 The role of guidance in raising taxpayer awareness

For a tax system to work, everyone affected by it needs to know what they need to do to comply. Making a change to the tax system does not involve just changing the wording of the law. Public awareness must also keep up, otherwise taxpayers' obligations can go unmet (like the high income child benefit charge⁵ or capital gains tax 60-day reporting⁶) or new reliefs can go unclaimed (like the marriage allowance⁷).

Furthermore, an important element of fairness is that all taxpayers know what tax reliefs they are eligible for, and that they are equipped with the knowledge and capacity to apply for those reliefs successfully. Good guidance is one of the lead actors in this role, alongside smooth, intuitive systems and processes and efforts to raise awareness amongst the taxpayer population.

⁵ After the high income child benefit charge was introduced, large numbers of taxpayers failed to notify their liability to it because of a lack of awareness. Unusually, HMRC took unilateral action to refund the associated penalties for 2013/14 to 2015/16 for certain taxpayers (broadly those who were not in scope of the charge at the time of its introduction, but became so later) – see <https://www.gov.uk/government/news/review-for-high-income-child-benefit-charge-penalty-cases-concludes>.

⁶ Accelerated capital gains tax reporting on UK residential property was first introduced in April 2015 for non-residents, extended to disposals of UK land and property by non-residents in April 2019, and then extended again for disposals of UK residential property by UK residents in April 2020. The First-tier Tribunal has seen a number of cases where it was considered reasonable that non-residents were not aware of the new requirements (for example, *McGreevy* (TC6109) and *Smith/Rowan-Smith* (TC6622/TC6623)). The reporting window was increased from 30 days to 60 days on 27 October 2021.

⁷ See the House of Commons Research Briefing, *Income tax allowance for married couples* (May 2022), section 2.4: <https://researchbriefings.files.parliament.uk/documents/SN00870/SN00870.pdf>.

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In an ideal world, the UK's tax system should not show any inherent bias towards those who can afford professional representation to navigate it. To provide a simple example, an unrepresented taxpayer may be unaware of the need to register to file a tax return in their circumstances, and potentially face penalties for that failure to notify chargeability. *Awareness* of what taxpayers need to do to comply (often, simply knowing that they need to do *something*), and of relevant tax reliefs, is important for all taxpayers. If only represented taxpayers become aware of a tax relief which an unrepresented taxpayer might equally be eligible for, this is a flaw which needs addressing through increased public awareness of that relief.

Equally, the risk of unrepresented taxpayers falling down a compliance 'hole' should be minimised. In practice, such a 'hole' might look like several years of late submission penalties for unfiled Self Assessment tax returns, or a taxpayer finding out that they have unwittingly not declared to HMRC overseas income which had been reported and taxed in the overseas jurisdiction. An ideal tax system – including guidance – should make this kind of non-compliance intrinsically difficult. HMRC recognise this in their compliance strategy: to make it easy to get tax right, as well as hard to get it wrong.⁸

Guidance can play a role in raising awareness, but publishing guidance on GOV.UK alone has limited application if the taxpayer is not prompted to search for it or cannot find it. Wider publicity and communication campaigns are also needed to raise awareness that the taxpayer might *need* to do something, or is *able* to do something which benefits them.

1.3 The benefits of good guidance

The primary function of guidance, then, sits somewhere between explaining and raising awareness of the tax law, and the tax law itself. It can be thought of as a bridge between the two.

We see the main role of guidance as helping people to *understand* the tax system, at least to the extent it is relevant to them. If guidance plays this role well, including being easily found and easily understood, it should increase public understanding of the tax system. This has multiple benefits:

- For the taxpayer, the risk of penalties and interest is decreased as they know how and when to comply with their tax responsibilities. Being able to claim the tax reliefs that they are eligible for means that the taxpayer does not miss out. It also reduces stress for the taxpayer (for example, by providing them with confidence that they

⁸ See HM Treasury/HMRC paper, *Tackling tax avoidance, evasion and other forms of non-compliance*, March 2019, paragraph 1.20: <https://www.gov.uk/government/publications/tackling-tax-avoidance-evasion-and-other-forms-of-non-compliance>.

are fulfilling their obligations), and improves their perception and trust of HMRC and the tax system in general.

- For HMRC, it reduces the number of compliance interventions and taxpayer contact, which frees up resources.
- For the public purse, if people pay the right amount of tax, the tax gap is reduced.
- For the tax system itself, if public understanding increases, public engagement hopefully increases in turn.

1.4 The dangers of poor guidance

Poor guidance has the opposite effect: it does not have neutral impact. Poor guidance can:

- decrease public understanding,
- mislead and confuse taxpayers, leading to unnecessary costs for all parties,
- erode trust in the system and perceived authority of HMRC, and
- damage the health of the tax system as a whole.

We look at examples of this in the report.

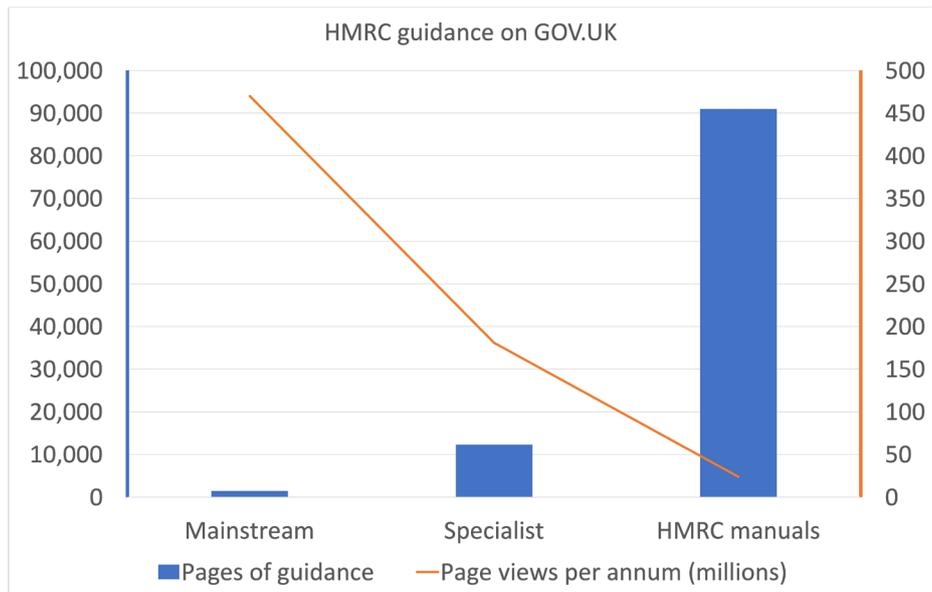
Furthermore, where guidance is incorrect on GOV.UK, which is seen as an authority, it can be perpetuated by those trying to help others, including qualified advisers and even software providers – causing damage to public understanding which is challenging to reverse.

While unrepresented taxpayers may get assistance from other sources (like friends and family, online forums, social media, and charities), government-issued guidance often provides the backbone reference. Its reputation is key. Where that reputation is damaged through incomplete or confusing information, taxpayers may seek guidance from other sources, potentially leading them to take action (or indeed inaction) which is not in their interest, or HMRC's.

2 How GOV.UK works

2.1 The three tiers of guidance

HMRC's guidance on GOV.UK is structured on three levels, as illustrated by the following chart:



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Our examples look primarily at the mainstream guidance on GOV.UK. This set of pages is aimed at the general taxpayer. It is interesting to note from the chart that although this is the smallest set of pages, it has the greatest number of views per annum. While this is probably as one would expect (as proportionately fewer users will need to delve into the more detailed guidance), it does illustrate the importance of ensuring mainstream guidance is correctly pitched for its vast audience. These mainstream pages are distinct from the more detailed, specialist guidance (known sometimes as 'second tier').

⁹ Figures for the number of pages and page views were provided by HMRC in their April 2022 Guidance Strategy Forum (see details of the forum on GOV.UK: <https://www.gov.uk/government/groups/guidance-strategy-forum>). HMRC estimate that the number of page views is actually three times higher (the given figures are based on users who accept cookies).

Mainstream guidance has simple headers like this:

Tax on foreign income

Contents

- Overview
- [UK residence and tax](#)
- ['Non-domiciled' residents](#)
- [Reporting your foreign income](#)
- [Foreign income that's taxed differently](#)
- [If you're taxed twice](#)
- [If you come to study in the UK](#)

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Second tier (specialist) guidance, aimed at taxpayers who need to know more and have some level of existing knowledge, can be identified from page headers which look like this:

Guidance

How to apply for a certificate of residence to claim tax relief abroad

Find out how to get a certificate of residence as an individual, company or organisation so you do not get taxed twice on foreign income.

From: [HM Revenue & Customs](#)

Published 2 December 2015

Last updated 16 November 2022 — [See all updates](#)

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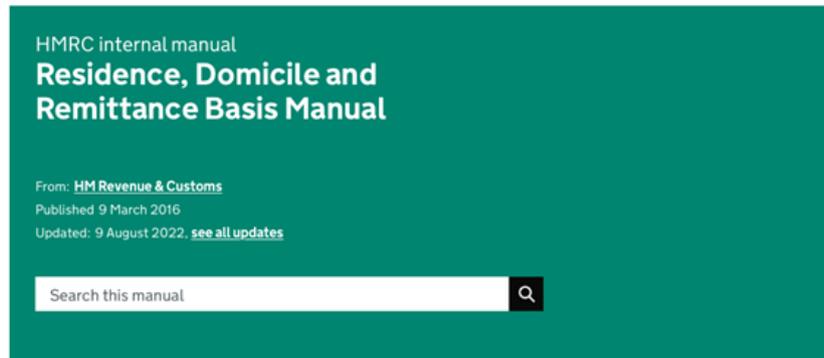
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¹⁰ <https://www.gov.uk/tax-foreign-income>, accessed 27 February 2023

¹¹ <https://www.gov.uk/guidance/get-a-certificate-of-residence>, accessed 13 February 2023

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Finally, third tier guidance – HMRC’s internal manuals – has a header like this:



[Contents](#) > [RDRM10000](#)

RDRM11000 - Residence: The Statutory Residence Test (SRT): contents

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Third tier guidance is aimed at professional and specialist users, such as HMRC staff, accountants and representative bodies.

Our initial observation is that it is not immediately clear which level of guidance is being viewed without already understanding the differences in how they are presented. In particular, mainstream guidance (first tier) looks very similar to specialist guidance (second tier).

Recommendation 1: The level of technical detail offered by a page of guidance should be immediately clear when landing on a page.

2.2 Government Digital Service (GDS) and HMRC

Mainstream guidance is written and designed by the Government Digital Service (GDS), part of the Cabinet Office,¹³ but we understand that all pages relevant to HMRC are technically signed off and ‘owned’ by HMRC. GDS have strict design principles and editorial guidelines. While these guidelines aim to deliver a simple and consistent user experience, they can occasionally lead to inaccuracies, ambiguities and other shortcomings – as evidenced in this report. We do not go into detail on the relationship between GDS and HMRC, or whether responsibility for guidance is currently sitting in the right place. The recommendations in this report are instead aimed collectively at all those who play a part in the final content.¹⁴

¹² <https://www.gov.uk/hmrc-internal-manuals/residence-domicile-and-remittance-basis>, accessed 12 October 2022

¹³ See <https://www.gov.uk/government/organisations/government-digital-service>.

¹⁴ For a more detailed discussion on this point, see the Office of Tax Simplification report *Guidance for taxpayers* (October 2018) and their *Guidance update paper* (April 2021).

By contrast, HMRC have a lot more flexibility over the design and content of second tier (specialist) and third tier (HMRC manuals) guidance, as HMRC technical experts design and write this guidance directly. However, we understand that these tiers are still influenced by GOV.UK editorial principles to some degree.

2.3 The “80/20 rule”?

Through our experience in working with HMRC on their mainstream guidance, the philosophy sometimes appears to be that if the information works for most users, it is less important to cater for the needs of others. This principle is sometimes referred to as the “80/20 rule”, even though it may not always fit to those exact proportions. We are concerned that following such an approach could have disproportionate consequences for those on low incomes with benefits interactions, or others with ‘protected characteristics’. This is because the detail is considered relevant to too few people to warrant covering. The “20%” are therefore more likely to be on the receiving end of inaccurate, misleading or missing information. It is also important to recognise that 20% (or thereabouts) of the population using HMRC’s mainstream guidance is still a sizeable number of people.

