President's page, May 2013

Welcomes

30 April 2013

Farewell

Welcome to this month's President's Page. This will be the final one that I will be writing as I will complete my year of office in about three weeks' time. I will hand over the baton to Stephen Coleclough, who will be writing for you next month. I am sure that he will be a very good President.

My year in office has coincided with tax becoming front page news for a big part of the year. All of the debates about tax avoidance by both high income entertainers and others, multinational companies and 'tax morality' have hit the headlines and demanded our attention.

I have taken the view that it has been important for your Institute to stand up and be visible and to try to inform politicians, journalists and the public about what the real questions are, so that the debate can be better informed. An Institute with tax in its name cannot hide from the debate, but it is even more important that we do not take any one side. Our aim is to enhance the standing of our members by being associated with a body that can be seen as knowledgeable, balanced and able to give good advice. That is why I and (even more so) John Whiting, our Tax Policy Director for much of my year, have spent large amounts of time speaking to radio, television and the press on these and other subjects. We try to explain and bring balance – which does mean that we don't always get asked, as others are more willing to sensationalise. But I think that our stance is correct: we are a professional body and one with a firm educational objective.

So where have all those column inches and broadcast hours by the politicians and interest groups got us? When I speak to people in our profession about this matter, one thing we can mainly all agree on is that much of the debate has been based on poor information and facts. Despite this (or maybe because of it) I think there has been a lot of movement. The whole question of tax avoidance has become much

less acceptable and many large corporates simply will not countenance anything that smacks of ‘unacceptable avoidance’ today. But the dividing line between this and routine planning remains opaque in many situations.

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In addition, there is an OECD work programme which is moving quickly and which will probably lead to some very real changes to the way that the taxation of international transactions is dealt with by many countries. It will clearly take time for countries to adopt the proposals, even when they have been finalised, but I believe they will lead to some substantial changes to the taxation of international transactions.

Interestingly, one of the biggest changes has been in the results of a number of tax cases going through the courts. As the court judgments never fail to point out, the new judgment is based firmly on the precedent of preceding cases, so the result of a case should never be a surprise to us. However, I think it would be fair to say that it is often possible for a precedent to be interpreted in different ways. There have been some cases where the interpretation of the courts, if tax avoidance is involved, has gone in directions that I, for one, was not expecting.

Very recently, the ***PA Holdings Ltd v HMRC* [2011] EWCA Civ 1414** case (which was admitted to involve tax avoidance) came to a conclusion. The taxpayer had lost in the Court of Appeal, on grounds which few of us were expecting. The taxpayer has now withdrawn the appeal to the Supreme Court. It has left the state of tax law in relation to paying what are effectively bonuses out as dividends in a very uncertain position. The judgment succeeded in striking down the avoidance scheme, but has left lots of common transactions in doubt. I made a speech at an Institute conference last autumn, using this case as an example of the sort of uncertainty that can arise when the courts go out of their way to defeat an obvious scheme. I little thought that the appeal would then be withdrawn, leaving the law to be tidied up by legislation or HMRC diktat.

Next week, one of my final engagements as President will be to present prizes and certificates to many new members at our admission ceremony. We generally hold two such events a year and it is one of my favourites: successful candidates and their proud families in one of the fine City of London halls; a glorious evening with

lots of photographs. Our new members will face many challenges in their chosen profession. I am not sure we do an exam paper on how to appear before the Public Accounts Committee. Perhaps we should?

I wish all our new members, as well as all our established members, every success in your careers. I have had a great time in our profession and I wish you all well.