

## Why I gave up giving tax advice

By Mark Lee FCA CTA (Fellow)

I met someone recently whom I hadn't seen for a few years. He was the main contact at a client of mine when I was a partner at BDO Stoy Hayward in the 1990s. He'd noticed that I was no longer in practice and asked what had brought this on. When I explained why I had consciously decided to give up giving tax advice, he was shocked. He said it was **a sad indictment of the tax system**.

I mentioned this conversation to our esteemed editor and offered to explain my thinking. Mike thought this would be of interest to readers as he anticipated it would be a heart-led approach as distinct from the more erudite 'head-led' pieces that more usually occupy these pages (My words, not his).

### Background

I tell people that I was lucky to reach, what I considered to be, the top of my profession. I'd accept that not everyone would agree with that, but I was happy. I'd been a tax partner in the London office of two large firms, headhunted twice due to my reputation and profile, elected as Chairman of the ICAEW Tax Faculty 2003-2005 and awarded a fellowship of CIOT in 2006 for my writings on Incorporation.

When I left BDO Stoy Hayward in 2001 I had already decided that I didn't want to be a tax partner in an accountancy firm again. I'd worked in 4 such firms since qualifying in 1982 and been a tax partner in two of them – and I still rate both of them highly. But, no, I did not want any more of that 'audit vs tax' office politics that seems to be ever present in possibly all accountancy practices.

I recall talking with Robert Maas after the CTA Address in 2001 and he convinced me not to turn my back on the world of tax. I went on to run the Tax Support for Professionals team at WJB Chiltern, the consultancy that is, coincidentally, now owned by BDO Stoy Hayward

Then two years ago, approaching the age of 50, I had cause to consider what I wanted to do for the rest of my career. Entrepreneurship beckoned. But I wasn't interested in running my own accountancy or tax practice – for the reasons explained below. Instead I initially created the BookMarkLee 'brand', acted as a mentor and business coach for ambitious accountants and continued with my professional speaking engagements.

But this was all moving me away from the world of tax and that didn't feel right. Then the idea for the Tax Advice Network started to take shape and I eventually decided to focus all of my efforts and activities on this endeavour. Launched at the end of last year, it enables me to play to my strengths, continue with my professional speaking activities and stay in tax. Crucially however it doesn't involve ME in providing tax advice so I'm not competing with the tax adviser members whose services we promote more widely than they would be able to do themselves.

### Summary

Looking back there were three catalysts for me choosing to move away from roles that required me to provide any more tax advice:

- 1 – An increasing degree of frustration with developments in tax legislation; this led to
- 2 – A lack of confidence in my own ability to keep sufficiently on top of current developments; and
- 3 – An awareness of the growing incidence of professional negligence claims and the impact these can have on one's business and personal life.

## **The three catalysts**

### *Frustrations*

First and foremost was my frustration with the tax system. I didn't want to struggle any longer to keep on top of the constant tax changes, many of which seemed capricious, illogical and in danger of bringing our tax law into disrepute. I hated the caveats I felt it necessary to give to clients when I was being paid for my advice. If there were choices to be made I wanted to be able to indicate what I would do if I was the client, but I was finding that increasingly difficult to decide.

There was also the work I had been doing with the ICAEW Tax Faculty. In particular the insights gained into the day to day difficulties faced by smaller practitioners over and above the stories I encountered first hand during my talks around the UK. As a result, the idea of running my own practice, providing high level (or even more day to day) tax advice was not a serious prospect. I felt it would be too lonely and risky for me to advise on tax without having day to day contact with other trusted tax specialists.

### *Tax advice*

A few years ago I was headhunted out of Chiltern to run a small tax consultancy in London. When I looked back on this experience I realised that decent fees were generally derived from:

- Providing expert witness services in cases of professional negligence; and more commonly
- Persuading wealthy taxpayers to switch from their previous accountants to us.

And, with the benefit of hindsight, I was uncomfortable with that second approach. Why? Well it seemed to require me to help wealthy people to pay less tax than they would otherwise do. In effect to identify and actively promote tax avoidance and mitigation schemes, mostly of the type frowned upon by the authorities. I had also found that I had a talent to help people appreciate the full risks of such 'schemes'. So 'good' was I at this that they often decided NOT to proceed. As we all know, there's a limit as to how much you can earn actively helping prospective clients NOT to reduce their tax liabilities!