HMRC have told us that there is no such thing as the “80/20 rule” when writing and designing their guidance. However, the thinking underlying the rule does seem to be part of the general principle of mainstream guidance, which is aimed – perhaps reasonably enough – at the vast majority of taxpayers. It is not clear to us how guidance writers currently decide what to include (and therefore what to exclude). This should be delicately managed, so those unrepresented taxpayers who fall into the minority are not systematically disadvantaged or misled. We discuss later from page 53 where we have seen the apparent application of a ‘suitable for the majority’ approach in the context of an inheritance tax checker tool, which does not cater for non-domiciled spouse situations. Where a decision is made to exclude certain matters or circumstances, such limitations should always be clearly explained or acknowledged, and links provided to further detail for the minority of cases which fall outside of it.

Recommendation 2: HMRC should publish guidelines to help guidance writers decide what matters and circumstances to include and exclude.

2.4 User testing

User testing (also referred to as ‘user research’) is a key part of HMRC’s process for producing effective guidance. While we agree that such testing is important, decisions made on the basis of user testing must not

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override technical accuracy or lead to ambiguity, and the user testing process must be fit for purpose.

For example, a new late submission penalty regime for VAT applies from January 2023 in which late submissions accrue “driving licence”-style points. If sufficient points are accumulated, a financial penalty of £200 is triggered. During the drafting of the guidance to accompany the introduction of the new regime, it was initially intended that the word “penalty” would refer both to the point *and* the financial penalty. This is because user testing purportedly did not reveal that taxpayers would be confused between the two concepts. It is difficult to see how this could have been the case, and we wonder if the users were being asked the right questions to check their understanding.¹⁵

In general, HMRC user testing of guidance, interactive tools and systems needs to be carried out in such a way as to determine whether the user understood correctly and did actually get to the *right* answer – rather than focusing on whether they ‘felt’ or ‘thought’ the system to be easy to use or understand. It is perfectly possible that users might feel or think a system is user-friendly and easy to understand, but unless their understanding or responses/use of the system are independently verified as being correct, the testing could fail to identify people inadvertently misinterpreting the question.

For example, user testing on new interactive guidance might feedback that they understood it and that it was easy to use. Suppose one of the questions asked if their ‘income’ was over a certain level, and the taxpayer answered that it was not. There is no value in this feedback if the individual answered the question incorrectly. The only way to know that would be to find out their income (in detail) and then compare that to the answer that they gave. This would allow further investigation as to why the individual answered in the way they did, what they understood by the question (for example, the term ‘income’ can mean different things to different people).

We also give several examples in this report of examples where over-simplified guidance may appear to be easy to understand but could lead to the wrong answer.

Recommendation 3: HMRC should consider how their user testing can be expanded to determine whether users get to the right answer, not just whether they find guidance easy to use.

¹⁵ The underlying legislation (Schedule 24, Finance Act 2021) is not ideal either, referring to “penalty points” and simply “penalties”, though at least there is some distinction. Good guidance is able to eliminate the ambiguity altogether by consistently referring to ‘financial penalties’ where that is what is meant, and avoiding the word ‘penalty’ on its own entirely.

2.5 User need

When new mainstream guidance is designed and updated by GDS, the general focus is on task-based user need. This means that only where there is an evidenced user need for new guidance, or for changes to existing guidance, can it be justified to apply resources to put that into effect.¹⁶

If an opinion or suggestion is made to improve guidance and that does not come from a 'user', GDS guidelines say that this must be proven by doing research.¹⁷ For unrepresented taxpayers, this can be problematic where they do not understand what they need to do and why – but also because they may be less likely to articulate their thoughts and needs relating to a tax obligation. This can mean that it is less likely for the user need to become apparent, and it may take more work for sufficient evidence to be uncovered to support a change. In some cases, it may not be possible to gather evidence at all.

In addition, unrepresented taxpayers who are also in the minority (see the discussion of the supposed 80/20 rule on page 17) face a compounded problem. If there are special rules more fitting to their circumstances, not only might there be a bias towards not covering these 'fringe' rules in the first place, they may also be less likely to come to light and be addressed.

Another problem with this approach is that users may be happy with existing GOV.UK content but if, for example, it is incorrect or incomplete then the taxpayer may not be aware. They do not know what they do not know, so no 'user need' is identified for changes to be made. This problem can be exacerbated by the fact that volunteers to provide feedback on GOV.UK content often come from the agent population, so the perspective of unrepresented taxpayers can be missed.

LITRG aims to put forward views from the perspective of unrepresented taxpayers on various panels and forums, but we encourage HMRC and GDS to do more – either by reducing the bar when it comes to the 'user need' of unrepresented taxpayers or otherwise by recognising the additional work required to gather that evidence and applying further resource as necessary to obtain it.

Recommendation 4: HMRC and GDS should review 'user need' requirements from the perspective of unrepresented taxpayers, to ensure they do not represent a barrier to effective guidance being published for this group.

¹⁶ See <https://www.gov.uk/guidance/content-design/user-needs>.

¹⁷ <https://www.gov.uk/service-manual/user-research/start-by-learning-user-needs#researching-users-and-their-needs>

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2.6 User feedback

Much of HMRC's continuous improvement is driven by user satisfaction ratings which are calculated from users clicking on the following button at the bottom of every page of guidance:



We understand that the data from these clicks directly drives HMRC's focus on which pages to improve. However, it could be dangerous for HMRC to place too much weight on this data: it only determines the *perceived* usefulness of a page. Taxpayers with a question are likely to click 'Yes' if that question is answered in a clear and unambiguous way, and 'No' otherwise (if they click the button at all). But it gives no information on whether that question has been addressed, answered correctly, or more pertinently, whether the taxpayer has understood the correct answer to the question – in other words, *actual* usefulness rather than perceived usefulness.

There are two other routes to provide feedback on GOV.UK pages. One is to click on the button labelled 'Report a problem with this page'. This invites the user to describe what they were doing and what went wrong. We understand from HMRC that nearly half (47%) of these feedback comments on their manuals for the period April to October 2022 resulted in changes.¹⁸

Alternatively, the user can click on 'Contact' (at the very bottom of each GOV.UK page, amongst the 'small print' of the cookies policy and terms and conditions) and then 'Use the GOV.UK form to send your questions or comments about the website'. This presents the user with the most comprehensive feedback form and gives the option for the user to receive a reply. This third route is quite opaque. We appreciate it requires resources for GOV.UK and/or HMRC staff to get back to the taxpayer in relation to a question raised, but offering a response is likely to encourage taxpayers to get in touch and therefore offers crucial insight as to user needs which are not being met.

Recommendation 5: The GOV.UK feedback route which offers a reply to the user should be easier to find.

¹⁸ <https://www.gov.uk/government/publications/agent-update-issue-102/issue-102-of-agent-update#agent-forum>

3 What is good guidance?

In order to better understand what we mean by good guidance, it is helpful to look at a number of attributes. In this chapter, we discuss these attributes and, to help understand what we mean by them, we look at some examples of current or recent guidance which is (or has been) lacking in one or more of them.

These attributes are that good guidance should:

- exist,
- be easily found,
- be clear in scope,
- be easily navigable,
- be presented in a suitable format,
- be accurate,
- be up-to-date,
- be clear and unambiguous,
- be holistic,
- use examples,
- be consistent,
- be accessible, and
- be timely.

A final attribute is that good guidance should be able to be relied upon. We discuss this separately in Chapter 5.

3.1 Good guidance exists

First of all, if a taxpayer has a question which they want to find the answer to, then guidance should exist to help them with that.

Where guidance does not exist, there is risk of taxpayer inaction (where some action might be required) or of driving contact to HMRC's telephone lines which could be avoided. There is also a risk that in the absence of government-issued information on a particular topic, less reliable sources will fill that gap (for example, online forums or social media).

Recommendation 6: HMRC should design and implement an ongoing process to help proactively identify areas where guidance is missing, and rectify these areas as soon as they are identified.

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Recommendation 7: Whenever any changes or new policies are introduced, there should be a published guidance assessment to ensure that any associated guidance is as complete as possible.

3.2 Good guidance is easily found

Obviously, it is not sufficient for guidance, even good guidance, merely to exist. Taxpayers must be able to find it. This can be challenging to get right. For example, many taxpayers with a tax question will use a search engine to try and find the answer. How they phrase their question or search term will determine what results they are shown. So for guidance to be found by the greatest number of taxpayers, it should reference terms and language which are natural, familiar and even colloquial. Use of such language need not compromise on the accuracy or even the formality of the guidance – we recognise the importance of a quasi-formal, straightforward and consistent style on GOV.UK. But more informal terms can be referenced (though not used instead) so that taxpayers are comforted that they are looking at the right material.

Ideally, HMRC should undertake a regular exercise to review what terms people are using in search engines to try and locate guidance on a tax-related matter. ‘Cornerstone’ pages could then be published to bring together links to all related pre-existing material. One area in which GOV.UK currently fails in this regard is for the perspective of someone trying to understand their tax responsibilities if they are making money online through social media and other sharing platforms, like YouTube, Patreon and Instagram.¹⁹

Tailoring guidance to its intended audience in this way could also help that audience understand it, by allowing people to recognise its application to their own circumstances. Clearly stating the scope of guidance (see page 25), including who the intended audience is, will also help achieve this goal.

In addition, trying to find the right piece of guidance without using a search engine but just clicking through links on GOV.UK or using GOV.UK’s own search function is challenging. This goes some way to explain why 78% of the people who contact us say that they have

¹⁹ Though it appears to be HMRC’s intention to address that: in July 2022, HMRC said as part of their consultation on reporting rules for digital platforms that “HMRC will consider how relevant guidance on GOV.UK could be more useful for gig workers and platform users. This will include exploring whether it would be possible to have a new dedicated ‘landing page’ for sellers with appropriate links to other guidance that might be relevant for them.” See <https://www.gov.uk/government/consultations/reporting-rules-for-digital-platforms/outcome/reporting-rules-for-digital-platforms-summary-of-responses>. In January 2023, HMRC did publish an ‘information sheet’ on selling online and paying taxes (at <https://www.gov.uk/government/publications/selling-online-and-paying-taxes/selling-online-and-paying-taxes-information-sheet>) though there are a number of failings in this guidance which we have fed back to HMRC.

not been able to find the answer to their query on GOV.UK.²⁰ To take an example, one of our most popular pages of guidance on our own website discusses how to claim back income tax which has been overpaid.²¹ But searching GOV.UK for “claim tax back” returns results relating to scams and Statutory Off Road Notifications for unused vehicles:

Search

The screenshot shows the GOV.UK search interface. At the top, a search bar contains the text "claim tax back" and a magnifying glass icon. Below the search bar, there are three filter categories: "Topic", "Content type", and "Updated", each with a downward arrow. To the right of the filters, it says "252,067 results" and "Subscribe to feed". Below the filters, there is a "Sort by" dropdown menu set to "Relevance". The search results are displayed in a list format. The first result is titled "Avoid and report internet scams and phishing" and includes a sub-heading "Report internet scams and phishing" with a description: "Report misleading websites, emails, phone numbers, phone calls or text...". There are also two other sub-headings: "Report scam HMRC emails, texts, phone calls and letters" and "Report visa and immigration scams". The second result is titled "When you need to make a SORN" and includes a sub-heading "Overview" with a description: "You need to make a SORN (Statutory Off Road Notification) when you take a...". There is also a sub-heading "Exceptions for motor traders" with a description: "You do not need to make a SORN on a vehicle if you're a motor trader of...".

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By contrast, the same search phrase on Google returns the most appropriate page on GOV.UK as its first result (www.gov.uk/claim-tax-refund).

