



Attributes of good guidance - CIOT, ATT and LITRG comments

1 Introduction

- 1.1 The Welsh Revenue Authority (WRA) is currently engaging with Welsh taxpayers and stakeholders on the development of tax guidance and digital systems ready for April 2018. The CIOT and ATT welcome this engagement. We are pleased to continue contributing to the process of establishing a responsive and competent devolved taxes administration, with a minimum of bureaucracy and a fair balance between the powers of tax collectors and the rights of taxpayers.
- 1.2 With these objectives in mind, we have set out some attributes of effective guidance that we hope will assist the WRA.
- 1.3 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.4 The Low Incomes Tax Reform Group (LITRG) is an initiative of the 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 LITRG does 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.
- 1.5 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations.

2 Guidance – its purpose and context

- 2.1 The CIOT and ATT have long maintained that guidance from a tax authority should not be a substitute for drafting good law in the first place. Guidance should be there, where necessary, to explain or amplify the WRA's view of the law where it is within its collection and management powers to do so.
- 2.2 As such, guidance is welcome. It is generally acknowledged that although the application of tax rules should be readily discernible from the statute, that ideal will not always be possible.
- 2.3 Guidance can be published in various forms. For these purposes we are largely concerned with best practice in relation to:
- Specialist technical guidance that is written to inform tax practitioners, whether acting within or outside the WRA, of the way the WRA interprets devolved tax legislation.
 - Simpler guidance aimed at providing an overview of the way the taxes operate for non-tax specialists or unrepresented taxpayers.

Guidance should be written with these two distinct purposes in mind and written to meet the needs of one or other group. Guidance is significantly less effective when it tries to meet the requirements of both groups.

- 2.4 In this context, we consider below some of the attributes and characteristics of 'good' guidance in the sense of guidance that achieves its object of explaining or amplifying the WRA's view of the law for the appropriate audience where it is necessary or useful to do so.

3 Tailored to the audience for which it is intended

- 3.1 Many of the attributes of good guidance explored below apply irrespective of the audience for which it is intended. However, it is recognised that guidance needs to be appropriate for the audience for whom it is intended.
- 3.2 Guidance aimed at informing non-tax specialists about the way in which tax rules work will be inevitably less detailed and more broad brush. However, the guidance should be sufficiently detailed to (a) inform people about anything they may be entitled to claim (reliefs, allowances, exemptions etc.) while (b) ensuring that they are fully briefed about any legal or procedural requirements that could carry a penalty if they did not comply, or result in a relief being withdrawn.
- 3.3 The criticism that is often levelled at non-technical guidance is that in attempting to reduce complex technical language and concepts, to simple terms, accuracy is sacrificed and at worst it may be misleading. It is recognised that achieving the right balance between providing clear explanations for a non-technical audience and not compromising accuracy is a delicate one.

- 3.4 The objective to bear in mind is that the guidance should help the average taxpayer¹ understand and comply with their responsibilities. If that is not possible because of the significant complexity of an issue, there is an argument that it is preferable to recognise that fact and write guidance that says ‘This is a complex area and you should consider getting specialist advice/assistance.’ Ideally, of course, tax legislation should not be drafted in such complex terms that it defies explanation to those who are subject to it. However, where that is the case, it is probably better to recognise the defect rather than compound the problem by writing guidance that is inaccurate or misleading.
- 3.5 The tension inherent in translating technical content into guidance aimed at a non-specialist can be relieved to some extent by making it explicit on the face of the guidance that it is intended to provide an overview only, providing clear signposts to more detailed guidance and a pathway to further support from the WRA and from professional tax advisers.
- 3.6 Technical terminology cannot always be eliminated from such simpler guidance. Land Transaction Tax (LTT), for example, is constructed upon and underpinned by land law concepts. As such, attempting to remove or paraphrase technical terms could lead to inaccuracies. The better approach is to include technical terms but seek to embed accessible explanations within the guidance.
- 3.7 In preparing simpler guidance, it is important to bear in mind the type of query a user may input into a search engine and how they might phrase such a question. It is highly likely they will use well-known terms or phrases over technical terminology. Colloquial vocabulary will need to be recognised alongside technical terms, including the use of acronyms.
- 3.8 The layout of guidance may logically follow the order of the sections in the legislation. Although this approach has the advantage of allowing professional advisers to consult the guidance in conjunction with the legislation, for a non-technical reader who is consulting the guidance as the primary guide, it may seem disjointed in places. One approach might be to consider the use of flowcharts or decision trees to follow through the legislative process, for example to decide whether a land transaction is notifiable for LTT purposes, or to decide whether a transaction is subject to the LTT higher rates. The use of such tools then provides the framework for navigating through the detailed provisions as well as providing an overview for the non-technical user.
- 3.9 In terms of technical guidance, it is important that such guidance does not merely restate the legislation in different words. On the basis that professional advisers will most often use technical guidance when they are trying to understand a provision where the text of the legislation is not self-explanatory, guidance framed in those terms has little to offer. In fact, it can be misleading as some may be concerned that what is purely a restatement is intended to add something more.

