Response from ICAS to the HMRC consultation

‘Scottish Rate of Income Tax - Technical Guidance on Scottish Taxpayer Status’

24 July 2015
About ICAS

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent over 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General comments

2. ICAS welcomes the opportunity to comment on ‘Scottish Rate of Income Tax - Technical Guidance on Scottish Taxpayer Status’ issued by HMRC on 11 June 2015, which has been prepared for the use of HMRC and the external tax advisory and business community.

3. As a general comment, we are concerned that there is a lack of awareness amongst the general public of the forthcoming Scottish Rate of Income Tax (SRIT) and its part in the overall package of taxes that are being devolved. In public usage the phrases ‘Scottish taxes’ or ‘devolved taxes’ tend to be used indiscriminately and there is great scope for confusion. It would be helpful if there was a wider awareness that:
   - The Scottish Rate of Income Tax is simply a rate that will be applied to income tax, which will be levied on a UK based measure of income and remain the collection responsibility of HMRC and those who operate payroll taxes, and
   - More widely, the way in which the different devolved taxes work so that there can be greater understanding and accountability.

4. The responsibility of employers in relation to SRIT needs to be clarified in the guidance. It is our understanding that employers are not liable for identifying Scottish taxpayers, because this rests with HMRC, and so it is not clear why this guidance should be directed towards the business community. If it is simply to assist businesses in answering general employee queries concerning their status, the guidance should say as much. We understand that there are plans for separate guidance for employers to be made available in due course.

5. The guidance and advisory products to assist taxpayers in understanding what SRIT might mean for them should be made available as soon as possible.

6. We note that further guidance is to be prepared in relation to service personnel and in what circumstances they will be considered to be a Scottish taxpayer, which is welcome.

7. It would be helpful if this guidance had an appendix containing the relevant legislation, section 80D-80F of the Scotland Act 1998 as amended.

8. If this guidance is to be updated, particularly as further tax powers are devolved under the current Scotland Bill, it would be helpful if any revisions are clearly highlighted and dated. Earlier dated copies should be accessible, even after they have been superseded.

Drafting comments

9. It would be helpful if the guidance included the following:
   - clarification that the contents relate only to the powers under Scotland Act 2012 and not to the further powers to be devolved under the current Scotland Bill
   - pointers as to the categories of people who may not have a clear cut status, for example, those at the high income end of the spectrum who are more mobile, and those who are at the low end of the income spectrum such as students or migrant seasonal workers
• a reminder that employers are not responsible for identifying who is a Scottish taxpayer. This rests with HMRC in the case of allocating PAYE codes, and the individual taxpayer who self-assesses
• a recommendation that the more mobile taxpayers who may not have a main place of residence keep day count records, and a diary, from the outset. Clarity is needed in the guidance around day counts for those who have spent time in Scotland and also time in England, Wales and Northern Ireland and a combination of these.

Interaction between SRT and SRIT

10. The guidance focuses on the ‘close connection’ tests for SRIT, with insufficient emphasis on the initial qualification which is that an individual must be UK resident for income tax. Until UK residence is established, the test of Scottish ‘close connection’ is not relevant and the relationship between the two tests should feature more strongly in the introduction to the guidance, and also be introduced into the examples.

11. Under the UK Statutory Residence Test an individual may be eligible for ‘split year’ treatment during their year of arrival in, or departure from, the UK. Where this applies, it seems logical that only the part year for which they are treated as UK resident should be considered in determining whether they are a Scottish taxpayer for that part year. However, this is unclear, and the draft guidance is unhelpful where it states that it is not possible to be a Scottish taxpayer for part of a tax year.

Examples used to illustrate the guidance

12. The guidance provides examples to illustrate how the legislation may be interpreted and applied by HMRC. Examples are often helpful in illustrating general points of interpretation but there is a risk that in seeking to be comprehensive, that the examples may become very specific which can lead to issues with legitimate expectation. We suggest the introduction to these examples should emphasise that they are illustrative only of the key principles, and they are not designed to be definitive in all specific cases. It would be helpful if the guidance is updated with actual examples to help illustrate the principles as these arise in practice.

13. The ‘close connection’ examples are helpful, although it would aid the reader if example 9 ‘Jane’ was placed immediately below example 4 ‘Bob’ as these have very similar facts but different outcomes. A further line of comment as to what distinguishes the two examples could then be provided, which appears to be registration with a doctor, and electoral registration.

Case law

14. The guidance has extensive coverage of the case law on residence, which is relevant to capital gains tax and relates to an exemption from tax rather than to establish the taxing rights of a part of the UK. The legislative test for SRIT is whether there is a “close connection” with Scotland, and not purely whether there is a residence in Scotland. The emphasis in the guidance on the concept of residence is misplaced. The ‘close connection’ test is not tied to the private residence exemption from capital gains tax; and it would also be useful to state as much in the guidance.

Appeal and informal clearance processes

15. Clearly, there will be some who are subject to PAYE and who wish to dispute their status as Scottish taxpayers, or non-Scottish taxpayers, and it would be helpful if the guidance noted the appeals process. These are new provisions and the processes and details of how to appeal may be useful to users of the guidance in assisting taxpayers. It would also be helpful to know how to contact HMRC where there are questions and uncertainties. Any such facility should be outlined in the guidance.
Record keeping

16. Page 18 discusses record keeping which appears to be aimed at the taxpayer, despite the introduction saying that the guidance is for HMRC officials and tax agents. This could be tidied up.

17. Also, if record keeping guidance is aimed at the taxpayer, the second paragraph should be deleted because it is not helpful to say, in effect, that most taxpayers need not retain paperwork. More importantly, the guidance should tell the reader how long the records need to be kept.