With the objective of helping people get to the right page as quickly and as easily as possible, it is arguably unhelpful for GOV.UK to direct users to its own search facility ahead of more efficient commercial search engines. Yet, at the same time, it might be seen as desirable for taxpayers to stay within the GOV.UK ‘ecosystem’ rather than be shown results which may include adverts – for example, when we performed a search on Bing for the phrase “claim tax back”, we were shown the following adverts ahead of the genuine result on GOV.UK:

²⁰ Based on an analysis of 4,418 queries we have received since August 2017.

²¹ <https://www.litrg.org.uk/tax-guides/tax-basics/how-do-i-claim-tax-back>

²² <https://www.gov.uk/search/all?keywords=claim+tax+back&order=relevance>, accessed 17 October 2022

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The screenshot shows a Microsoft Bing search results page for the query 'claim tax back'. The search bar at the top contains the text 'claim tax back' and has a search icon to its right. Below the search bar are navigation options: ALL, CHAT, IMAGES, VIDEOS, MAPS, NEWS, and MORE. The search results show 1,060,000 results. The first result is an advertisement titled 'Claim Your Tax Refunds | Are You Due A Tax Refunds?' with a sub-headline 'Ad Beat Rising Living Costs & Get A £3K Tax Refund Back In Your Bank Account With [redacted] Would A £3K Tax Refund Help With Rising Living Costs? Claim What's Yours With [redacted]'. Below the headline are four buttons: 'Self Assessment', 'Apply From Your Phone', 'Start For Free', and 'Refund On Travel'. The second result is titled 'Tax Advice And Tax Returns | Personal Tax Advice Online' with a sub-headline 'Ad We'll pair you with a certified accountant who can chat through your questions and options. Personal tax advice, whether you're a sole trader, UK expat, investor, landlord and more. When you pay for our tax return service, an accredited accountant will sort and ...'. The third result is titled 'Uniform Tax Refunds Claim | Uniform Tax Refund Calculator' with a sub-headline 'Ad Tax Preparation Completed, Claim Made To Hmrc And A Refund Is Paid. Claim A Uniform Tax Refund. Find Out How Much Uniform Tax You Can Claim Back. Claim Mileage Tax - Free Check · Get A Tax Refund Today · Mileage Tax Claim Online'. The fourth result is titled 'HMRC Marriage Tax Rebate | How to claim Marriage Refund' with a sub-headline 'Ad Claim your Marriage Allowance Tax Rebate Online, Fast + Easy Online Claim Process. We will Maximise your Tax Rebate to get best payouts from HMRC Do I Qualify ? · Marriage Allowance · Contact Us · Marriage Rebate Form'. The number '23' is visible in the bottom right corner of the screenshot.

The use of advertising does of course provide commercial search engines with the revenues and resources to develop technologies which return more relevant results alongside the advertisements. But it is unfortunate that the shortcomings of GOV.UK's own search functionality drive taxpayers to commercial search engines and therefore might, for example, lead them to engage the services of a tax refund company unnecessarily instead of applying directly to HMRC.²⁴

There is, in fact, a solution – albeit an inelegant one – to using a commercial search engine such as Google and restricting the results to a particular domain, such as GOV.UK. This is achieved by adding the phrase “site:GOV.UK” to any search string. This technique is often the quickest way of finding the relevant page on GOV.UK. Alternatively, it is possible to implement search engines “powered by Google” on a website. In any case, the status quo is unsatisfactory. At the very least, GOV.UK might publish some tips on how to best use commercial search engines to get to the right page on GOV.UK.

Recommendation 8: The search function on GOV.UK should be much improved to ensure users are directed to the most appropriate pages, potentially by working with commercial search engines to improve underlying technologies behind it.

²³ <https://www.bing.com/search?q=claim+tax+back>, accessed 28 February 2023

²⁴ We discuss tax refund companies here: <https://www.litrg.org.uk/tax-guides/tax-basics/how-do-i-claim-tax-back/should-i-use-tax-refund-company>.

3.3 Good guidance is clear in scope

The question of guidance existing should not be confused with the question of guidance being complete or comprehensive. Clearly, guidance cannot always deal with every possible set of circumstances. There will be a balance to be struck between ensuring that the guidance on a particular topic is easy to understand yet still relevant and applicable to the vast majority of taxpayers.

For those whose circumstances are not covered, it is important for it to be made clear that the guidance does not apply to them, and they should be given a route to where the answer may exist (either in more detailed guidance, or upon seeking support from HMRC or a tax professional). One example where GOV.UK fails in this regard is in HMRC's inheritance tax checker (see page 53), which does not highlight that the advice given will not apply where the deceased's spouse is non-domiciled in the UK.

Recommendation 9: Guidance should always clearly state its intended audience and scope.

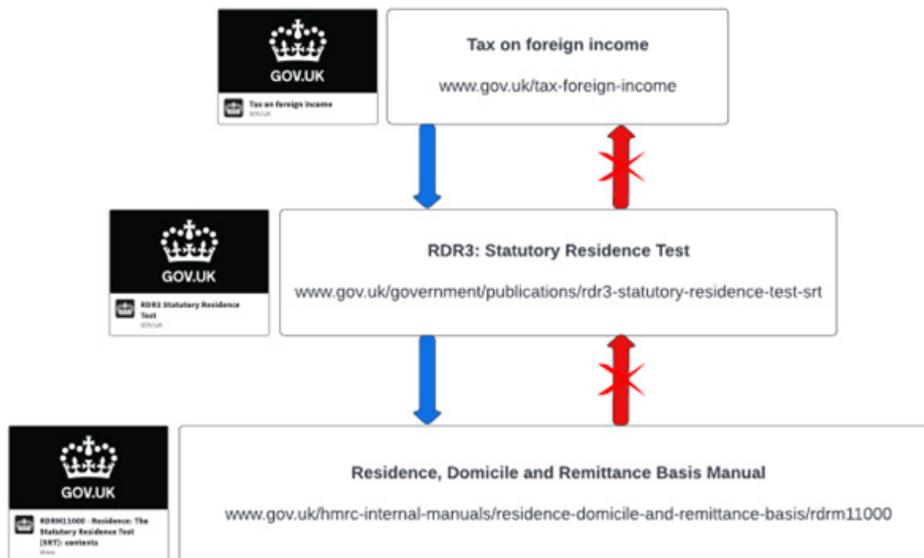
Recommendation 10: Where exceptions apply, links should be provided to more information on those exceptions.

3.4 Good guidance is easily navigable

Once a taxpayer has found a page on GOV.UK which is related to their query, it is important that this guidance is easily navigable. For example, a taxpayer may feel that the guidance they are presented with is too technical, or oversimplified. These taxpayers need an easy way of being able to zoom out from the technical detail or otherwise drill down into it. Currently, links between the different tiers of guidance on GOV.UK are inconsistent. In particular, while some links exist from mainstream guidance into more specialist material, they are not usually present in reverse. Links to and from HMRC's internal manuals are rare, though they do exist in some instances. Often, the links to other guidance are buried in the text so a taxpayer has to spend time reading the text to find them.

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The following shows an example of guidance on the statutory residence test at different tiers, with the blue and red arrows indicating where links exist or do not exist, respectively:



As previously highlighted, when landing on a page on GOV.UK, it is not immediately obvious which level of guidance one has arrived at unless you are versed in the differences in what they look like (see earlier, page 15). Were this to be clearer, per our first recommendation, then taxpayers would not spend time reading guidance which is too detailed (to then get confused) or too simple (to then get frustrated because their question is not answered).²⁵ It is also important that relevant guidance is cross-linked in pages where you might expect to find it.

Recommendation 11: Links between tiers of guidance should be given at the top of the page so that taxpayers can navigate easily between them without having to read the body text.

Recommendation 12: Links between tiers of guidance should be consistently present, including from the more detailed to the simpler.

Recommendation 13: Links between related guidance on GOV.UK should be provided whenever it is helpful to do so, including between guidance 'owned' by different government departments.

²⁵ This was the Office of Tax Simplification's 5th recommendation in their 2018 report *Guidance for taxpayers: a vision for the future*: <https://www.gov.uk/government/publications/guidance-for-taxpayers>.

Circular links

Circular links cause significant frustration for the user. In a recent case which was highlighted to us, a mother wanted to understand how to claim National Insurance credits which she believed she was entitled to as a result of looking after her child. She did not claim child benefit because her husband would have been liable to the high income child benefit charge.²⁶

At www.gov.uk/national-insurance-credits/eligibility, it used to say:

Family members who care for a child

Your situation	How to get credits
You're a family member over 16 but under State Pension age and you're caring for a child under 12 (usually while the parent or main carer is working). This includes care that you're providing from a distance because of coronavirus (COVID-19) - for example, by telephone or video call while you're self-isolating	Apply for Specified Adult Childcare Class 3 credits

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This taxpayer might have read this and thought that they would be eligible for Specified Adult Childcare credits – but in fact these are only applicable where there is a child benefit claim which has been made for the child and the claimant does not require the associated National Insurance credits themselves. There was no mention of this in the above text.²⁸ Clicking on the link on the right-hand side leads to the application form, where it again states:

Details

Use form CA9176 to apply for National Insurance credits if you're an adult caring for a child under 12 from 6 April 2011.

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²⁶ In this situation, it is often advisable to claim child benefit and opt out of receiving payments in order to retain entitlement to National Insurance credits which stem from the claim.

²⁷ Accessed 28 February 2023. This page has since been updated.

²⁸ If you click on the link from 'family member' it does take you a factsheet from which is possible to deduce that the credits would not apply in this situation. However, there is nothing to suggest that the mother of the child would not be considered to be a family member for this purpose, and therefore no prompt to click on the link.

²⁹ <https://www.gov.uk/government/publications/national-insurance-application-for-specified-adult-childcare-credits-ca9176>, accessed 12 October 2022

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Again, this seems to confirm the availability of the credits to this person. The front page of the form is similarly unhelpful:

About this form

Use this form to apply for National Insurance credits if you are an adult carer, caring for a child under 12, for periods from **6 April 2011**.

You may be entitled to these credits if you:

- provided care for a child under 12
- are related to the child, and
- were ordinarily resident in the UK for the period(s) of care.

You, and the parent or main carer of the child you provided care for, **must** read the guidance for Specified Adult Childcare credits before you decide to apply. By parent or main carer we mean the person who receives or received Child Benefit for the child.

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There is no link to the guidance referred to in the last paragraph above. However, there is a link below to information about National Insurance credits – leading the person back to the page they started with.

This frustrating journey could have been avoided if the initial page were clearer about the requirement of a child benefit claim (as it now is).

Recommendation 14: HMRC should consider how to better identify circular user journeys. Once identified, they should be addressed as soon as possible.

3.5 Good guidance should be presented in a suitable format

Taxpayer guidance on GOV.UK and other platforms, such as YouTube, is presented in a variety of formats. While the standard format for mainstream guidance on GOV.UK is suitable for the majority of users – especially those viewing the guidance on a mobile phone³¹ – this can present challenges for those wishing to consider a lot of information at once. Taxpayers may wish to do this to get a broader understanding of a particular topic so that they can apply this understanding to their unique circumstances.

It is therefore important to be able to easily view all the guidance on a particular topic. This helps taxpayers to search, navigate and print guidance as they wish. Many sections on GOV.UK now include a link to 'View a printable version of the whole guide' at the same time as being

³⁰ <https://www.gov.uk/government/publications/national-insurance-application-for-specified-adult-childcare-credits-ca9176>, accessed 12 October 2022

³¹ Statistics suggest that the majority (c.55%) of internet usage is via a mobile phone. For example, see <https://www.statista.com/topics/779/mobile-internet/>.

divided into individual pages. Although this is useful, in other cases, GOV.UK offers a hybrid set of 'accordion'-style pages with expandable links.³² The benefit of sub-dividing the guidance into separate pages is not clear – there is no way of viewing all the content at once as there used to be.

