

## One minute with...

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#### What's keeping you busy at work?

A variety of personal and business tax disputes. I'm currently involved in lead appeal cases and group litigation by contractors who, sometimes inadvertently, entered into remuneration loan schemes. Issues include employment status, validity of discovery assessments, the operation of PAYE and the transfer of assets abroad legislation. I also have a number of pending judicial review claims where taxpayers allege unfair treatment by HMRC, a claim in the High Court for rescission of a pension contract on the grounds of mistake (resulting in the revocation of a fixed protection certificate), ADRs and formal complaints to the adjudicator.

#### If you could make one change to tax law or practice, what would it be?

Allowing judicial review-style challenges to be run in the First-tier Tribunal and the ability to commence JR applications in the Upper Tribunal. 'JR-style challenges' means disputes where HMRC exercises a discretion, applies an ESC or departs from published guidance with adverse consequences for a taxpayer or a group of taxpayers, and it is alleged that the decision is irrational and/or unfair. It would also be helpful for the specialist tribunal to be able to determine cases impugning the procedural/ substantive validity of a formal notice issued by HMRC with the exception of any expressly ousted by Parliament. This change would significantly improve access to justice for all taxpayers, reduce satellite litigation in multiple fora and relieve the demand on resources in the Administrative Court. If vexatious litigants were of concern, the tribunals could apply rules similar to those in the civil procedure rules, and a JR costs regime could also be implemented.

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

Justice is a slow-moving machine. It is difficult to explain to clients that it may be several years before their tax disputes are finally determined by the tribunal and court system. I am still litigating

appeals which relate to tax years in the 1990s and 2000s.

#### Has a recent tax case caught your eye?

The Court of Appeal's decision in *Payne, Garbett, Coca-Cola European Partners Great Britain Ltd v HMRC* [2020] EWCA Civ 889 is interesting. On a basic level, the case addressed whether or not crew cab panel vehicles should be classified as cars or vans for the purposes of ITEPA 2003 s 115. The court determined that the final construction of the vehicles – not their use – was key to their classification as 'primarily suited for the conveyance of goods'. The practical consequence being that both the Vauxhall Vivaro and the VW Transporter T5 Kombi (first and second generation) are classified as cars and not vans as held by the FTT and UT in the case of the *Vivaro*. The surprising part of this decision is that an online search brings up images of what an ordinary and reasonable person would recognise as a van. It appears that Parliament had something altogether different in mind when it enacted s 115. One interesting aspect is that as both the FTT and UT decided that the Vivaro vehicles should be classified as vans many taxpayers and their advisers would have submitted P11Ds (P11D(b)) and other returns for 2018/19 and 2017/18 (and earlier years) on this basis. Following the Court of Appeal's decision, it is now known that this tax treatment was incorrect but questions about any duty to correct, inaccurate returns and professional conduct are very likely to arise in practice. It will be interesting to learn HMRC's stance on these cases going forward and whether or not the Supreme Court is asked to conclusively decide the issue.

#### Finally, you might not know this about me but...

I am an animal lover and actively support charities for the welfare and rescue of abused animals. In an ideal world, I'd found a sanctuary for all animals in need and would live there. The funding, location and day to day upkeep are still to be arranged... ■

## What's ahead

**Covid-19:** Please note some dates might be postponed and some of the proceedings of the tax tribunals suspended.

### September

- 18 Consultation:** Call for evidence reviewing business rates closes.
- 19 Compliance:** PAYE/NICs/construction industry scheme payments for month ended 5/9/2020 if by cheque; file monthly construction industry scheme return.
- 21 Compliance:** File online monthly EC sales list; Intrastat: submit supplementary declarations for August 2020.
- 22 Consultation:** The CIOT has requested comments from members on Scottish Budget by this date. **Legislation:** Committee stage is due to begin on UK Internal Market Bill. **Compliance:** PAYE/NICs/construction industry scheme payments for month ended 5/9/2020 if paid online.
- 25 Regs:** The Finance Act 2008, Section 135 (Coronavirus) Order, SI 2020/934, in force.
- 29 Consultation:** Consultation on carbon emissions tax closes.
- 30 Consultation:** Call for evidence on tackling disguised remuneration tax avoidance closes. **Deadline:** Deadline to report any loan charge liability. **Compliance:** Companies House to receive accounts of private companies with 31/12/2019 year end and accounts of plc's with 31/3/2020 year end; HMRC to receive CT self-assessment returns for companies having accounting period ended 30/9/2019; end of CT61 quarterly return period; business rates: small business relief claims for 2019/20 to local authority due; businesses to reclaim EC VAT chargeable in 2019; report the disguised remuneration loan charge; companies with a 30/6/2020 period end must notify HMRC if they have profits within the scope of the diverted profit tax.

### October

- 1 Compliance:** Payment of corporation tax for periods ended 31/9/2019 for SMEs not liable to pay in instalments.
- 5 Case:** UT to hear HMRC's appeal in *The Core (Swindon) v HMRC* (are cleansing juices beverages?) **Regs:** The Finance Act 2009, Sections 101 and 102 (Disguised Remuneration Repayment Scheme) (Appointed Day and Consequential Amendment) Order, SI 2020/979, in force.

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

#### Coming soon in Tax Journal:

- *Charman*: old ERS law, new insights.
- *AXA v Genworth*: gross misunderstandings.
- VAT on break clauses: HMRC's about turn.