4 Reliance

- 4.1 The principle should be that taxpayers and agents should generally be able to rely² on published guidance. Caveats may be needed to prevent exploitation. But these need

¹ ‘Average’ in the sense of the likely skills, abilities and knowledge of the average taxpayer

² It is recognised that the question of reliance must be considered under common law, and in particular the case law in relation to the doctrine of legitimate expectation. We do not explore the common law position here, however, see further the Tax Law Review Committee report published December 2014 entitled [HMRC’s Discretion: The Application of the Ultra Vires Rule and the Legitimate Expectation Doctrine](#) and recent case law

to be limited, clear and with protection for taxpayers who in good faith rely on the guidance. Such an approach would seem wholly consistent with the principles of mutual trust and respect that are likely to underpin a Welsh taxpayer charter.

- 4.2 A broad caveat that disapplies the ability to rely on guidance where there is avoidance, for example, lacks clarity. A caveat that operates by reference to the devolved taxes General Anti-Avoidance Rule³ (GAAR) although involving some inherent uncertainty in terms of the application of the GAAR has the advantage of providing a boundary.

5 'Dynamic guidance'

- 5.1 If taxpayers and agents are to rely upon published guidance, it is essential that guidance is regularly updated for changes to legislation and for decisions or judgments of a tribunal or court. Investing time and resources in keeping guidance up to date is fundamental. (If that is not possible, there is an argument that it would be better to spend a limited resource on a helpline instead of inadequately maintained guidance.)
- 5.2 Prompt and reactive updates to guidance should also include updated and new examples to confirm and illustrate the WRA's approach to actual situations as experience evolves. Subject to ensuring that confidentiality is maintained, we think that including new examples in the guidance based on anonymised actual situations offers efficiency savings for both taxpayers and the WRA (see further below on the use of examples)
- 5.3 The means by which changes/updates in guidance are communicated to taxpayers and agents whether by way of alerts or bulletins is one aspect. However, one of the key points for users is that changes are incorporated into the guidance as swiftly as possible. In the intervening period, it should be clear on the face of the guidance that there has been an update that may affect the current guidance. It follows also that dating of guidance is essential (see paragraph 6 below).
- 5.4 As a corollary to the need to rely on published guidance, guidance setting out changes to the WRA's interpretation of the law, particularly where the change has the potential to adversely affect a taxpayer's liability, should not be changed without adequate notice and communication.⁴
- 5.5 Retrospective amendments for matters of interpretation should be the exception and should take into account pre-existing legitimate expectations, protecting taxpayers who have acted in good faith in relation to the former guidance. Consultation with professional bodies on the possible consequences of significant changes to guidance would reduce collateral damage by considering the implications before the new interpretation is published.

including: Revenue And Customs v Hutchinson [2017] EWCA Civ 1075 (26 July 2017) Samarkand Film Partnership No. 3 & Ors v Revenue And Customs [2017] EWCA Civ 77 (24 February 2017) R (Aozora GMAC Investment Ltd) v HMRC [2017] EWHC 2881

³ Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 section 66

⁴ As stated in paragraphs 70 and 71 of *Ian Cameron & Ors v HMRC* [add citation], we would expect a [revenue authority] to treat themselves as bound 'until they had given notice ... that the [policy] was to be withdrawn or altered' and also until they had given 'reasonable notice of any withdrawal or alteration ... so as to [give] all ... taxpayers time to make any necessary adjustments to their affairs'.