Another example in this regard is the guidance on tax and National Insurance for employee travel.³³ This used to be known as 'Booklet 490' and was previously published in PDF format. Owing to a move away from that format (see page 45), the guidance is now displayed in several different pages. HMRC call this a 'coherent document', but there is no facility to view the entire guide at once.³⁴

One of the most difficult-to-use examples of online guidance, albeit from the Department for Work and Pensions rather than HMRC, is the Advice for Decision Making (ADM) staff guide for those claiming certain benefits.³⁵ The online page provides links to no fewer than 178 PDFs, of varying lengths, published in an unhelpful chronological order with no overview or structure and no means of searching all pages at once. While aimed at DWP staff rather than individuals, the material may be relevant for individuals with more complex situations seeking to understand their own position. We include reference to it here as a clear example of practice to be avoided.

Recommendation 15: It should always be possible to view all the guidance at a given level on a single topic together on a single page or document so that taxpayers can easily search, navigate and print it as required.

3.6 Good guidance is accurate

Accuracy is one of the most important principles of good guidance.

We recognise that when writing guidance there is a possible tension between accuracy and ensuring that guidance is easy to understand. However, we firmly believe that aiming for simplicity in the guidance should not lead to compromises on accuracy.

³² <https://www.gov.uk/guidance/calculating-the-minimum-wage> is one such example. We acknowledge that National Minimum Wage policy is owned by the Department for Business, Energy and Industrial Strategy (BEIS), but HMRC enforces it, and it is largely inseparable from other employer obligations which HMRC does have responsibility for (like PAYE). In any case, different presentations from different government departments on the same issue provides scope for user confusion.

³³ <https://www.gov.uk/government/collections/tax-and-national-insurance-contributions-for-employee-travel-490>

³⁴ We understand HMRC are reviewing their 'coherent document' concept but at the time of writing the results of that work are not yet available.

³⁵ <https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>

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There are a number of ways this can be achieved – for example, by being faithful to the language and terminology used in the law. Attempting to paraphrase such terms could lead to inaccuracies – a better approach is to include technical terms but seek to include accessible explanations within the guidance.

As previously mentioned, guidance should be clear that there may be exceptions to a general rule. There should then be a clear route for the taxpayer to find out more information about those exceptions. It is unhelpful to use terms like “usually” without referencing when the point does not apply.

For example, www.gov.uk/working-tax-credit states the following when discussing eligibility criteria for working tax credit:

Exceptions for couples with at least one child

You can claim if you work less than 24 hours a week between you and one of the following applies:

- you work at least 16 hours a week and you're disabled or aged 60 or above
- you work at least 16 hours a week and your partner is incapacitated (getting certain benefits because of disability or ill health), is entitled to Carer's Allowance, or is in hospital or prison

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On the second bullet, there is nowhere for the user to go to find out *which* “benefits because of disability or ill health” are being referred to.

Similarly, blanket statements which appear simple can be misleading. For example, a search on GOV.UK for “tax on interest” brings up the following as the second result:

121,915 results [Subscribe to feed](#)

Sort by

Rates and allowances: Inheritance Tax thresholds and interest rates
Find the Inheritance Tax thresholds (or 'nil rate bands') from 1914, and see changes to Inheritance Tax interest rates from October 1988.
Updated: 3 February 2023

Inheritance Tax thresholds and interest rates
Inheritance Tax thresholds — from 18 March 1986 to 5 April 2028 From To...

Tax on savings interest
You do not pay tax on your savings interest if you're on a low income.

How much tax you pay
Most people can earn some interest from their savings without paying tax...

Previous tax years
If you're self-employed and need to declare savings interest from a...

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³⁶ Accessed 25 October 2022

³⁷ <https://www.gov.uk/search/all?keywords=tax%20on%20interest&order=relevance>, accessed 28 February 2023

The statement “You do not pay tax on your savings interest if you’re on a low income” is unhelpful. The phrase ‘on a low income’ can mean different things to different people – it is subjective. It is quite possible – albeit unusual – to owe tax on savings interest but still have total taxable income of less than £20,000, which by most measures would be considered a ‘low income’. It is necessary to define subjective phrases such as ‘on a low income’ to avoid misinterpretation.

Recommendation 16: When writing guidance, simplicity should not compromise on accuracy. Factually incorrect or subjective statements should always be avoided.

Marriage Allowance

The marriage allowance (in legislative terms, the ‘transferable tax allowance for married couples and civil partners’) allows one person in a qualifying couple to give up some of their personal allowance to provide their spouse or civil partner with a tax reducer, provided the eligibility conditions are met. It is important to note that, despite its legal name, it is not a *transfer* of part of the personal allowance in the sense that the receiving partner’s personal allowance is increased.

However, GOV.UK guidance on the marriage allowance consistently misrepresents the operation of this relief. For example, www.gov.uk/income-tax-rates says:

Your tax-free Personal Allowance

The standard Personal Allowance is £12,570, which is the amount of income you do not have to pay tax on.

Your Personal Allowance may be bigger if you claim [Marriage Allowance](#) or [Blind Person’s Allowance](#). It’s smaller if your [income is over £100,000](#).³⁸

It is factually incorrect to state that the personal allowance ‘may be bigger’ if marriage allowance is claimed. This is important because it can affect the tax rate applicable on other income – especially pre-6 April 2016 deferred state pension lump sums. Someone may, for example, stop deferring their state pension and assume they will pay no tax on the lump sum because their net tax liability on their other income is nil, thinking that their personal allowance has increased due to the marriage allowance, when in fact 20% tax may be due on the lump sum. This is because their income may be over their personal allowance, but they pay no tax because of the marriage allowance tax reducer. The mistake could lead to an unexpected tax bill for thousands of pounds (and we are aware of one such case where this exact situation occurred).

³⁸ <https://www.gov.uk/income-tax-rates>, accessed 13 February 2023

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Another area where misunderstanding about the operation of the marriage allowance can lead to unexpected liabilities is when a taxpayer makes a return through HMRC's Report and pay your Capital Gains Tax service.³⁹ When calculating the tax owed, the taxpayer is asked to input a figure for their personal allowance in the year. This is because the rate of capital gains tax depends on the amount of basic rate band which has been set against taxable income. Capital gains which fall within a person's basic rate band are charged at a lower rate.

During the process of reporting a gain, the service states "The UK Personal Allowance in the tax year 2021 to 2022 is £12,570. Your Personal Allowance may be more than this if you receive Marriage Allowance or Blind Person's Allowance". But if a taxpayer in receipt of the marriage allowance tax reducer inputs £13,830 instead of £12,570, the system may incorrectly calculate the capital gains tax payable by calculating the wrong amount at the lower rate.

It is also misleading to conflate the marriage allowance with the blind person's allowance, as the two work very differently. In contrast to marriage allowance, blind person's allowance *does* make the individual's overall allowances bigger (though, in strictness, it is still a separate allowance and does not increase a person's personal allowance either).

This particular issue has been raised with HMRC numerous times, and we understand they are now actively considering the issue again, but to date it has not yet been corrected.

Making Tax Digital for Income Tax Self Assessment

The following is another example of guidance which is misaligned with the law. Recently published guidance on signing up for Making Tax Digital for Income Tax Self Assessment (MTD for ITSA) originally stated the following on keeping digital records:

Keep digital records using software

You must use compatible software to keep digital records of all your business income and expenses.

Using the software, you should create records of your transactions:

- as close to the date of the transaction as possible
- before you send the quarterly update for that period
- no later than the quarterly deadline

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³⁹ <https://www.gov.uk/report-and-pay-your-capital-gains-tax/if-you-sold-a-property-in-the-uk-on-or-after-6-april-2020>

⁴⁰ <https://www.gov.uk/guidance/using-making-tax-digital-for-income-tax#keep-digital-records-using-software>, accessed 13 September 2022

The relevant part of the law, however, states:⁴¹

Keeping and recording digital records

5.—(1) A relevant person must keep digital records for each business for the period beginning with the digital start date which applies to the business and ending with the date on which the business ceases.

(2) A relevant person must record a digital record by no later than—

(a) the quarterly deadline for the quarterly period in which the digital record falls; or

(b) immediately before the relevant person provides the quarterly update for the quarterly period in which the digital record falls,

whichever is the earlier.

The guidance was incorrect in a number of ways:

- The use of the word 'should' hid the fact that there is a statutory time limit on when a person must record their digital record (under regulation 5(2)). Using 'must' per the legislation would make it clear that it is essential, whereas 'should' may be interpreted as something which is desirable but not necessarily imperative;
- The instruction to create the record 'as close to the date of the transaction as possible' does not appear in law at all; and
- The logical connection between the bullets is unclear (we discuss this in more detail later on page 37). It is not clear that the deadline is the earlier of the two points referred to in the latter two bullets.

3.7 Good guidance is up-to-date

An important element of accurate guidance is that it is up-to-date. At the very least, pages should be reviewed annually – for example, the reference to 2018/19 in guidance on the trading and property allowances does not fill the reader with confidence that what they are reading has not been superseded:

⁴¹ The Income Tax (Digital Requirements) Regulations 2021, reg 5

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Self-employed

If you're starting a new self-employed business and expect your annual gross income to be no more than £1,000, you may not have to register for Self Assessment but can voluntarily if your gross income for 2018 to 2019 will go above £1,000 and you want to be in Self Assessment.

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Fiscal events should also prompt updates to relevant pages. Until December 2022, the GOV.UK page on Self-employed National Insurance rates still indicated that Class 2 National Insurance Contributions were paid once profits are £6,725 or more a year:

Self-employed National Insurance rates

You usually pay 2 types of National Insurance if you're self-employed:

- Class 2 if your profits are £6,725 or more a year
- Class 4 if your profits are £11,909 or more a year

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But in the Spring Statement on 23 March 2022, it was announced that self-employed taxpayers would not pay Class 2 National Insurance contributions if their profits were between the Small Profits Threshold and the Lower Profits Limit (£11,908 for 2022/23).⁴⁴ Prior to the update to GOV.UK in December 2022, we were contacted by members of the public pointing out the discrepancy between our own website material (which correctly describes the changes) and GOV.UK, asking for the source of our own guidance.

Related to this, updates to pages should be made clear. GOV.UK needs to show when and how information has been changed (and 'silent' updates to pages should be technically prevented by ensuring the date is populated automatically). More detailed guidance pages do usually show this,⁴⁵ but mainstream guidance tends not to.

Of course, guidance should be updated as quickly as possible when there is a change (or any pending changes should be flagged). Users should also be signposted to archived pages and documents so they can see what the law and guidance were at any particular time if necessary. It is possible to access historical versions through the National Archives website to some degree – but the existence of this website is

⁴² <https://www.gov.uk/guidance/tax-free-allowances-on-property-and-trading-income#vol>, accessed 12 October 2022

⁴³ <https://www.gov.uk/self-employed-national-insurance-rates>, accessed 12 October 2022

⁴⁴ <https://www.gov.uk/government/publications/spring-statement-2022-factsheet-on-personal-tax>

⁴⁵ <https://www.gov.uk/guidance/working-through-an-umbrella-company#full-publication-update-history> is one such example

not widely publicised and the archived pages are snapshots in time rather than a list of all revisions.⁴⁶

One example of a government website which does this better is Revenue Scotland's website at www.revenue.scot. For example, the page on Land and Buildings Transaction Tax shows links to the page revisions on the right-hand side of the screen:

Home » Guidance for devolved taxes » Land and Buildings Transaction Tax » LBTT Legislation Guidance » LBTT3001 - Exemptions and reliefs » LBTT3010 - Tax Reliefs

LBTT3010 - Tax Reliefs

Overview of LBTT guidance on the different LBTT reliefs which are available.

There are a number of tax reliefs which provide whole or partial relief from LBTT. Any relief must be claimed in the first LBTT return made in relation to the transaction or in an amendment of that return, even if no tax is due. The quickest and easiest way to make the LBTT return is by completing and submitting it online.

Before making a claim for relief, buyers must satisfy themselves that the relief is due and that all the relevant conditions have been met. In order to claim a relief, the buyer should indicate that a relief is being claimed and complete the relevant section of the LBTT return, indicating which relief, or reliefs, is or are being claimed.



Recommendation 17: Though it may require additional resources, HMRC should ensure pages on GOV.UK are reviewed at least annually and as soon as possible after each fiscal event.

Recommendation 18: Each page of guidance should be dated, including mainstream guidance.

