

## One minute with...

### David Wilson

Cooley



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

I'm lucky to have a broad range of interesting work. Today I have been working on a couple of cross-border M&A transactions, an equity capital markets deal, some international structuring and a financing round for an emerging company.

#### You've recently moved to Cooley. What was the attraction?

Cooley is a hugely exciting firm, and the London office has been highly successful since opening less than four years ago. With our Northern Californian roots, we're especially strong in the tech and life science sectors, and much of my work is in these areas. I was previously at Linklaters and Davis Polk and was involved in a lot of bank sector work, before and in the aftermath of the financial crisis – which at the time felt like the centre of the action. One of the many attractions of joining Cooley was the opportunity to be at the heart of developments in the taxation of the digital economy – which I am convinced will be the most fascinating area of tax law over the next decade or more.

#### What are your thoughts on the proposed digital services tax?

A number of our clients may be affected, and I won't comment on the politics or economic rationale of the proposals. However, it seems incontrovertible that a number of important details need to be addressed during the consultation process. In particular, the current 'safe harbour' (intended to address criticism that a tax on gross revenues is unfair to companies with no or low profits) is a misnomer. An effective tax rate of 80% is not 'safe'. Some of the distinctions drawn in defining 'in-scope activity' look questionable or unclear, and could be a recipe for litigation.

Time will tell whether HMRC can succeed in ducking difficult questions around user location and attribution of revenues through a fudge of 'just and reasonable' apportionment. Likely problems in this area will give a flavour of the even greater practical difficulties I think we will face in moving towards

any longer-term aspiration of charging corporation tax by reference to user-created value.

#### What changes would you make to existing tax law?

My list has got shorter, since the Budget! On life science transactions, in particular, real difficulties have been caused by the intangibles degrouping charge and the application of the stamp duty contingency principle to typical structures involving escalating contingent milestone payments. It is reassuring to see that HMRC has listened to representations from industry and advisers on these points.

A change I would still like to see is for the courts to do more to develop a 'reverse Ramsay' principle, in favour of taxpayers. Tax should not be levied on the basis of a highly literalistic interpretation of the law where a transaction, viewed realistically, is consistent with the purpose of the legislation.

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

How complicated everything was going to become. 'Read to the end of the section' has always been sound advice, but nowadays there are so many sections that you need to read to the end of, and that is before you move on to applying purposive construction, TAARs, the GAAR, EU law, state aid, the code of practice for banks, DOTAS, considering whether you can rely on guidance which may be crucial to your advice – and now also thinking about whether you need to keep a record of relevant information ready for DAC6.

#### You might not know this about me...

Since moving to the countryside a few years ago, I've been living a 'good life', of sorts. Our homemade produce includes (readers may detect a theme...) cider, perry, red and sparkling white wine, and beer made with our own hops. My ambition is to graduate to apple brandy, but that would require me to obtain a distiller's licence from HMRC. I've written to HMRC many times over the years, but one of these days, my letter might refer to s 12(5) of the Alcoholic Liquor Duties Act 1979. ■

## What's ahead

### November

- 23** **Consultation:** Comments close on draft amending regulations which reduce the time limit for filing an SDLT return.
- 26** **Case:** UT scheduled to hear HMRC's appeal in *Tesco v HMRC* (VAT recovery: clubcard scheme).
- 27** **Finance Bill:** Proceedings in the Public Bill Committee due to start.
- 28** **Case:** CA scheduled to hear taxpayer's appeal in *R (oao Dickinson) v HMRC* (accelerated payment notices).  
**Regs:** The Child Tax Credit (Amendment) Regs, SI 2018/1130, comes into force.
- 30** **Compliance:** Companies House should have received accounts of private companies with 28 February 2018 year end; to receive accounts of plcs with 31 May 2018 year end; HMRC should have received corporation tax self-assessment returns for companies with accounting periods ended 30 November 2017.

### December

- 1** **Compliance:** Payment of corporation tax liabilities for accounting periods ended 28 February 2018 for small and medium-sized companies not liable to pay by instalments; check HMRC website for changes to advisory fuel rates.
- 2** **EU:** The directive extending the EU temporary VAT reverse charge option and quick reaction mechanism until 30 June 2022 enters into force; certain measures to ensure uniform application of controls on cash entering or leaving the EU by the member states comes into force.
- 3** **Case:** UT scheduled to hear HMRC's appeal in *HMRC v The Learning Centre (Romford) Ltd* (VAT: different treatment of suppliers situated in different devolved areas).
- 4** **Directive:** The amending directive allowing EU member states to apply reduced or zero rates to electronic publications published in the EU official journal comes into 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:

- Intangibles, royalties and low tax jurisdictions.
- The VAT sporting services exemption: a new test for non-profit making bodies?
- The Finance Bill changes on profit fragmentation.