Beyond this, I realise, with the benefit of hindsight, that I was getting less confident in my ability to keep on top of the constantly changing tax rules. As a partner or director I was relying more and more on managers and junior staff. I think I felt that my roles required me to appear more familiar with the detail than was in fact the case. I could sense the day coming when I might be perceived as being too full of, what we might politely call, 'bovine manure'. I've never admired that quality in others.

### *Expert witness work*

My work as an expert witness had been in the area of professional negligence claims against accountants. I had seen at first hand how easy it is for well intentioned accountants to fall into the traps that lead to such claims. Despite their good intentions, they may lose out if they are shown to have failed to act in the way expected of a reasonably competent accountant.

No one has ever suggested such failings in my work nor is there any reason for me to suspect that any such claims will arise in the future. But still I was concerned. I'd seen how easy it was to try too hard to help a client, to try to cover up one's limited knowledge, to miss that crucial little detail that makes all the difference and to take on work that ought really to be passed on to a specialist. I didn't want to be that accountant.

## **Frustrations**

These are really the focus of this article and I'm sure that my frustrations were a direct consequence of three key developments in our tax system.

- 1 - The ever increasing complexity of our tax system that causes inequalities and inconsistencies.
- 2 – The 'doublespeak' of politicians and civil servants as regards our tax system
- 3 – The prospect of increased powers for HMRC without adequate safeguards for taxpayers.

### **Complexity**

I had reached the limit as to the number of times I could explain to clients that:

- despite being law abiding citizens and in principle deserving of a widely available tax relief, their circumstances took them just outside the qualification criteria;
- there are apparently arbitrary distinctions in the tax code and inconsistencies in HMRC practice;
- there is a continued absence of tax rules to reflect the new working practices of the 21<sup>st</sup> century;
- we cannot appeal HMRC's refusal to apply a concession or statement of practice (as we are 'taxed by legislation, and often only untaxed by concession');
- tax credit claims can only be backdated by 3 months. Thus if you unexpectedly make a loss in your business you can't claim the tax credits to which you would have been entitled if you had wasted your time and made a claim (for no credits) at the start of the year, just in case you make a loss;
- there are different rules for computing income for income tax, NICs and tax credit purposes;
- bizarre arguments and distinctions are highlighted in tax cases – albeit I can sympathise with HMRC to a degree when it is evident that 'clever tax advisers' have encouraged their clients to 'push the envelope';
- we cannot rely on a consistent application of the principles set out in ESC A19 (writing off underpayments of tax due to Revenue error);
- entitlement to claim the small companies rate of corporation tax, is affected by the associated company rules as they apply for various family companies, even if there is no substantial trading interdependence as between them;
- the unrelenting pace of new tax legislation is extending our tax code such that it is possibly now the longest in the world.

Such a list could go on and on. I still sit on various technical committees and chair the ICAEW Personal Tax and Finance Committee so I continue to hear and read about such matters. I enjoy making what I hope is a worthwhile contribution in this regard. My profession has been good to me. I'm happy to put time and effort back. But I still find myself thinking 'Thank goodness I don't have to deal with such things in real life anymore'.

Sadly there appears to be no genuine effort to ensure that taxpayers are only liable for a fair amount of tax on their income and gains. Of course I understand the need for strict time limits and deadlines but the principle of 'equitable liability' should be more widely available and applicable than is currently permitted.

### **Doublespeak**

I resent the suggestion sometimes offered by HMRC that the complexities of which I complain are a response to 'clever accountants' thinking up ruses. No. The complexities that were frustrating me were those that affect typical clients and taxpayers who are willing to pay the 'right amount' of tax but get caught out because of what I consider to be unjustifiable complexities and complications, such as those listed above.