Recommendation 19: Previous versions of guidance should be more easily accessible.

Recommendation 20: Changes to guidance should be summarised and dated at the bottom of each page, including for mainstream guidance.

⁴⁶ The useful shortcut `javascript:location%3Dlocation.href.replace(/%5E/,'http://webarchive.nationalarchives.gov.uk/*/')` allows a person to go directly to the National Archives page for the page currently being viewed.

⁴⁷ <https://www.revenue.scot/taxes/land-buildings-transaction-tax/lbtt-legislation-guidance/lbtt3001-exemptions-reliefs/lbtt3010-tax-reliefs>, accessed 27 February 2023

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3.8 Good guidance is clear and unambiguous

Clarity is a general term which can mean many things in practice. It is distinct from accuracy, which is concerned with alignment with the law. The law itself can lack clarity in some cases. Similarly, guidance can be clear but wrong. Clarity is also distinct from completeness – it is possible for guidance to be clear in 80% of cases but lacking entirely for the remaining 20%.

In broad terms, clarity is about how easy guidance is to understand. Part of this is about appropriate use of language. But in practice we can consider guidance is clear if it is unambiguous, and that those who read it have a consistent understanding of what is intended by the author of that guidance.

One example of unclear guidance is in relation to reporting thresholds for property income. These are not explained clearly on GOV.UK and there is a complex interaction between the property allowance, a non-statutory Self Assessment reporting threshold, and the personal allowance. GOV.UK states:

Property you personally own

The first £1,000 of your income from property rental is tax-free. This is your 'property allowance'.

[Contact HM Revenue and Customs \(HMRC\)](#) if your income from property rental is between £1,000 and £2,500 a year.

You must report it on a [Self Assessment tax return](#) if it's:

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

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This guidance is not clear that the 'income' which is tested against the property allowance should be the figure *before* allowable expenses. The position is further confused by the non-statutory *profits* threshold of £2,500 (that is the figure *after* allowable expenses), below which the tax on the income may be collected outside of Self Assessment. The sentence 'Contact HMRC if your income from property rental is between £1,000 and £2,500' even uses the word 'income' in both senses simultaneously (that is gross rental income and net profit after expenses).

⁴⁸ <https://www.gov.uk/renting-out-a-property/paying-tax>, accessed 14 February 2023. Our explanation of the same point can be found here <https://www.litrg.org.uk/tax-guides/savers-property-owners-and-other-tax-issues/property-income/renting-out-property#toc-how-do-i-report-my-property-income-to-hmrc->

It is also not clear that the logical connection between the final two bullets is 'or' rather than 'and'. For example, if you had gross property income of £12,000 and deductible expenses of £10,000, you might conclude you did not need to report the income on a Self Assessment tax return, as your profits would only be £2,000 (less than £2,500). This would be incorrect.

This type of issue is endemic across much of the guidance on GOV.UK, because the GOV.UK Style Guide prevents the use of 'or' or 'and' after bullet points.⁴⁹ Another example of where this stylistic guideline leads to ambiguity was on HMRC's page on *Tax on foreign income*. Until recently, this stated:

Work out your residence status

Whether you're UK resident usually depends on how many days you spend in the UK in the tax year (6 April to 5 April the following year).

You'll be resident in the UK if:

- you do not meet any of the automatic overseas tests
- you meet one of the automatic UK tests or the sufficient ties test

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It is unclear whether a taxpayer must meet both bullet points to be resident or if just one of them is sufficient to trigger residence. The answer is the former. If the logical connection cannot be stated after the bullet points, then those drafting the guidance must make it clear before the bullet points are introduced (for example, by saying 'You'll be resident in the UK if both of the following apply:'). In this vein, the following passage is clearer:

Overseas tests

You're automatically non-resident if either:

- you spent fewer than 16 days in the UK (or 46 days if you have not been classed as UK resident for the 3 previous tax years)
- you work abroad full-time (averaging at least 35 hours a week) and spent fewer than 91 days in the UK, of which no more than 30 were spent working

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⁴⁹ <https://www.gov.uk/guidance/style-guide/a-to-z-of-gov-uk-style#bullet-points-steps>

⁵⁰ <https://www.gov.uk/tax-foreign-income>, accessed 12 October 2022

⁵¹ <https://www.gov.uk/tax-foreign-income/residence>, accessed 12 October 2022

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There is a technical inaccuracy here relating to what constitutes a “day in the UK” versus a UK workday – it is possible to have a UK workday which is not a “day in the UK” if you are not present in the UK at midnight at the end of the day – but at least there is no ambiguity in the logic of the bullets. Unfortunately, it is immediately followed by the ambiguous:

UK tests

You may be resident under the automatic UK tests if:

- you spent 183 or more days in the UK in the tax year
- your only home was in the UK and it was available to use for at least 91 days in total - and you spent time there for at least 30 days in the tax year
- you worked full-time in the UK for any period of 365 days and at least one of these days fell into the specific tax year

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By way of one final example on this issue, the GOV.UK page which explains payments on account shows the following:

Payments on account

‘Payments on account’ are advance payments towards your tax bill (including [Class 4 National Insurance](#) if you’re self-employed).

You have to make 2 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

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Payments on account are a common area of confusion, especially when they become payable for the first time by taxpayers in Self Assessment. The above extract is entirely ambiguous over whether one or both conditions are required to be excused from the obligation.^{54,55} In fact, the example which follows on the page suggests, incorrectly, payments on account are due simply by virtue of a taxpayer’s “bill” being more than £1,000:

⁵² Ibid.

⁵³ <https://www.gov.uk/understand-self-assessment-bill/payments-on-account>, accessed 9 December 2022

⁵⁴ Either condition, if satisfied, will mean that payments on account are not due.

⁵⁵ As an aside, we observe that the reference to banks deducting interest on savings income is also at least five years out of date – banks have not generally been required to deduct tax on interest since April 2016.

Example

Your bill for the 2020 to 2021 tax year is £3,000. You made 2 payments of £900 each (£1,800 in total) on account towards this bill in 2020.

The total tax to pay by midnight on 31 January 2022 is £2,700. This includes:

- your 'balancing payment' of £1,200 for the 2020 to 2021 tax year (£3,000 minus £1,800)
- the first payment on account of £1,500 (half your 2020 to 2021 tax bill) towards your 2021 to 2022 tax bill

You then make a second payment on account of £1,500 on 31 July 2022.

If your tax bill for the 2021 to 2022 tax year is more than £3,000 (the total of your 2 payments on account), you'll need to make a 'balancing payment' by 31 January 2023.

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There is also no example on the page of how to calculate the '80% rule' in practice.

Recommendation 21: If bullet points are used to list conditions, it should always be clear whether all conditions are necessary.

Unclear guidance can have financial consequences on the taxpayer and the Exchequer, as well as drain resources of the judiciary where a taxpayer takes action based on unclear guidance and then tries to appeal to the courts. The First-tier Tribunal does not have any power to deviate from the law where guidance is unclear.

⁵⁶ <https://www.gov.uk/understand-self-assessment-bill/payments-on-account>, accessed 9 December 2022

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In *Taylor v HMRC*,⁵⁷ the taxpayer made a claim for a Self-Employment Income Support Scheme (SEISS) grant during the coronavirus pandemic. He had previously been self-employed, but incorporated his business before he made the claim. The law did not allow a claim in those circumstances, but the taxpayer (and his adviser) clearly misunderstood that point from the guidance and application process. It is a widespread misunderstanding that someone operating their business through their own limited company is “self-employed” – this is a natural way of contrasting such an individual to someone who is employed in the usual sense, even though the legal position is that they are employees of their own company.⁵⁸ The confusion should have been anticipated. Through our experience working with the charity TaxAid, we know that other taxpayers, especially those who were unrepresented, also made the same mistake.

The above point was clarified in later iterations of the guidance for SEISS (including when, in this particular case, the taxpayer first applied), which was welcome. We also recognise the unique circumstances and speed with which this guidance and process needed to be put in place. However, the point that potential taxpayer misunderstandings should be anticipated and corrected in guidance (with suitable prominence) is of general application and an important function of good guidance.

Recommendation 22: Potential taxpayer misunderstandings should be anticipated and clarified in guidance.

3.9 Good guidance is holistic

Where there are interactions with different systems, guidance should contain cross-referred links to related content. For example, taxpayers who claim means-tested benefits and who are looking up the tax treatment of a particular type of income often need to consider whether that income is taken into account for benefits purposes. The GOV.UK page on the taxation of tips, for example, clarifies that tips are taxable but do not count for National Minimum Wage purposes.⁵⁹ It does not say whether the tips count as income for tax credits or universal credit. Crucially, the reader may not have considered the point, in which case while the taxpayer is reading the page would be the perfect opportunity to provide that prompt.

⁵⁷ <https://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08576.pdf>

⁵⁸ See, for example, *Important update from Martin Lewis for self-employed company directors excluded from financial support*, <https://www.moneysavingexpert.com/news/2021/01/important-update-from-martin-lewis-for-those-excluded-from-coron/>

⁵⁹ <https://www.gov.uk/tips-at-work>, accessed 17 August 2022

Recommendation 23: Links to related content should include guidance on means-tested benefits and other parts of the tax system, where relevant.

3.10 Good guidance uses examples

We feel that the use of examples, particularly those derived from actual experience, is an essential part of good guidance. They help taxpayers test their own understanding of a general explanation of a point, and can give them confidence that they have understood that point correctly as well as see how it applies to their own circumstances.

For example, at www.gov.uk/apply-tax-free-interest-on-savings there is a helpful example to explain the operation of the starting rate for savings:

Example

You earn £16,000 of wages and get £200 interest on your savings.

Your Personal Allowance is £12,570. It's used up by the first £12,570 of your wages.

The remaining £3,430 of your wages (£16,000 minus £12,570) reduces your starting rate for savings by £3,430.

Your remaining starting rate for savings is £1,570 (£5,000 minus £3,430). This means you will not have to pay tax on your £200 savings interest.

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However, this could go further. The page goes on to discuss the personal savings allowance, but it does not explain how the starting rate for savings interacts with the personal savings allowance. If the taxpayer also has dividend income, then while there is a simple example at www.gov.uk/tax-on-dividends on how the dividend allowance works, the taxpayer is left with no information on how the four 'allowances' (i.e. the personal allowance, personal savings allowance, starting rate for savings and the dividend allowance) interact.

In our own guidance on savings and tax (including dividend income), we explain these interactions in a series of detailed examples, covering the detail which is lacking on GOV.UK.⁶¹ Some of these interactions are complex, and in some cases the allocation of the personal allowance can affect a person's overall tax liability.

⁶⁰ <https://www.gov.uk/apply-tax-free-interest-on-savings>, accessed 25 October 2022

⁶¹ <https://www.litrg.org.uk/tax-guides/savers-property-owners-and-other-tax-issues/savings-and-tax#toc-examples>

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Recommendation 24: Guidance should include examples to help explain concepts. The examples should not be limited to the straightforward cases, and should also be used to explain more complex interactions.

Sometimes, illustrative examples cover situations where the particular tax treatment is clear or undisputed. While these have their place, it would also be helpful for examples to cover more nuanced or 'grey' areas.

Finally, where narrative examples include numbers, it should always be obvious how any consequential calculations have been made. Showing a new number together with its calculation in brackets is one way of doing this. Without such help, readers may become distracted or confused. In addition, when calculations are set out in a table format, the source of numbers should always be apparent.

3.11 Good guidance is consistent

What is 'taxable income'?

We might feel that we understand what is meant by the phrase 'taxable income', but unfortunately the tax code is not that straightforward. The term is not actually defined in the legislation. For example, if someone is UK resident with gross earnings from employment in 2022/23 of £10,000 and no other income, they would not pay any tax on that amount because it is within their tax-free personal allowance. But are the earnings 'taxable income'? Intuitively we might say that they are, certainly if we consider the income source in isolation, separate from the individual's wider circumstances.

Yet www.gov.uk/marriage-allowance states:

Example

Your income is £11,500 and your Personal Allowance is £12,570, so you do not pay tax.

