

September

19 **Consultations:** Comments close on OECD consultation on discussion draft which applies the findings of the report on BEPS Action 2 (neutralising the effects of hybrid mismatch arrangements); comments close on European Commission consultation on reduced VAT rates for electronically supplied publications (see www.bit.ly/2atAy4).

30 **Regulations:** The International Tax Compliance (Client Notification) Regulations, SI 2016/899 come into force setting out the new obligation on financial institutions and professional advisers to notify certain clients of the information HMRC will receive automatically under the common reporting standard from 2017.

Consultations: Comments close on European Commission consultation on reduced VAT rates for electronically supplied publications (see www.bit.ly/2atAy4); comments close on proposed regulations to allow friendly societies and mutual insurers to issue 'mutuals' deferred shares' (see www.bit.ly/2aXiOvN).

October

1 **Regulations:** The Tonnage Tax (Training Requirement) (Amendment) Regulations, SI 2016/819 comes into force; The Bank Levy (Amendment of Schedule 19 to the Finance Act 2011) Regulations, SI 2016/874, amending the definitions of 'high quality liquid assets' and 'high quality securities' for the purposes of the bank levy come into force.

3 **Consultations:** Comments close on potential changes to the tax rules on how capital allowances are allocated to investors in authorised contractual schemes (see: www.bit.ly/2axvvPX); comments close on changes to the categories of assets that life insurance policies can contain without giving rise to an annual tax charge on the policyholder under the personal portfolio bond legislation (see www.bit.ly/2bc4fqd); comments close on draft amendments to the draft Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2016 (see www.bit.ly/2aCQBbr).

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

Coming soon in Tax Journal:

- A closer look at making tax digital.
- Hot topics for SMEs.

One minute with...

John Kavanagh

Taxxa



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What caught your eye in the Finance Bill?

The extent to which the government has been such an early and enthusiastic adopter of the OECD's BEPS proposals. This made perfect sense in our pre-Brexit world view, but it's a tendency that might be regretted and possibly reversed should there be a Hard Brexit, which is starting to look like a distinct possibility.

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

I think it should be possible to refer a matter to the Adjudicator's Office even if HMRC has not notified a taxpayer of its decision. I am working on one case where HMRC has withheld VAT repayments for several years despite the fact that the VAT was accounted for by the parties in accordance with HMRC's express instructions. HMRC has offered no legitimate reasons for refusing repayment, has progressed the matter at a snail's pace and refuses to give any decision that the clients can appeal against. This means that the clients can neither take the case to tribunal nor complain to the adjudicator. Complaints to HMRC itself have met with further stonewalling and aside from judicial review, which the clients cannot afford, there is nowhere else to go.

What's your view on the new proposals for sanctions for 'enablers' and users of tax avoidance schemes that are defeated by HMRC?

I'm uncomfortable that the government has consulted on the basis that the rules should be modelled on those for the facilitation of offshore tax evasion (without the requirement that an offence has been committed or a penalty charged). Activities that might be undesirable but are by no means criminal should not, in my view, be discouraged in the same way as those that are. It's a shame that the designers of schemes that never had the slightest chance of working to do this but there it is. It does not seem fair to me that 'enablers' of arrangements based on entirely arguable interpretations

of the law should be treated the same way as chancers and kite-flyers.

Is there a recent tax case that has affected the advice you give in practice?

The case that I am following with the most interest at the moment is the *De Silva* judicial review, which will be heard by the Supreme Court next year. In a nutshell, HMRC claims that it can use TMA 1970 s 9A to enquire into any aspect of a self-assessment tax return, including stand-alone claims. However, in the Supreme Court judgment in *Cotter* in November 2013, Lord Hodge stated that enquiries into stand-alone claims such as carried back losses can only be enquired into under TMA 1970 Sch 1A para 5. Leaving aside the practical implications for HMRC and affected taxpayers, it's surprising that the status of legislation which is so central to the machinery of self-assessment is still in doubt some 20 years after it was first enacted.

Looking back on your career to date, what key lesson have you learned?

I have always been very wary of excessive specialisation. I've advised clients on all of the major taxes over the years (and some of the minor ones). I joined a major firm in the late 1980s and worked for a partner who had previously specialised in development land tax, sadly (for him) abolished a few years earlier. I don't think his career ever recovered from that. A year or so ago I was talking to a partner in a regional mid-tier firm who told me they had recruited a partner specialising in share schemes but now that he had implemented all of the share schemes he was likely to for their existing clients, they didn't really know what to do with him.

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

I am a fan of contemporary art. I founded and edited a contemporary art exhibition reviews website (it had 20 reviewers at one point) and I've also written critical essays for exhibition catalogues. ■