

One minute with...

James Hill

Mayer Brown



James Hill is a tax partner at Mayer Brown International LLP. He has experience in the corporate tax aspects of mergers and acquisitions, reorganisations and corporate finance, and in employment taxes, carried interest and benefits. Email: james.hill@mayerbrown.com; tel. 020 3130 3227.

What's keeping you busy at work?

As ever, it's a broad range. Amongst many other matters this week I have been looking at: the UK tax consequences of a possible change to the structure of a PE fund; a large, cross border M&A transaction; the tax treatment of distribution/service fees in the music industry; the tax treatment of unusual securities issued by a foreign issuer; the tax position of UK managers in a (foreign headquartered) group in relation to a partial sale; an acquisition of an indirect interest in UK real estate by a foreign investor; and various domestic M&A deals.

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

The approach adopted by HMRC and successive governments of consultation on policy, and particularly drafting, in relation to new legislation is laudable. However, far too often comments which are made in good faith in consultation are not taken on board, even where that leads to anomalous results and/or poorly drafted legislation. The end result – which is far from satisfactory – is tax by legislation and relief (or exemption) by guidance. This can be applied to numerous of our 'anti-avoidance' regimes – for example, disguised remuneration, the diverted profits tax, the transactions in land rules, the hybrids rules and the offshore funds rules.

Are there any new or draft rules that are causing a particular problem?

The hybrids rules (and, if I had to pick one bit of those, it would be imported mismatches). They are very complex, and can have arbitrary and unfair results. The recent updated guidance and draft legislative changes are welcome, but it will likely be a number of years (and several more changes of guidance and amends to the legislation) before these rules become workable.

Is there a recent tax case that has caught your eye (and why)?

The *Lomas* case (*HMRC v Lomas and others* [2017] EWCA Civ 2124) is

interesting, in particular the general comments about whether interest is short or yearly. Given that interest is often calculated at a yearly rate (even on short term loans), the 'intention-based test' that the Court of Appeal referred to will be key in determining whether interest is short or yearly. There could be difficulties in attempting to apply this test retrospectively to loans which are not recorded in a written agreement and/or in relation to which it was not clear at the outset when they were intended to be repaid. Some intercompany loans could fall into this category. One could argue that in respect of a great many loans, and as a matter of fact, interest *may* be or become payable yearly, but that is not the same as saying that the parties intended at the outset of the loan that the interest *would* be or become payable yearly. Given the sums involved, there must be a high chance that this case will be appealed to the Supreme Court.

What challenges are facing the profession today?

Aside from the ever increasing technical complexity of UK tax law, we are now also required to navigate our own obligations as professional advisers (including the various conduct/regulatory rules we are subject to) and our own obligations under the various disclosure rules, as well as advising on the same. The DOTAS provisions, POTAS, follower notices, accelerated payment notices, the enablers rules, the client notification regulations, etc. Then you can add in to the mix our obligations as a business, in relation to (for example) anti-money laundering and the corporate failure to prevent the facilitation of tax evasion.

Finally, you might not know this about me but

As a supporter of Reading FC, I don't get to watch much Champions League football. Last year's trip to Wembley for the Championship play-off final was at least a big game, but the football (if not the occasion) turned out to be pretty dire, as was the result. ■

What's ahead

April

6

For changes taking effect on this date, see 'What's Ahead' at taxjournal.com, and also 'April 2018 tax changes: an A to Z guide', Tax Journal, 23 March 2018.

7

Compliance: Due date for VAT returns and payment for 28 February 2018 quarter (electronic payment).

11

Cases: The Court of Appeal is listed to hear the appeal in *Adecco UK Ltd* concerning the VAT treatment of supplies of temporary workers; The Supreme Court is listed to hear HMRC's appeal in *Taylor Clark Leisure*. The case concerns the question who is entitled to a repayment of VAT in a VAT group context

13

Consultation: Scottish government consultation on a proposed amendment to the land and buildings transaction tax (LBTT) group relief provisions closes

14

Compliance: Quarterly corporation tax instalment for large companies depending on accounting year end; Forms CT61 to be submitted and tax paid for the quarter ended 31 March 2018.

19

Compliance: Payment of PAYE, NIC, construction scheme industry and student loan liabilities for month ended 5 April 2018 if not paying electronically; payment of PAYE liability for quarter ended 5 April 2018 if average monthly liability is less than £1,500.

Cases: The AG is expected to deliver his opinion in *Gmina Ryjewo* (Case C-140/17) concerning the ability of a local authority to recover input VAT on the acquisition of capital assets initially used only for non-business purposes and later for taxable purposes

21

Compliance: File online monthly EC sales list; submit supplementary Intrastat declarations for March 2018.

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

Coming soon in Tax Journal:

- Examining the substantial shareholdings exemption.
- Exactly what shares count as employment-related securities?
- Case tracker.