

What's ahead

Dates for your diary

November

- 21 Parliament:** House of Commons and House of Lords return after autumn recess.
- 22 ECJ hearing:** *Littlewoods Retail Ltd and others v HMRC (C-591/10)*: Preliminary ruling on the compatibility of the UK compound interest rules.
- 24 ECJ opinion:** *EC v Republic of Estonia (C-39/10)*: Infringement procedure against Estonia over its taxation of pensions paid to non-residents with low income.
- 29 Parliament:** The Chancellor will deliver his autumn statement on the economy, and the Office for Budget Responsibility will publish its economic and fiscal outlook.
ECJ judgment: *National Grid Indus BV v Inspecteur van de Belastingdienst Rijnmond (kantoor Rotterdam) (C-371/10)*: Dutch exit tax levied on company transferring their place of effective management in another Member State; whether compatible with freedom of establishment.
Upper Tribunal hearing: *ITV Services Ltd v HMRC TC 836*: National insurance contributions, categorisation of earners.

December

- 01 ECJ judgment:** *Systeme Helmholtz GmbH v Hauptzollamt Nürnberg (C-79/10)*: Preliminary ruling on the scope of the tax exemption for motor fuel under the energy product Directive.
Upper Tribunal hearing: *HMRC v Newey TC 487*: VAT and advertising services.
- 02 Upper Tribunal hearing:** *A One Distribution Ltd v HMRC TC 704*: VAT, MTIC appeal involving transactions in relation to which input tax was disputed, whether appellant knew that its transactions were connected to MTIC fraud.
- 05 Upper Tribunal hearing:** *HMRC v S & I Electronics* VAT input tax and MTIC fraud, incorporation of Kittel into domestic law and related issues.
- 06 Consultations:** Finance Bill draft clauses to be published.
Regulations: The Social Security (Contributions) (Amendment No. 5) Regulations, SI 2011/2700, and The Employment Income Provided Through Third Parties (Excluded Relevant Steps) Regulations, SI 2011/2696, come into force.

One minute with ...

Name a recent piece of work of which you are most proud?

It is a transaction; the acquisition of HSBC Rail by an infrastructure consortium in late 2010. It was complex, with some very stimulating tax points. Indeed, so much of the taxation arising around leasing companies can be challenging.

Where do you stand on the introduction of a GAAR?

I have strong views on this. Graham Aaronson QC is the leading tax advocate of his generation – but there is a trap that he has to avoid – a trap into which barristers can fall – which is thinking that a problem can be solved by a turn of phrase. A ‘turn of phrase’ can work well in an opinion or in argument, but be much less successful in a judgment. We have a precedent for this with *MacNiven v Westmoreland Investments Ltd*. Lord Hoffmann’s attempt to define the limits of *Ramsay* using a distinction between legal concepts and commercial concepts took us nowhere. In my opinion there is no simple formulation of words which could claim to answer this complex question without falling into a ‘Hoffmann’ trap.

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

I actually wouldn’t invest any more money in changing UK tax legislation. Instead I would invest money in attracting really good people into HMRC. I’d like a return to the days when you dealt with someone from the Revenue on a concept like ‘the meaning of distribution’ and you discovered that their expert was a really clever guy with a PHD in potatoes. So I would like to see the return of more of their intellectuals. I imagined them to be quietly subversive.

Do you think chartered accountants should get the equivalent of legal privilege?

Yes, I do. I was a partner in a Big 4 accountancy firm for a while after I left banking, impressed by the quality of my colleagues and by the level to which their work was



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internally audited. Legal privilege rests on the historical role of lawyers and the regulation of the profession. However, chartered accountants are also highly regulated, I think most lawyers would be amazed by the scope of the Big 4 ‘Total Quality Reviews’ where every element of your work including when you signed engagement letters, what notes you have on file to back up advice you gave and so on is audited.

Was the bank payroll tax fair?

Alistair Darling predicted bank payroll tax would raise £500m and he thought it would change the banks’ bonus policies. The politicians seemed totally unprepared for what happened and to me this showed a lack of understanding of modern banking. I’m sure the politicians wanted to raise a token amount and change the bank’s behaviour but they hadn’t factored in that most non-UK banks’ bonus pools are global and not fixed nationally. Many of the foreign banks mutualised the cost of the payroll tax so people in Hong Kong and Singapore, for example ended up sharing the cost, together with shareholders to varying degrees. He missed the global perspective. This and the 50% income tax rate have made the City less competitive a location and made us enemies. For a while the City was the place to be. It isn’t any more. International bankers have been leaving the UK because they can do the same international work in another location but with a lower personal tax burden.

Interview by Georgiana Head
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