- 5.6 We recommend establishing a protocol for changes to interpretation or approach to a particular provision that provides for consultation, where possible, the method of communication and the date from which changes apply.
- 5.7 A feedback channel for stakeholders to identify areas of guidance that need expanding or correcting, with acknowledgement, is important.

6 Dating of all guidance

- 6.1 Dating of all guidance should be the default position. Where changes to guidance are made the date and, ideally, the reason for the change should be given with a permanent record of the changes made, such that the previous guidance remains available for the periods when it applied. Previous versions should remain accessible, but clearly dated so it is readily apparent they have been superseded.⁵

7 The use of examples

- 7.1 The use of examples, particularly those derived from actual experience, is widely recognised as an essential part of 'good' guidance.
- 7.2 One of the comments we receive frequently from members is that illustrative examples given in guidance, while very welcome in principle, often cover situations where the particular tax treatment is quite clear or undisputed; of much greater assistance would examples covering 'grey' or nuanced areas. The UK wide statutory General Anti Abuse Rule guidance⁶ is widely recognised as an example of good practice in this respect.
- 7.3 The draft LTT guidance generally uses neutral names in examples (eg Mr B, C Ltd and children of Mr and Mrs A are AA). As we noted in our comments on the drafts:
- 'We recognise the rationale for the use of such neutrality. However, it is important to consider whether any title given (Ms D, Mrs A) is intended to have significance in the context of a particular example eg whether it is significant that the parties are married or not, or in a civil partnership or not. The status of an individual may have an impact on liability particularly in the context of the higher rates. Where no significance should be attached to the title, it might be better to consider removing it altogether and simply use the letters.'*
- 7.4 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 be distracted or confused.
- 7.5 Where calculations are set out in table format, the source of numbers should always be apparent.

⁵ In the case of superseded HMRC guidance, for example, it is accessible to some extent via the National Archives although it is not easily found. Furthermore, the National Archives provide only a snapshot at a particular date. It does not therefore provide the necessary complete record of past guidance.

⁶ <https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules>

8 Online tools

- 8.1 We view the development of online calculation and decision tools as generally a positive step particularly for the unrepresented taxpayer. However, it is essential that as well as being simple to use, and without error or bias, users must be able to rely on the result. It should be possible to print off the results of an online decision or calculation tool in support of the filing of a return.
- 8.2 A particular bugbear is starting to use an online tools or form, realising that you do not have all the information to hand and being unable to save it to complete the form later. If the ability to save a partially completed iform is not available, the user should be alerted to that fact and provided with a list of the information needed before starting the process.
- 8.3 Guidance in the form of 'FAQs' can be very useful - particularly where new legislation is introduced – provided that the questions being answered are those the taxpayer is likely to be asking themselves. In other words, they are framed to deal with situations that the reader would encounter and potentially find difficult.
- 8.4 The use of hyperlinks to explanations of terms and to related areas of guidance is good practice. It is important to hyperlink specific words and phrases instead of the word 'here' (which is often done).

9 Accessibility and web layout

- 9.1 It is inevitable that guidance will largely be found online. However, the system adopted must support printing to allow users, for example, to print off copies of complex points to consider. In the same way, it should be possible to print off forms even if they are to be completed online, to help users prepare. A corollary is that helpline staff should have access to all guidance and be prepared to run off a paper copy of some materials to send to a confused taxpayer.
- 9.2 Website layout needs to be fully compatible with screen readers and tablet- or phone-friendly. Something that looks accessible on a computer screen is not necessarily easily read on a mobile. We note (above) the advantages in using flowcharts and similar tools to enhance understanding. However, we understand that such aids can serve to confuse things for screen reading users so this concern needs to be borne in mind and their use fully tested.
- 9.3 Fonts and colour schemes are equally important. We understand that people with reading difficulties or a visual impairment, for example, tend to find sans serif fonts such as Arial more legible and usable. We are also aware that particular colour combinations (for example, black text on a blue background) can cause difficulties to those with visual impairments as there is insufficient colour contrast between the front colour and the background making the text harder to distinguish.
- 9.4 The design of the written material needs to work online as well as allowing for a printable form. In terms of the web look and layout, positive factors include some white space, good line spacing and font size. The use of headings and sub- headings help to organise the text and make it easy to read and understand (see also the Appendix). It is important that these issues are considered at the commissioning stage.

