

One minute with...

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What's keeping you busy at work?

It's an eclectic mix as per usual. One of the big draws of tax for me is being involved in the broad spectrum of our clients' businesses. On any given day that can and typically does include everything from corporate (public, private, JVs, PE) to financing and derivatives to funds to restructurings (Brexit-inspired and otherwise).

If you could make one change to tax, what would it be?

The UK treaty clearance process routinely baffles those unfamiliar with it, who are then yet more mystified to discover that even a treaty passport doesn't stop further hoops having to be jumped through. A process with fewer in-built traps for routine applications would be nice. That grumble aside, a pause on major surgery to the tax code every year would be really beneficial. Great gouts of semi-digested new legislation, every recent year on BEPS and real estate for instance, need time and work to build into a coherent system that is properly navigable by taxpayers and administrable by the authorities. This is clearly just a pipe dream, of course.

What do you know now that you wish you'd known at the start of your career?

If something doesn't quite make sense, big or small, it's always best just to ask questions. If you can't quite formulate the right question, ask questions anyway.

Has a recent tax case caught your eye?

The decade-long Lehman Brothers administration has uncovered all sorts of weird and wonderful points. On tax, we have the contrasting decisions of each court (so far) in the *Lomas* case on the UK withholding position of statutory interest payable out of the surplus found when the debts of LBIE were collected in. The point involves a survey from first principles of longstanding case law on 'yearly' interest, in the context of a £1bn issue. The Supreme Court hearing took place earlier this month and its judgment is keenly awaited. For what it's worth, given that the expectation of the parties is still somewhat

relevant to determine whether interest is short or annual (even if the right to interest comes from statute not contract), in 2008 when the administration began absolutely nobody would have expected this to be a live issue today.

What should we look out for in 2019?

Of the known knowns for 2019, the MLI and a new UK tax regime for hybrid capital securities have already mostly come in from January and, beginning in April, the UK tax net will catch offshore receipts from intangibles and non-residents' interests in UK commercial real estate and property rich companies.

There are several known unknowns. Lots to play for in the digital economy space, with several countries pursuing turnover-based taxes of different types, pending the OECD landing in its search for consensus on what is a sufficient nexus to charge profits tax in the modern age. The latter may bring with it major changes in transfer pricing, tax treaties and a wider (than digital) BEPS 2.0 modelled on new US tax acronyms like GILTI and the BEAT.

On a more parochial level, in relation to the recent UK stamp duty consultation on a market value rule for connected party transfers of unlisted shares, one hopes practicality will take a front seat. We'll not be thanked by our corporate colleagues, or clients, if valuations become necessary as a precondition simply to obtain legal title to unlisted shares. And practitioners will be hoping against hope that tax authorities introduce DAC6 reporting requirements in a way that is proportionate and workable.

On unknown unknowns, there is always Brexit...

You might not know this about me...

I collect rivers. If I throw a stone into one, then I've got it. This also works for seas, lakes, fjords and other bodies of water.

And my team recently won a dance-off competition between groups of partners at the Austin City Limits theatre in Texas. But I'm trying to keep quiet about that. ■

What's ahead

March

1 **Legislation:** Reduction in SDLT filing and payment window takes effect. **Regs:** The Stamp Duty Land Tax (Administration) (Amendment) Regulations, SI 2018/1319, and The Value Added Tax (Input Tax) (Specified Supplies) (Amendment) Order, SI 2018/1328, come into force. **VAT:** HMRC's changed policy on retained payments and forfeited deposits comes into effect. **Compliance:** Payment of corporation tax liabilities for accounting periods ended 31 May 2018 for SMEs not liable to pay by instalments; review HMRC car mileage fuel rates.

2 **Compliance:** Unpaid income tax/class 4 NIC liability for 2017/18 will attract an automatic 5% penalty after this date.

4 **Cases:** CA scheduled to hear taxpayers' appeals in *Farnborough Airport Properties Company Ltd and Farnborough Properties Company Ltd v HMRC* (appointment of receiver prevented group relief); UT due to hear taxpayer's appeal in *Ingenious Games LLP and others v HMRC* (rights to income from films are capital in nature).

5 **Case:** CA scheduled to hear taxpayer's appeal in *Christianuyi Ltd and others v HMRC* (managed service companies: meaning of 'involvement').

6 **Consultation:** Comments close on extended deadline on OECD's tax challenges of digitalisation consultation. **Survey:** Comments close on European Commission survey on functioning of administrative cooperation in the field of direct taxation. **Case:** Supreme Court scheduled to hear HMRC's appeal in *HMRC v Frank A Smart & Sons Ltd* (Respondent) (Scotland) (VAT).

7 **Compliance:** Due date for VAT returns and payment for 31 January 2019 quarter (electronic payment).

11 **Case:** UT scheduled to hear taxpayer's appeal in *Big Bad Wolff Limited v HMRC* (actor using a personal service company is in employed earner's employment).

For a 'what's ahead' which looks further ahead, see taxjournal.com (under the trackers' tab).

Coming soon in Tax Journal:

- The SDLT non-resident surcharge proposals.
- Goodwill and IP.
- Tax and the City.