Your partner's income is £20,000 and their Personal Allowance is £12,570, so they pay tax on £7,430 (their 'taxable income'). This means as a couple you are paying Income Tax on £7,430.

When you claim Marriage Allowance you transfer £1,260 of your Personal Allowance to your partner. Your Personal Allowance becomes £11,310 and your partner gets a 'tax credit' on £1,260 of their taxable income.

This means you will now pay tax on £190, but your partner will only pay tax on £6,170. As a couple you benefit, as you are only paying Income Tax on £6,360 rather than £7,430, which saves you £214 in tax.

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⁶² <https://www.gov.uk/marriage-allowance>, accessed 12 October 2022

While the use of an example here is helpful, the term 'taxable income' is being used to refer to the amount after deducting the personal allowance. That is inconsistent with other parts of GOV.UK; for example www.gov.uk/income-tax/taxfree-and-taxable-state-benefits and www.gov.uk/income-tax-rates both refer to the taxable amount being the total amount of income which may be subject to tax – notwithstanding the availability of allowances.

In our view, the page on the marriage allowance is misleading. The point is important from the perspective of means-tested benefits. For example, a person might think that a type of income is 'tax free' and therefore not counted for means-tested benefits simply because it falls within that person's personal allowance.⁶³

The example given earlier on page 36 regarding the use of the word 'income' when discussing reporting thresholds for property income (that is, whether it refers to net or gross income) is also relevant from the point of view of consistent use of language.

Recommendation 25: Potentially ambiguous, non-statutory terms such as 'income' and 'taxable income' should be defined and used consistently.

HMRC's Self Assessment criteria with respect to foreign income

There is also inconsistency on GOV.UK relating to the circumstances in which receipt of foreign income can trigger, in HMRC's view, the need to file a Self Assessment tax return.

The legal answer to this question depends on whether UK tax is owed on the income (without the need to make a claim to treaty relief, foreign tax credit relief or the remittance basis). This is, in fact, how the matter is addressed in HMRC's 'Check if you need to send a tax return' tool, which is discussed in more detail on page 50. But HMRC's Self Assessment criteria state instead:

⁶³ The tax status of a type of income often determines whether it is included as income for tax credits, for example.

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Paying tax on foreign income

You usually need to fill in a Self Assessment tax return if you're a UK resident with foreign income or capital gains. But there's some foreign income that's taxed differently.

You do not need to fill in a tax return if your only foreign income is dividends which will be covered by the [dividend allowance](#) and you do not have anything else to report.

See also subject 'Criteria For A PAYE / SA Record' ([SAM100050](#)).

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This extract is unclear, but strongly suggests that if the foreign dividends exceed the dividend allowance (£2,000 for 2022/23, but reducing to £1,000 in 2023/24 and further to £500 from 2024/25), then a tax return is 'required'. It also seems from the extract that any amount of foreign savings interest would be considered 'within' HMRC's criteria, thus requiring a return, even if covered by the personal savings allowance.

The 'Check if you need to send a Self Assessment tax return' tool referenced above introduces a further threshold of £10,000 to investment income generally. It will conclude that if, for example, your income consisted solely of £11,000 of foreign dividend income which falls within your personal allowance, then a tax return is required even if there is no tax due on the income.⁶⁵

To add to the confusion, all of the above is apparently contradicted by the following guidance on the GOV.UK page which hosts the SA1 form to register for Self Assessment:

⁶⁴ <https://www.gov.uk/hmrc-internal-manuals/self-assessment-manual/sam100060>, accessed 18 January 2023

⁶⁵ <https://www.gov.uk/check-if-you-need-tax-return/y/no/no/less-than-50-000/no/yes-i-got-more-than-10-000-from-share-dividends>

Details

How you [register for Self Assessment](#) depends on your circumstances. Use form SA1 if you need to register but you're not self-employed. For example, if you:

- become a company director
- receive income from land and property in the UK
- have taxable foreign income of more than £300 a year
- receive yearly income from a trust or settlement
- sell shares, property or other assets liable to Capital Gains
- have yearly income over £100,000
- get untaxed income that can't be collected through your PAYE tax code
- have income over £50,000 and you or your partner carry on receiving Child Benefit payments
- have Capital Gains Tax to pay

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It is understood that the £300 threshold referenced here previously applied to foreign dividend income, not all types of taxable foreign income. We also note that this page has not been updated since July 2014.

We believe that the lack of clarity on this point is leading HMRC to be inconsistent in their decisions to withdraw notices to file a tax return where there is foreign savings income covered by a taxpayer's personal savings allowance.

3.12 Good guidance is accessible

Clearly, it is important for GOV.UK to ensure that its content is accessible to all taxpayers with varying accessibility needs. To this end, we understand the benefits of using HTML⁶⁷ format as a 'gold standard' in accessibility, particularly as against PDFs.⁶⁸ In particular, PDFs can be hard to access for those using screen readers (for those who are visually impaired) or when using a mobile phone.⁶⁹

However, PDFs can be very useful for those wishing to print a document or otherwise have all the relevant material on a particular topic presented at the same time. This can make it easier to search for key words. They can also be shared as email attachments easily. While it is possible to share or bookmark a URL to HTML guidance, the page may have changed by the time it is later accessed.

⁶⁶ <https://www.gov.uk/government/publications/self-assessment-register-for-self-assessment-and-get-a-tax-return-sa1>, accessed 27 February 2023

⁶⁷ HyperText Markup Language (HTML)

⁶⁸ Portable Document Format (PDF)

⁶⁹ The benefits of HTML versus PDF are discussed here: <https://gds.blog.gov.uk/2018/07/16/why-gov-uk-content-should-be-published-in-html-and-not-pdf/>.

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So while we accept the validity of the case against using PDFs, there is a question over how HTML guidance can retain the benefits of a PDF while maintaining accessibility. That means ensuring that the guidance, as far as possible, has the following characteristics:

- it is reliable (in the sense that the information is technically accurate),
- it is searchable,
- it has a coherent structure,
- it can be easily referenced, and
- it is dated.

Recommendation 26: Guidance on GOV.UK should retain the benefits of the pdf format where alternative formats are used, especially in relation to searchability.

As well as ensuring the format of guidance is accessible, it is important that the content itself is similarly accessible. In 2018, we collaborated with HMRC on a content approach called 'Easy Read', which is aimed at helping users with low literacy skills, learning disabilities or those who do not have English as their first language.

We had hoped that HMRC would produce an 'Easy Read' guide for individuals in 'false self-employment' (where the worker-engager relationship is *de facto* one of employment but it is treated by both parties as self-employment). This is an issue which, in our experience, especially affects migrants to the UK who may struggle to understand the implications of being wrongly treated as self-employed, such as missing out on employment rights like the National Minimum Wage and Statutory Sick Pay. Sadly, the guide was never produced.

We understand HMRC have, however, introduced an 'EasyWriter' tool which allocates scores to words depending on how widely they are understood. Although the tool has a laudable aim, it is important that technical terms are not avoided without regard for the impact on how (in)accurate that guidance then becomes. The question of whether content is accessible should be considered more holistically rather than just rubber-stamped by an automated tool.

Recommendation 27: HMRC should resume their work on ensuring guidance on certain key topics is available in an 'Easy Read' format.

3.13 Good guidance is timely

Guidance should be published in good time. Generally, in our experience, delays are more of an issue for 'second tier' (specialist) guidance which addresses more complex situations. Of course, there is some reason for these kinds of delay: time might be needed for issues to come to light with the operational and practical aspects of a new policy which then need to be addressed in guidance. However, the delay can cause much confusion.

For example, a new regime for reporting capital gains tax when UK residents dispose of UK residential property was introduced in April 2020, but the first detailed guidance about the process was not published until 20 months later, in December 2021. Similarly, detailed guidance from HMRC on the Trust Registration Service – first introduced in 2017 – did not appear until May 2021.

From looking at their website, we understand that Revenue Scotland generally takes a different approach, which is to acknowledge that guidance should be constantly evolving with new examples added as experience of new legislation is gained. We agree with this: it is important to publish initial guidance even if it is accompanied by an acknowledgement that it will be expanded, in due course, in ways aligned with evidenced user need. In other words, guidance should be constantly evolving; not 'once and done'.

Recommendation 28: Detailed guidance on GOV.UK should be published as soon as possible after a change in the law, and treated as a dynamic content which is expanded as practical experience of the law is gained.

4 Interactive tools

HMRC are introducing more interactive tools to supplement their written guidance. Over 50 such tools and calculators are listed on GOV.UK.⁷⁰ While there is a separate debate about how such a tool might represent advice rather than guidance (see page 55), we generally support the introduction of such tools as a way of helping taxpayers understand how the tax law applies to them. This approach is part of HMRC's vision for guidance, which is largely aligned with the Office of Tax Simplification's vision for taxpayer guidance in their 2018 report. However, tools should supplement and not replace written guidance.

In addition, the purpose and functionality of the tool must be made clear. This means:

- any limitations should be clearly explained,
- a list of what is needed to complete it should be provided up-front,
- box entries should be given proper explanation so that users are clear on what the question is asking,
- users should be able to obtain a copy for their records – for example, by automatically receiving a copy by email, or being prompted to print or save a report showing the user's inputs and the tool's results, and
- users should be clear in what circumstances they can rely on the answers from an interactive tool.

In addition, one particular issue with tools is that mistakes in the tool's code are much less transparent and therefore may persist for much longer before coming to light. Unlike written guidance – which external stakeholders can agree by consensus as being technically accurate and which is completely transparent for scrutiny by the profession and the public – there is no easy way to technically review a tool's underlying logic and to confirm that it gives the right result in every situation. This is especially so when the tool is only accessible behind a Government Gateway log-in, so it cannot be tested freely using test data.

Recommendation 29: HMRC should review their range of interactive tools and calculators to ensure their scope and reliability is as clear as possible.

⁷⁰ <https://www.gov.uk/guidance/hmrc-tools-and-calculators>

Recommendation 30: Taxpayers should always be given the opportunity to print or save their input to an interactive tool, as well as the tool's output, for their records.

Recommendation 31: Where possible, HMRC should ensure that tools can also be used without needing to enter Government Gateway credentials.

Recommendation 32: HMRC should allow external stakeholders to review a flowchart version (or similar) of interactive tools so that their technical accuracy can be scrutinised. HMRC should also consider whether to publish such a flowchart for taxpayers generally.

4.1 Check Employment Status for Tax (CEST)

One interesting example to look at is the Check Employment Status for Tax (CEST) tool. This is currently aimed primarily at intermediaries to determine if the 'IR35' anti-avoidance rules apply, but it is also useful for those trying to understand if they are in false self-employment when there is a direct engagement and no intermediary. The tool is helpful in the sense that HMRC have said they will stand by the result of it (*provided* the questions have been answered accurately, which can be a matter for debate):

Disclaimer

HMRC will stand by the result you get from this tool.

! This would not be the case if the information you have provided was checked and found to be inaccurate.

HMRC will also not stand by results achieved through contrived arrangements, designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance, which can attract higher associated penalties.

Accept and continue

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⁷¹ <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>, accessed 12 October 2022

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The fact this disclaimer exists is good, but it could be improved. For example, it is not clear what it means for HMRC to 'stand by' a result. The following questions arise:

- What if the tool gives an incorrect result which the taxpayer would not want HMRC to apply (i.e. can they ask HMRC to apply the law rather than standing by the tool's result, which they believe to be incorrect)?
- Will HMRC stand by the result in terms of calculating any tax liability or does it just apply to penalties?
- What is the position in relation to interest on unpaid tax?
- What if the tool was completed in good faith and to the best knowledge and belief of the taxpayer, but one or more of their answers was nevertheless inaccurate?

It is also difficult to see how this is a case of where HMRC are giving anything other than 'advice' in the sense that HMRC is giving an opinion on a certain set of facts. This is in direct contradiction with the GOV.UK disclaimer, which states there is no advice on GOV.UK.⁷²

4.2 Check if you need to send a Self Assessment tax return

Check if you need to send a Self Assessment tax return

Use this tool to find out if you need to send a tax return for the 2021 to 2022 tax year (6 April 2021 to 5 April 2022).