- 9.5 In terms of wider accessibility, the importance of short sentences should not be underestimated. Short words in short sentences present the reader with the fewest obstacles to comprehension.

10 An effective search facility

- 10.1 An effective search facility should allow a user to search by reference to specific words or by legislative reference and, where guidance is categorised between simple and technical, by reference to those categories.
- 10.2 Search engine optimisation is clearly an important part of any website development process. The CIOT and ATT are not, of course, website designers. However, LITRG's experience, in particular, in building a website that attracts significant numbers, leads to a number of observations that are summarised in the Appendix.

11 Acknowledgement of submission

- 11.1 We would be grateful if you could acknowledge safe receipt of this joint submission.

12 The Chartered Institute of Taxation

- 12.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,000 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

The Chartered Institute of Taxation
15 December 2017

APPENDIX

1 Search Engine Optimisation (SEO)

1.1 SEO is an important part of any website development process and necessary in a digital age to help rank your information above other websites. Usually, government websites are prioritised by search engines above other content but only if they contain the correct information to begin with. However, there are a number of items to look out for in a basic SEO audit that will help drive traffic to a website.

1.2 *Basic technical points*

1.2.1 Page titles and key metatags – it is important that the titles and introductions of pages reflect the content within that page. URLs should be easy to decipher and introductions contain either keywords or a summary of what a user can expect from the rest of the page.

1.2.2 Sitemaps – Google will require an XML sitemap in order to crawl your site. This alongside a human readable sitemap in the footer of a website should be enough for both humans and AI. URL structure is also another thing to consider alongside the sitemap. Ideally, in order for your URL structures to work to best effect, they should include some descriptive parameters.

1.2.3 Redirects – It is important to keep an eye on redirects. Make sure to redirect URLs (301 redirect or permanent redirect) to other content if you are deleting whole pages. This will cut down on 404 or other system crawl errors and allow for a smoother customer journey. Crawl errors can often crop up due to random mistyped URLs or can be indicative of a systemic issue with the way a website is setup. Programmes such as Google analytics and webmaster tools can help flush these out.

1.2.4 HTTPS/WWW enabled – In order for search engines to consider your site a trusted, safe website, you will need to have HTTPS enabled (formerly HTTP) with all non HTTP and non WWW redirects in place.

1.3 *Format*

1.3.1 Headings -the format of headings is an important part of a webpage. Pages should have h1 headings with h2, h3, etc following in suit.

1.3.2 Videos/ images – Videos can be a highly effective, visual tool for transferring information to your audience but must contain transcripts of any audio for SEO and accessibility purposes. Similarly, any image used ought to have alt-text and consistent link titles. This will allow search engines to properly catalogue the images on your site and can be used by accessibility readers for visually impaired users.

1.3.3 Hyperlinks – Both internal and external hyperlinks are important to SEO. Try to hyperlink specific words and phrases instead of the word 'here' (which is often done) for best practice.

1.4 *Content*

1.4.1 Length and regularity – It is important to keep text as succinct as possible and maintain the same format throughout a page (even better, a site!). A question and answer format,

for example, can be an effective means to break up text as well as providing keywords and phrases that a user may search for. It is crucial to do this without losing any of the detail that is required of the more technical information.

- 1.4.2 Keywords – The use of keywords is still an important part of any SEO process. A user may very well scan through a page and bounce off if they are unable to immediately see a keyword that indicates the information they require is there. The use of colloquial language, alongside the technical terminology, could not only help your website's search engine results but may help ingratiate your audience to the content you provide. Use keywords intelligently and try not to overstuff your introductions with them – you run the risk of looking 'spammy'. Keywords on your homepage is also another consideration.
- 1.4.3 Rolling content – It is important to upload new content in a regular manner with internal links to guide your audience through your website. You want to stay relevant and up-to-date when search engines crawl your site and this is one of the best methods to do so.