

What's ahead

Dates for your diary

One minute with...

You lead the firm's tax group in London. What's in your in-tray?

Our tax practice reflects the full breadth of the firm's practices. At present, I am working on: a private equity acquisition in the insurance sector, focusing especially on the management incentive arrangements; the restructuring of a major North Sea oil producer with a US parent in Chapter 11; numerous offshore fund management issues and a cross-border oil and gas project in West Africa involving an array of tax-mitigating jurisdictional issues (which are most topical in the context of the BEPS activity).

What sets Milbank, Tweed, Hadley & McCloy apart from other law firms?

Milbank remains focused on its marquis global practice areas and industry sectors, and the London office is no exception; we specialise in financial restructuring, transportation, project finance, technology and outsourcing, leveraged finance, M&A and private equity, and complex regulatory litigation. Each of these areas interlink and many rely on having a very strong capital markets practice, allowing many of the firm's financial clients to raise (or restructure) capital from both sides of the pond under one roof. Tax and structuring are at the core of most of these practice areas.

What's the top practical issue in tax for your clients?

Substance. There is hardly a single practice area where reinforcing the need for substance in the important tax-mitigating jurisdictions through which our clients structure their affairs is not at or near the top of the agenda.

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

UK tax law requires at least two changes! First, HMRC needs to trawl the complicated anti-avoidance provisions peppered in the tax code like statutory land mines and work out which are really needed and which can be repealed in the light of the GAAR. Second, the Tax Acts need to be consolidated in a coherent



Russell Jacobs
Partner, Milbank

fashion (rather like the IRS code), so that the legislation is easy to navigate and incremental changes are added within existing sections, not dotted around various Acts. After 32 years of practising tax, the Tax Acts are bordering on impossible to navigate and index.

What recent development has caught your eye?

The impending changes on domicile in the September consultation document attracted my attention. They are logical, fair and concisely argued by HMRC and, unlike a lot of other recent anti-avoidance legislation, rely on bright-line tests (especially coupled with the statutory residence test), which I applaud.

How does BEPS affect your clients?

For our clients, BEPS is all about taking a long, hard look at devoting substantial resources to tax mitigation. This includes allocating meaningful human resource to jurisdictions where value is created and tax really matters. Our clients are (or have become) extremely sensitive and receptive to advice on creating and sustaining a substantive presence in important jurisdictions; and not over-egging the tax arbitrage potential of a structure, but rather looking at the overall suitability and tax 'ethic' of their corporate structuring.

Tell us a secret.

I am happiest scuba diving on a coral reef at around 20 metres – close enough to sunlight, but far enough away from the Blackberry, BEPS and all matters fiscal.

For a longer version of this feature, see www.taxjournal.com.

October

23 Consultations: Comments due on the impact the current anti-money laundering and terrorist financing regime is having on business (www.bit.ly/1PCnZ05).
BEPS: Eleventh session of the UN Committee of Experts on International Cooperation in Tax Matters to be held in Geneva, Switzerland, where BEPS is one of the items on the agenda.

26 Finance (No.2) Bill: Report stage and third reading to take place in House of Commons' main chamber.

Tax credits: House of Lords' debate on the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations, SI 2015/Draft, regarding tax credit cuts; Work and Pensions Committee (a House of Commons select committee) hearing on tax credits scheduled at 3:45pm.

Upper Tribunal: *HMRC v Invicta Foods Ltd* [2014] UKFTT 456 (TC): Whether HMRC had acted reasonably in defending an action; *Krishna Moorthy v HMRC* [2014] UKFTT 834 (TC): Tax treatment of termination payments.

27 Upper Tribunal: *Carlton Clubs Ltd v HMRC* [2014] UKFTT 1045 (TC): Bingo gaming duty on electronic hand held devices.

30 Draft legislation: Comments due on amendments to the four sets of regulations which set out the tax rules on accounting for profits and losses on loan relationships and derivative contracts, to reflect legislation in Finance (No.2) Bill 2015 (see www.bit.ly/1KVVkXB7).

31 ATED: Deadline to pay the annual tax on enveloped dwellings (ATED) liability for properties coming within the charge on 1 April 2015; ATED return should have been submitted at the beginning of the month.
Consultation: Comments due on the length and detail of transitional arrangements for withdrawal of the climate change levy renewables exemption for electricity supplied to businesses and the public sector (www.bit.ly/1f3clyz).

November

02 Regulations: The Taxes, etc. (Fees for Payment by Internet) (Amendment) Regulations, SI 2015/1777, come into force, increasing the fee for online credit card payments made to HMRC from 1.4% to 1.5%.
Upper Tribunal: *HMRC v FMX Food Merchants Import Export Company Limited* [2013] UKFTT 720 (TC): Customs duty on import of Chinese garlic, falsely declared as Cambodian in origin; *Peter Arakiel Brookes v HMRC* [2013] UKFTT 362 (TC): Taxpayer appeal against VAT dishonest evasion penalty under VATA 1994 s 61.

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

Coming soon:

- Your new look *Tax Journal*, starting with a special edition on BEPS published next Saturday.