This service is also available [in Welsh \(Cymraeg\)](#).

The tool will not send your details to HM Revenue and Customs (HMRC).

Continue >

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⁷² See page 58.

⁷³ <https://www.gov.uk/check-if-you-need-tax-return>, accessed 12 October 2022

This tool is one example of where existing guidance has been abbreviated and effectively replaced by an interactive tool.

Unfortunately, the tool risks misleading taxpayers by suggesting they need not take action when in fact they should. This is largely because the tool conflates the concepts of the legal liability to notify HMRC of chargeability for a tax year with HMRC's non-statutory Self Assessment criteria.⁷⁴ The two are not aligned, and in fact the legal answer to whether a taxpayer needs to send a tax return is very straightforward: if and only if HMRC have issued a notice to file such a return. The tool should therefore start with this question, but it doesn't.

We highlight an example below where the tool used to give a misleading result and might have led a taxpayer not to file when in fact they should.⁷⁵ The high income child benefit charge can apply to a taxpayer in some cases where contributions are received by a taxpayer towards the upkeep of a child from someone who claims child benefit for that child. Such an individual might have answered 'No' to the following question:

Check if you need to send a Self Assessment tax return

4. Did you claim Child Benefit?

- Yes
- No, but my partner did
- No, I do not have children or did not claim

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The tool would have then concluded that no return was required, assuming no other Self Assessment triggers were met.

This same tool may lead a taxpayer to conclude that they need to file a tax return when in fact they do not. The third question asks:

⁷⁴ The legal obligation is given in section 7 of the Taxes Management Act 1970. HMRC's criteria are given in their Self Assessment Manual at <https://www.gov.uk/hmrc-internal-manuals/self-assessment-manual/sam100060>. HMRC are reviewing these criteria as part of the Tax Administration Framework Review.

⁷⁵ The tool has since been updated since the drafting of this report.

⁷⁶ <https://www.gov.uk/check-if-you-need-tax-return/y/no/no/between-50-000-and-100-000>, accessed 12 October 2022

Check if you need to send a Self Assessment tax return

3. What was your total income for the year?

To work this out, add up all your income - for example, salary before tax, taxable benefits (such as a company car), and income from investments or pensions.

- Less than £50,000
- Between £50,000 and £100,000
- More than £100,000

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This question is trying to identify whether an individual's adjusted net income is such that the high income child benefit charge might potentially be applicable. However, in calculating adjusted net income, a taxpayer can take deductions for various amounts including gross pension contributions and gross Gift Aid donations. The tool does not mention this, so it may lead a taxpayer to register unnecessarily. In fact, upon answering 'Yes' to the question and then saying that child benefit has been claimed, it says:

Check if you need to send a Self Assessment tax return

You or your partner (if you have one) need to send a Self Assessment tax return

You need to send a return for 2021 to 2022 to pay the High Income Child Benefit Charge. ⁷⁸

This is a confusing conclusion. It suggests that a taxpayer might be able to choose between themselves or their partner as to who files a tax return. But then the third line seems to confirm that it is the person who completed the tool who always needs to file – even if, legally, the liability falls on that person's partner. Neither is correct.

Another example of unnecessary registration might occur when an individual has only gross income from self-employment under the personal allowance and National Insurance thresholds but the income

⁷⁷ <https://www.gov.uk/check-if-you-need-tax-return/y/no/no>, accessed 12 October 2022

⁷⁸ <https://www.gov.uk/check-if-you-need-tax-return/y/no/no/between-50-000-and-100-000/yes>, accessed 12 October 2022

exceeds the trading allowance. The tool is clear in this case: that person “must” file a tax return, and indeed there are many reasons why they may want to – for example, to pay Class 2 National Insurance contributions. However, the law is also clear that such an individual has no legal obligation to notify liability to HMRC, and without receiving a notice to file, they have no legal obligation to submit a return either.

Finally, there are places within the tool where additional guidance is lacking. For example, the taxpayer is asked if they owe tax on any foreign income, but there is no link to guidance to help them understand how to work that out.

Recommendation 33: Tools which aim to let taxpayers know whether they have a particular legal obligation should be aligned more accurately with the law.

Recommendation 34: Tools should include links to further guidance, where relevant, so taxpayers can ensure they complete the tool correctly.

4.3 Inheritance Tax checker

Another tool which can provide a misleading conclusion is HMRC’s Inheritance Tax checker.⁷⁹ The landing page states:

Estimate the estate’s value

You need an estimate of the estate’s value (the deceased’s money, property and possessions), to find out if there’s Inheritance Tax to pay.

The estate will not have to pay tax as long as one of the following applies:

- it all passes to the spouse or civil partner of the person who died
- it all passes to a charity or a community amateur sports club
- it has a value below the Inheritance Tax threshold of £325,000

If the person who died was widowed or is giving away their home to their children, [the tax threshold can be higher](#).

⁷⁹ <https://www.gov.uk/valuing-estate-of-someone-who-died/estimate-estate-value>, accessed 12 October 2022

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The first bullet is potentially misleading as it does not mention the significance of domicile when assets are left to a spouse or civil partner on death. If the transferor is domiciled in the UK but their spouse or civil partner is not, then the inheritance tax exemption which applies on transfer to the latter is restricted to the nil-rate band. Therefore, if a surviving spouse or civil partner is non-domiciled and they inherit an estate whose value exceeds the nil-rate band, inheritance tax may be due. Such a situation is not just relevant to the very wealthy; the couple concerned may be on a low income in later stages of their lives and the estate may comprise of property or other assets whose value has never been realised.

The page then goes on to link to the tool, but there is no warning that this tool does not work where the surviving spouse or civil partner is non-domiciled. In fact, as you reach the question 'What was the value... of any assets left to a surviving husband, wife or civil partner?', the tool reiterates: 'Assets passed on to their surviving husband, wife or civil partner do not count towards the value of their estate.'

If you answer the questions showing that all property was left to the spouse, the tool concludes that it is 'unlikely' that inheritance tax is due. While not incorrect in a statistical sense, there is no warning in the 'what you should do next' guidance to check the domicile status of the spouse.

Without the prompt to check, a person may make a conclusion based on the tool's response.

We raised this issue with HMRC but they advised us that they would not be making any changes to this page because the number of estates involved would be very small.⁸⁰ However, in our view, we do not think affected taxpayers should be subjected to inaccurate guidance simply because they are few in number. The inaccuracy raises questions about the penalty position if a taxpayer were to be misled by these statements and underpaid inheritance tax as a result.

Recommendation 35: Tools should clearly state the assumptions used, to prevent taxpayers being misled.

⁸⁰ The number of taxpayers in the UK with a non-domiciled spouse is not clear. However, the 2021 census revealed that one in six people living in England and Wales were born outside of the UK (<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/internationalmigrationenglandandwales/census2021#country-of-birth>). By contrast, only a small proportion (about 0.5%) of those filing Self Assessment tax returns claim non-domiciled status for income tax purposes (<https://www.gov.uk/government/statistics/statistics-on-non-domiciled-taxpayers-in-the-uk/statistical-commentary-on-non-domiciled-taxpayers-in-the-uk--2>).

5 Guidance versus advice

It is often said that there is a distinction between guidance and advice, but the reality is that there is a large degree of overlap:

guidance | 'gʌɪd(ə)nɪs |

noun [mass noun]

1 advice or information aimed at resolving a problem or difficulty, especially as given by someone in authority: *he looked to his father for inspiration and guidance.*

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advice | əd'vɪs |

noun

1 [mass noun] guidance or recommendations offered with regard to prudent future action: *my advice is to see your doctor* | *on their solicitors' advice, the trustees have accepted £577,000 by way of compensation* | *he took my advice and put his house up for sale.*

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Despite the cross-referenced definitions in the Oxford English Dictionary, the emphasis when contrasting the two terms is that guidance has more of a flavour of information, whereas advice usually contains some recommendation or opinion (the word 'advice' itself stems from the verb 'to see', in the sense of being a 'way of looking at something'). Therefore, whether something is advice or guidance may be obvious in extreme examples, but in other cases one could argue the point either way.

We might also draw a distinction between 'information' and 'guidance' in the sense that pure 'information' simply states undisputed facts like thresholds and allowances, whereas the purpose of guidance (as we discussed in Chapter 1) is more to help taxpayers *understand* and *comply with* the law as it applies to them.

In the giving of 'advice', it is necessary to some degree to understand a taxpayer's situation and recommend a course of action out of a number of legally valid (or, at least, considered to be valid) options. It is not the role of guidance to do this, but it should be part of good guidance to point out where certain courses of action (such as a claim) might clearly be beneficial. For example, in the GOV.UK guidance on the trading allowance, it says:

⁸¹ Oxford English Dictionary

⁸² Ibid.

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If your annual gross trading or property income, from one or more trades or businesses is more than £1,000 you can use the tax-free allowances, instead of deducting any [expenses](#) or other [allowances](#).

If you use the allowances you can deduct up to £1,000, but not more than the amount of your income. This is known as 'partial relief'.

If your expenses are more than your income it may be beneficial to claim expenses instead of the allowances.

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The final sentence tries to make the point that it may be beneficial to claim a loss rather than to claim 'partial relief' and declare a small trading profit.

We think the guidance should go further and – in terms of achieving the goal of helping taxpayers understand how the law applies to them – point out other common circumstances where it may or may not be beneficial to claim the trading allowance. One of the best ways of engaging taxpayers, and therefore prompting that understanding, is to highlight which of two straight options (in this case, to claim or not to claim the trading allowance) is likely to be beneficial in certain very common circumstances.

For example, if my gross trading income is £20,000 and I have expenses of £3,000 – it would certainly be beneficial in terms of a reduced income tax liability *not* to claim the trading allowance.

Granted, taking a deduction for expenses does not always mean that a taxpayer will be financially better off overall. For example, if profits were below the tax-free personal allowance in either case, then the tax liability would be nil either way – assuming the taxpayer has no other taxable income. In this situation, if the taxpayer claims certain means-tested benefits like tax credits, then claiming the trading allowance instead of actual expenses may mean they are worse off, as the increased profits may lead to a lower tax credits award.⁸⁴

Taking another example, what if I have gross trading income of £15,000 but expenses of only £500? In this case, a taxpayer would have a reduced income tax liability by claiming the trading allowance instead of deducting actual expenses incurred. But the guidance does not mention that this 'may be beneficial'. In fact, the guidance is not even clear that this is possible, saying only that you can deduct "up to £1,000, but not more than the amount of your income". This is odd: the premise in the first quoted paragraph is that gross income exceeds £1,000,

⁸³ <https://www.gov.uk/guidance/tax-free-allowances-on-property-and-trading-income>, accessed 16 February 2023

⁸⁴ The impact on tax credits (and certain other elements of an individual's position which hinge on the taxable profit figure) is explained later on the page.

so the phrase ‘but not more than the amount of your income’ is not required. Taxpayers should be provided with reassurance that they can deduct the full £1,000 in this situation, even where the figure exceeds the amount of expenses incurred. So in our example, the taxable profits would then be £14,000 rather than £14,500.

Recommendation 36: GOV.UK guidance should highlight where certain claims may be beneficial.

5.1 HMRC Assist

HMRC Assist is the name given to nudges and prompts in third-party software, through the use of Application Programming Interfaces (APIs), in order to encourage compliance. HMRC also use nudges and prompts in their own online portals, such as for Self Assessment. We understand HMRC are keen to develop technology in this space in a number of different areas of tax. For example, where HMRC hold information received from other countries about a taxpayer’s offshore income, they can provide a prompt when a taxpayer is completing their tax return to remind them to complete the *Foreign* pages if necessary. We think this will be useful, but we encourage HMRC to provide links to good guidance as part of that prompt in order to ensure that the income is reported accurately.

In addition, prompts regarding claiming the trading allowance might extend beyond static guidance and instead be embedded into HMRC’s online portal for filing Self Assessment tax returns. For example, taxpayers who disclose expenses of less than £1,000 on the self-employment pages (and who only have one self-employment with gross income of more than £1,000) should be prompted to consider whether claiming the trading allowance instead may be beneficial.⁸⁵ There is currently no such prompt.

