A lifetime in tax disputes and investigations

Everyone enjoys a nostalgic look at “the good old days” - perhaps rose-tinted spectacles but in 35 years of working in tax, specialising in investigation and dispute work, I have to say that the past contained a lot a good things.

I have experienced my fair share of oddballs and difficult clients over the years, including miscreant celebrities, professionals (including chartered accountants) and a judge. Most of them, whether they acted deliberately or simply just got it wrong, genuinely wanted to be navigated back to full compliance. Some needed more persuasion including one who claimed his English was poor despite regularly appearing on UK TV and the client who denied being the person in question and physically ran away from HMRC. On the other side of the fence I have encountered many knowledgeable tax inspectors whom I respect greatly, but equally there have been bullies and those who lied, became entrenched in their view or ignored the facts, including one who openly stated that a client’s refusal [on my advice] to attend a meeting was evidence of fraud and a guilty mindset. Goodies and baddies on both sides.

So why do I reminisce about the old days? I’ve been around long enough to remember pre-self-assessment. In those days, the word “enquiry” was not used at all; it was an “investigation”, sometimes a “back duty” one, words which had gravitas and sounded scary to both the taxpayers and their non-specialist advisers. Self-assessment also brought the concept of random enquiries, which immediately softened their impact with many accountants – entirely wrongly - telling their clients not to worry, the enquiry is probably random rather than HMRC having a particular problem.

Even fraud enquiries were watered down, being renamed as the “civil” investigation of fraud at one point, again far less scary from the outset. In the old days, HMRC’s Special Compliance Office was well known as the super-serious, experienced and elite investigators and any case opened under COP 9 or Hansard meant there was a very strong likelihood that HMRC had done its homework and knew of the client’s fraudulent actions. It was much easier to metaphorically pin the client against the wall to get the message over that HMRC knew something, had already considered criminal prosecution, but was giving him the chance to come clean with a full disclosure in return for not being prosecuted, which was clearly the best course to take. Once the cases became “civil”, and HMRC’s homework was not so good with much flimsier cases being chosen in my experience, that became much harder. Nowadays the statistics prove that HMRC’s activity in this area has dwindled enormously.

The worst development in my time in this arena is, in my view, HMRC’s Litigation and Settlements Strategy (LSS). I am not advocating for any special deals or negotiated settlements that do not take account of all the tax due, but the LSS is such a straitjacket that common sense has left the building. The LSS has also taken away an awful lot of discretion and commercial judgement that sensible, seasoned inspectors previously exhibited; often, a grown-up conversation could be had and the case settled but that is now far less feasible because of the LSS. I expect many loan charge cases could have been settled years ago using such common sense without the need for Ray McCann’s 2025 report on the topic, albeit an excellent piece of work, and the resulting requirement for yet more primary (Finance Act) and secondary (Statutory Instrument) legislation.

On that front, I think it beggars belief that HMRC has not yet widened that settlement opportunity to cover all similar tax schemes. Many such arrangements are identical in substance but some used the word “loan”, even though the monies were clearly never loans, hence they qualify for the settlement scheme, and others used different language so don’t qualify. Thousands of cases could be settled and hundreds of millions of pounds collected but, unlike the old days, it seems HMRC’s commercial rationale and discretion is so absent at policy level that more years of protracted and costly litigation is preferred. In fact, a disclosure or settlement facility for <u>all</u> taxpayers that gives an opportunity to settle on even mildly beneficial

terms (such as the LDF that ended a decade ago) would quickly yield a huge amount for the Government and clear the decks of an awful lot of cases that will otherwise keep running for many years, some of which are already 20 years old.

The sheer complexity of the investigation legislation nowadays is also something that is not better than the good old days. In the past, before self-assessment, HMRC opened investigations based on identified risks or actual knowledge of errors and taxpayers and their clients engaged with those projects. HMRC used information powers within Taxes Management Act (TMA) if necessary. Nowadays, the interaction between the information powers in Schedule 36, Finance Act 2008 and the enquiry or discovery rules in TMA is incredibly complex and nuanced. In fact, Schedule 36 on its own is complex with HMRC and non-specialist practitioners alike constantly making errors. I have lost count of the times that I have had to provide a detailed technical analysis – to practitioners and HMRC alike - demonstrating that Schedule 36 does not allow HMRC free reign to ask for anything and everything or to explain the built-in safeguards and links to discovery powers. Schedule 36 then has further complications as, for different taxes there are different rules and links to Acts other than TMA for different types of HMRC challenge, for example on ATED matters.

Penalties is another bugbear. Penalty rules used to be relatively simple, start at 100% and get amounts knocked off for matters such as co-operation and the level of seriousness of the offence. Then we got the wholesale changes in 2007 which heralded new words such as careless, deliberate, prompted and unprompted. That new regime was very different but also absolutely fine to start with. HMRC has, however, bolted on so many add-ons over the years that the rules can be very difficult to navigate especially when intertwined with other penalties such as for failure to notify chargeability introduced a year later, a 10% uplift (not supported by legislation) for taking too long to disclose an error, different penalty rates for overseas matters, and separate huge penalties added in 2017's 2nd Finance Act for failing to correct offshore matters by a given date. So much les messy when I was young!

Nowadays we also have to do so much non-tax training that didn't exist at all years ago, and the courses seem to get meatier every year. Everything from training on anti-money laundering, ethics, DEI, cyber security and AI – all laudable but many multiples of hours spent training compared to the olden days and I start to wonder how we find time for client work! I think that AI has a big part to play in tax advisory in the future but wonder how much it will rapidly change the shape of our client interactions. I have already had a client refer to Chat GPT (which tried very hard to give him the answer he wanted to see but it was technically very incorrect) as his "trusted adviser" - not sure what that makes me but it illustrates the changing dynamic and potential for less human interaction, or more fractious human interaction, which I always enjoyed in the past.

Finally, don't get me started on the halcyon days of paper files, face to face meetings, correspondence by post meaning you had time to draw breath before responding and time to turn to other projects before having to deal with a reply, and e-mails requiring rapid attention or, worst of all, instant messaging asking "have you got 5 minutes", which really means "can you focus on me immediately I want to discuss something difficult".

Still, I am excited to be retiring safe in the knowledge that I leave a hugely capable team at Crowe led by Hayley Ives who is young enough not to crave the olden days and has made my life easier every day over the almost 20 years I have worked with her from school leaver to partner. I am privileged to have worked with that team for a long time and very pleased that Hayley will lead them into the next chapter.