

What's ahead

Dates for your diary

One minute with...

How did you end up in tax?

At law school in South Africa I had the choice between a second year of Roman law and taxation (the first time tax had been offered at a law school there). By process of elimination, I chose taxation! After the exam, my professor, Louise Tager, said I was one of only two who really understood the course.

My wider interest in law is public international law and public law – the relationships between the citizen and the state, and among states. Growing up in apartheid South Africa, this shaped my belief that international legal norms offer solutions to the inappropriate use of state power.

Who in law do you most admire?

My father Harry Schwarz (among other things, one of the defense counsel in the Rivonia Trial) and Professor John Dugard, who instilled an absolute belief in the rule of law as the cornerstone of a just and democratic society, as well as the courage to stand up for these values even when it is unpopular to do so.

What recent tax cases have caught your eye?

The recent Delhi High Court decision in *Centrica India Offshore Pvt Ltd v CIT* [WP(C) No. 6807/2012] concerns employees of the UK parent company sent to India to help with the establishment of a service company and were found to give rise to a permanent establishment there. The case is a stark reminder of the need to pay careful attention not only to the requirements of the particular treaty, but also to the legal documentation and other evidence of the way in which the operations are to be conducted.

R (oao Derrin Brother Properties Ltd) v HMRC [2014] EWHC 1152 (Admin), a case on exchange of information under the Australia/UK treaty, and *Whitefields Golf Club Ltd & Others v HMRC* [2014] UKFTT 458 (TC), a case on disputing information notices, both highlight the unnecessarily complex way in which controversy in this area must be addressed. This area, of necessity,



Jonathan Schwarz
Barrister at Temple Tax Chambers and visiting professor at King's College London

impinges on basic human rights such as due process and privacy and a more straightforward method of judicial scrutiny of administrative actions is needed.

Perrin v HMRC [2014] UKFTT 223 (TC) and *Ardmore Construction Ltd v HMRC* [2014] UKFTT 453 (TC) stirred up old unresolved questions about the source of interest in cross-border transactions. The taxpayers lost in both cases, which involved transactions with traditional offshore centres. They are unlikely to be the last word on the subject but may be of limited impact if the effect of the very recent CJEU decision in *Emerging Markets Series of DFA Investment Trust Company* (C-190/12) is to call into question the EU compatibility of withholding tax on such payments.

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

I'd repeal all legislation overriding treaties and agree treaties with other states that are appropriate to the tax systems and needs of both.

What's the highlight of your career?

Two sons who are pursuing careers in law – Daniel, a trainee at Clifford Chance, and Adam, currently writing GDL exams. Too many lawyers say: 'I'd never encourage my children to be lawyers today.' It is a stimulating and rewarding calling. The highly numerate Benjamin would have been an excellent tax lawyer, but is a space systems engineer designing satellites.

June

- 14** **UK Uncut:** Protests planned against Vodafone.
- 17** **UT hearing:** *Samarkand Film Partnership No.3 v HMRC* [2011] UKFTT 610 (TC): sale and leaseback of films.
- 18** **UT hearing:** *HMRC v Colaingrove Ltd (No.4)* [2013] UKFTT 295 (TC): VAT, sale of caravans.
- 19** **BEPS and the UK:** *Tax Journal* evening event with HMT and the OECD.
- 20** **Parliament:** Second reading in the House of Commons on the National Insurance (Renaming) Bill.
- 24** **UT hearing:** *Rigcharm Ltd v HMRC* [2013] UKFTT 270 (TC): VAT MTIC fraud decision.
- 30** **UT hearing:** *Boyer Allen Investment Services Ltd v HMRC* [2012] UKFTT 558 (TC): discovery assessment.

July

- 01** **Regulations:** The Value Added Tax (Amendment) (No. 2) Regulations, SI 2014/ Draft, and The Climate Change Agreements (Eligible Facilities) (Amendment) Regulations, SI 2014/1318, come into force. **VAT:** The reverse charge for wholesale supplies of gas and electricity within the UK is being introduced from this date.
- 05** **HMRC deadlines:** Non-resident landlords' scheme forms NRLY and NRL6 must be submitted; non-cash benefits not from registered pension schemes must be reported.
- 06** **Employment taxes:** The following forms should be completed and filed by this date: Benefits in kind forms P9D, P11D, P11D(b) for 2013/14 must be completed; employees must be given information on 2013/14 benefits and expenses; PAYE settlement agreements for 2013/14 must be finalised; taxed award scheme returns to be filed; details of redundancy packages for 2013/14 worth more than £30,000 to HMRC; file forms 42.

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

Coming soon in Tax Journal:

- EU law issues with the OECD proposals on BEPS.
- Examining the lead case procedure.

Correction: There was a gremlin in the 'Ask an expert: Problems with VAT groups when many become one' (Peter Mason), *Tax Journal*, 30 May: the citation for the *Midlands Cooperative* case should have read '[2008] EWCA Civ 305'. Sorry, Peter.