Recommendation 37: HMRC should consider how nudges and prompts can be used to highlight beneficial claims and elections, rather than simply encouraging compliance.

⁸⁵ The claim may not always be beneficial, however. Accordingly, it should not be automatic. For example, claiming the trading allowance instead of expenses might affect whether the person qualifies as having paid Class 2 National Insurance contributions, or it could affect mortgage affordability assessments. In addition, if the person has multiple trades the position can be more complex.

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5.2 Does HMRC give advice?

The GOV.UK disclaimer is clear that advice is *not* published on GOV.UK:

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.

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This is not helpful. It is worrying that taxpayers are told that they cannot rely on the information being current, accurate or complete. It is also in direct contradiction to the first standard of HMRC's Charter, which says:

Our standards

Getting things right

We'll give you accurate, consistent and clear information. This will help you meet your obligations, and understand your rights and what you can claim. When we ask for information, we rely on you to give us full, accurate and timely answers. If you disagree with us, we'll tell you about options available to you and work with you to reach an appropriate outcome quickly and simply.

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It is even more concerning that taxpayers are told that they should get professional or specialist advice before acting on the content of GOV.UK. This is not only unrealistic but also unreasonable: unrepresented taxpayers who cannot afford such advice should be able to rely on GOV.UK because it is the government's official source of information.

⁸⁶ <https://www.gov.uk/help/terms-conditions>, accessed 12 October 2022

⁸⁷ <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>, accessed 12 October 2022

Recommendation 38: HMRC should review the GOV.UK general disclaimer, their own guidance on relying on HMRC, and the HMRC Charter, to ensure they are consistent and state clearly that taxpayers can rely on guidance published on GOV.UK – or if not in some circumstances, explain why not.

Furthermore, in our opinion some of the content on GOV.UK *does* constitute advice – especially the interactive tools which process a taxpayer’s answers and give a conclusion (albeit which may be caveated) based on those answers.

More broadly, HMRC as an organisation admit that they do give ‘advice’. This is clear from the 2009 publication ‘When you can rely on information or advice provided by HM Revenue & Customs’,⁸⁸ and emphasised by the fact that the staff on their phone lines are referred to as ‘advisers’. HMRC also clearly give advice through other channels, such as Twitter, webchat and written correspondence. HMRC’s online community forums, for example, are described as a place for taxpayers “to ask questions, see what others are asking, and get answers”.⁸⁹

Of particular concern is the advice which HMRC provide in answer to questions posed by taxpayers in their live webinars.⁹⁰ These webinars are often well-attended and taxpayers have the opportunity to ask questions of HMRC in the chat function. In fact, such questions are encouraged – the ‘GoTo Webinar’ platform launch page says “Ask questions. Get expert answers.”

However, while well-intentioned, this ‘quick fire Q&A’ is a dangerous recipe for incorrect or misleading advice given by HMRC. There is no realistic opportunity for HMRC to ask any further information or clarification of the taxpayer in relation to a question posed, and the answers given – often copied and pasted from pre-existing content – risk missing the point or even misleading taxpayers.

One example was on a webinar relating to the Self-Employment Income Support Scheme (SEISS) in June 2020. At the time, there was much confusion over whether the grants under the scheme were ‘for’ any specific period, and incorrect advice was given on the point in the webinar. HMRC then needed to follow up with an email to attendees to acknowledge that the answer given was misleading and to explain the correct position.

⁸⁸ <https://www.gov.uk/guidance/when-you-can-rely-on-information-or-advice-provided-by-hm-revenue-and-customs>

⁸⁹ <https://www.gov.uk/government/collections/hmrc-webinars-email-alerts-and-videos>, accessed 28 November 2022

⁹⁰ <https://www.gov.uk/government/collections/hmrc-webinars-email-alerts-and-videos>

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While we encourage live engagement with HMRC, and we acknowledge the huge pressures on HMRC during the initial stages of the coronavirus pandemic in delivering the various support schemes, HMRC should try to ensure that their responses in webinar Q&As are always fully considered and not given in haste.

At the very least, the limitations of the answers given should be clearly stated and webinar attendees signposted to where they can confirm the correct answers or course of action specific to their individual circumstances.

Otherwise, if people rely on answers they are given as a result of engaging with HMRC via these channels and later find out the information or answers they received was wrong, trust in the system is damaged or lost.

It is currently unclear to what extent people can rely on guidance and advice through these webinars and other channels. HMRC's written statement on reliance (their public-facing statement on legitimate expectation, see page 62) referenced above says the following:

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.

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We feel this is not specific enough and needs updating to make the position clear for all taxpayer interactions, as well as to address the conflict between HMRC's statement and the wider GOV.UK disclaimer.⁹² It is also not specific about the position in relation to interest and penalties, or how a taxpayer should go about making a complaint with a view to asserting that the statement should apply in their own circumstances.

⁹¹ <https://www.gov.uk/guidance/when-you-can-rely-on-information-or-advice-provided-by-hm-revenue-and-customs>, accessed 12 October 2022

⁹² To help taxpayers understand where guidance can be relied upon, we also support the Office of Tax Simplification's recommendation that HMRC should be clearer when its guidance is knowingly giving a statement of HMRC's opinion rather than something it considers to be generally accepted.

Another example of misleading advice which we have seen on Twitter is pasted below:

@HMRCcustomers when you dispose of a property post probate at more than stated value - how do 3 x beneficiaries pay CGT?

3:07 PM · Jun 24, 2021 · Twitter for iPhone

HMRC Customer Support ✓ @HMRCcustomers · 2h ...

Replying to ...

Thanks for waiting

If the property is sold by the estate before it is distributed the estate pays the capital gains tax. If the property is distributed each beneficiary will need to declare their 1/3 share. 1/2

HMRC Customer Support ✓ @HMRCcustomers · 2h ...

Replying to ...

The disposal will need to be declared online within 30 days of the contracts being exchanged. Steve 2/2

First, we note that the adviser did not check what type of 'property' was being referred to in the query. The 30-day rule (now 60 days) for reporting the disposal and paying capital gains tax only applies to residential property, not other property such as commercial land or buildings.

Second, the answer (even if it is a residential property) is incorrect, as the filing and payment deadline is by reference to **completion** of the transaction, not exchange of contracts.⁹³ While exchange and completion can be simultaneous, that is not always the case.

Third, if the administration of the estate was finished but the property had not yet been formally distributed, then the personal representatives might be holding the property as bare trustees for the beneficiaries. In this case, the tax liability would fall on the individuals.

A taxpayer relying on the above answers could therefore have been misled on more than one count.

⁹³ Though, confusingly, the date of exchange is still the date of disposal for CGT purposes – which is relevant for determining which tax year the gain falls in.

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However, there is no doubt that HMRC would claim that they are not bound by the incorrect advice on the basis that there was not a full disclosure of all the relevant facts. But to what extent should HMRC ascertain these facts before HMRC provide advice of this kind? And if HMRC's position is that they are not bound by advice given in exchanges like this, then surely this should be made clear to those asking questions. Such an approach would be standard practice for a tax adviser in practice. Notwithstanding the character-limit in a question posed on Twitter – how can a taxpayer be expected to provide a full disclosure of all the relevant facts unless it is explained to them which facts are relevant?

5.3 Legitimate expectation

A taxpayer's ability to rely on guidance published by HMRC – that is, to have a position upheld even if it is found to be legally incorrect – is based primarily on the principle of 'legitimate expectation'. This is where there is a "clear, unambiguous and unqualified assurance, understood by those to whom it is given, that a particular course of action will be taken or a particular procedure will be followed"⁹⁴ and to do otherwise would amount to an abuse of power. The degree of unfairness to the individual taxpayer which is required to be demonstrated must be high enough to override the public interest in HMRC exercising its function to collect the correct amount of tax. It has been shown in the courts that taxpayer guidance is capable of giving rise to a legitimate expectation, and HMRC acknowledge this in their 2009 statement of this principle we saw above and in their own public-facing guidance.⁹⁵

We note HMRC's internal guidance on legitimate expectation appears to differ from the public-facing statement. For example, the manual does not seem to require that the taxpayer demonstrates it was *reasonable* for them to have relied upon the advice. The word 'reasonable' has been subject to much debate in the courts, particularly in the context of taxpayers claiming they have a reasonable excuse for not meeting a tax obligation. The internal guidance also includes additional conditions, like the taxpayer making it 'plain he or she was seeking fully considered advice and indicated what it would be used for'. We feel the internal manuals should be aligned with the public-facing statement – to the extent they are not, taxpayers could be misled. The public-facing statement should also include a link to the detailed manuals for further information, just as should be the case with standard technical guidance.

⁹⁴ Definition from The Incorporated Council of Law Reporting for England & Wales, <https://www.iclr.co.uk/knowledge/glossary/legitimate-expectation/>

⁹⁵ <https://www.gov.uk/hmrc-internal-manuals/admin-law-manual/adml1300>

In practice, unrepresented taxpayers are unlikely to be aware that there may be a legal defence in the case where they have relied upon guidance to their financial detriment – though the sense of injustice may prompt action or investigation into the point. The main challenge is then how a taxpayer can demonstrate that all requirements have been met. For example, in *Preston*,⁹⁶ the claim fell down as there was not full disclosure of relevant information. Famously, in *Gaines-Cooper*,⁹⁷ the Supreme Court held that the guidance in question (on tax residence) was qualified⁹⁸ and not clear enough to give rise to legitimate expectation.

In *Aozora*,⁹⁹ the claim failed on the basis that the taxpayer could not demonstrate that they relied specifically on HMRC's manuals as they had in fact simply relied on their professional advisers. Indeed, HMRC's manuals are internal statements of their view of the law and fundamentally distinct in purpose from mainstream taxpayer guidance. As a result of their being intended for use by HMRC staff and tax professionals¹⁰⁰ (despite their external publication, except for certain redactions under Freedom of Information restrictions¹⁰¹), they are perhaps less capable of giving rise to legitimate expectation. However, this point is not made clear when reading the manuals – there is not a consistent 'health warning' on each page to that effect and they are presented in the normal GOV.UK style and font. Other than the fact that the manuals are written in such a way whereby 'you', when used, refers to the HMRC officer rather than the taxpayer, individuals may not even realise that they are reading internal manuals.

Should the taxpayer wish to challenge the point in the courts, their only option is to apply for judicial review. This can be prohibitively expensive for those who cannot afford tax advice – unless the taxpayer can secure pro bono legal representation. In addition, claims for judicial review must be made within strict time limits. By the time unrepresented taxpayers realise this option is available and what they need to do to make a claim, this deadline can be easily missed.

⁹⁶ R v CIR, ex parte Preston [1985] 1 AC 835

⁹⁷ R (oao Davies and James; Gaines-Cooper) v HMRC [2011] UKSC 47

⁹⁸ The preface to IR20 stated 'If you have any difficulty in applying the rules in your own case, you should consult an Inland Revenue Tax Office'.

⁹⁹ Aozora GMAC Investment Ltd v HMRC [2019] EWCA Civ 1643

¹⁰⁰ <https://www.gov.uk/government/collections/hmrc-manuals>

¹⁰¹ <https://www.gov.uk/government/organisations/hm-revenue-customs/about/publication-scheme>

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The Office of Tax Simplification recommended that HMRC consult on reliance on guidance.¹⁰² We understand that HMRC have rolled this issue into their Tax Administration Framework Review¹⁰³ and, at the time of writing, HMRC are working on an updated statement. While we acknowledge that HMRC have discussed this with stakeholders via their Guidance Strategy Forum, we urge HMRC to publish their updated statement in draft as soon as possible, with it being open for public consultation and comment before being finalised.

Recommendation 39: HMRC's public-facing statement on legitimate expectation should be updated as soon as possible.

Recommendation 40: HMRC should follow the recommendation of the Office of Tax Simplification and issue a public consultation on the issue of reliance on guidance.

¹⁰² <https://www.gov.uk/government/publications/ots-guidance-review-update-paper>

¹⁰³ <https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system>

Low Incomes Tax Reform Group
30 Monck Street
London
SW1P 2AP
www.litrg.org.uk

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