Recent examples of the issues that are indicative of the sort of frustrations I encountered include:

- the debacle surrounding the 10% starting rate (introduced with a fanfare then removed despite no change in the underlying reason for its introduction – actually it's still with us in part!);
- the conflation of two separate concepts, 'tax avoidance' and 'tax evasion', by Ministers and HMRC, leading to confusion and lack of respect for the distinction;
- the removal of any holding or waiting period before qualifying for the lowest rate of CGT and the absence of any policy reason for REDUCING the main rate of CGT from 40% to 18%; it is now more tax effective to make short-term speculative gains than to work hard;
- the partial backtracking following the abolition of Business Asset Taper Relief that gave us Entrepreneur's relief;

- the reduction from 6 years to 4 years for making claims – whilst HMRC will still have 6 years (or more) to make discovery assessments;
- the sudden tax changes to the residence and domicile rules with no apparent regard for the consultation process previously kicked into the long grass, and all the consequential backtracking;
- the introduction of a £25,000 'income disregard' figure for tax credits as the underlying system is not fit for purpose but no one is allowed to admit this;
- the way the Arctic System case was handled. On the one hand HMRC refused to accept it was a test case and thus not deserving of public funding. On the other hand, immediately after the House of Lords found in favour of the taxpayer the Government announced consequential tax changes. Except that the changes were to rules that were unaffected by the outcome of the case;
- the failed attempt to increase tax on typical family companies. I have no real hope that we will get a more workable replacement for the 'income shifting' rules next year although I'm aware that the ICAEW Tax Faculty is leading a campaign on that score.

Again, I'm sure there are plenty of other examples. Those were all off the top of my head. As implied earlier in this article I am no fan of what some might call 'artificial' tax avoidance schemes – those that are within the letter of the law but that probably run contrary to the intention of the law. There's an element of 'doublespeak' here too. By removing myself from roles that require me to provide tax advice I can avoid any continuing struggle here. Is it sacrilege to admit in this context that I have a degree of sympathy for some of the views expressed so forcibly by tax justice campaigner, Richard Murphy?

### **Increased powers**

Following the merger of the Inland Revenue and HM Customs & Excise, it was only a matter of time before the powers of the new HMRC would need to be rationalised and brought into line. Like most commentators I always assumed this would mean more powers rather than less. The consultation documents and discussions of which I am aware suggest an awareness of the need for balance as between powers for HMRC and the rights of taxpayers.

Equally, despite a degree of sympathy for HMRC's need to be able to counter tax evasion (as distinct from tax avoidance), I have no confidence that the balance will be enshrined in law. And whilst those at the top of HMRC might intend that more extreme powers will only be used in exceptional circumstances, I fear that in time any such safeguards will be forgotten and of no value.

I should stress that I have met many people at the top of HMRC and have huge respect for most of them. When permitted to do so, HMRC are far better at effective consultations these days than in the past. Sadly however it often seems that they (and therefore we) are just going through the motions, especially when deadlines are too short, changes are introduced within days or multiple issues overlap. This is SO frustrating but, within the professional bodies we keep trying, even though it often feels like we're bashing our heads against a brick wall.

I suspect that all too often those at the top of HMRC are stuck in the middle between the Treasury and the more day to day face of HMRC. Senior HMRC officials have to do as they are told whilst also struggling with reduced staff numbers. And of course we are all aware that HMRC pronouncements of safeguards for taxpayers are unreliable as it is front line and specialist staff who decide what actually happens in practice.

I was interested to note the promise of a new HMRC charter and the drafts recently published. Of course this too will not be enshrined in legislation. Thus we will all be subject to strict legal obligations but protected only by little more than a non-statutory 'charter'.

### **Conclusion**

Despite my evident frustrations, the continued 'doublespeak' and the prospect of increased unbalanced powers for HMRC, I remain committed to my chosen profession. I remain involved in Tax Faculty (and to a lesser degree CIOT) activities although I prefer to focus more on those that involve the provision of guidance and support to members as compared

with the representational work. I can choose which non-exec and related activities to pursue in addition to running my Tax Advice Network and my public speaking roles. I consider myself very lucky. Not everyone is in a position to choose to review their career and take a new path.

Are my fears and frustrations shared by other tax practitioners? Are others looking for a way out of the profession (or would they but for financial concerns)? I'm sure the editor would love to know.

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