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John Brinsmead-Stockham KC



John undertakes a wide variety of advisory and litigation work in all areas of tax law. He has advised on and litigated matters ranging from inheritance tax and SDLT planning to major corporation tax and VAT disputes between multi-national companies and HMRC. In addition to his work in UK tax law, he has also advised as to the law of British Overseas Territories.

John's "Notable Cases" section (see tab below) provides a good cross-section of his areas of practice. However, he has also advised in respect of a much wider range of matters that have not led to litigation, an overview of which is set out in the "Practice Areas" section (see tab below).

Appointed King's Counsel - 2023

Tax Junior of the Year (2020) - Legal 500.

Tax Junior of the Year (2020) - Chambers and Partners.

Attorney General's Panel of Counsel - C Panel (2014), B Panel, (2019), A Panel (2021).

John is a CEDR qualified mediator and also has experience of being instructed to act as an expert witness as to the content of UK tax law in proceedings in the US.

Background

Corporate taxation - John has significant experience in advising on a wide range of areas including: all aspects of group relief; the substantial shareholding exemption; R&D allowances; taxation of dividends; capital allowances; the loan relationships codes and the taxation of derivatives.

International taxation - John has an extensive practise in matters concerning international taxation and has advised and/or litigated questions concerning: residence (both individual and corporate); the classification of foreign entities; anti-arbitrage provisions; transfer pricing; diverted profit tax; pensions taxation; and non-discrimination articles and anti-abuse provisions in UK treaties. In addition, John has advised on a number of occasions concerning the law of British Overseas Territories.

Personal taxation - John's practice has included most contentious aspects of individual taxation - from the taxation of trades and professions to capital gains tax, inheritance tax and SDLT disputes. John has broad experience in advising and litigating questions concerning the mechanics/procedure for assessment as well as advance payment notices (APNs) and follower notices. He has also advised on more specialist areas including disguised investment management fees (DIMF), carried interest and the taxation of fees paid to whistle-blowers in the US.

Oil taxation - John has advised and litigated in relation to petroleum revenue tax and the corporation tax ring fence, as well as in relation to capital allowances in the oil sector. His first significant piece of litigation involved securing the seafarers' earnings deduction for the crews of a number of semi-submersible vessels.

VAT and indirect taxation - John has advised extensively on VAT with recent work focusing on

questions of: single/multiple supply; the medical and financial services exemptions; zero-rating; VAT on property; claims to deduct input tax; the UK vouchers regime; TOMS; and the VAT treatment of situations involving multiple parties. John also has significant experience of advising on and litigating in customs disputes, including questions of classification and valuation.

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Legal Information

John Brinsmead-Stockham has professional liability insurance provided by the Bar Mutual Indemnity Fund Limited (90 Fenchurch Street, London EC3M 4ST) on a world-wide basis and subject to the terms of cover: see www.barmutual.co.uk

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Notable Cases

Court of Justice of the EU

- ***Marcandi Ltd v HMRC* [2018] EUECJ C-544/16 (CJEU)** - VAT treatment of credits used for online auction.

Supreme Court

- ***Anson v HMRC* [2015] UKSC 44 (SC)** - treatment of a Delaware LLC for the purposes of double taxation relief - entity classification (appeal allowed by the Supreme Court)

- *HMRC v Tooth* [2021] UKSC 17 (SC) - validity of discovery assessment - meaning of "deliberately" in Taxes Management Act 1970.

Court of Appeal

- *London Luton Hotel BPRA Property Fund LLP v HMRC* [2023] EWCA Civ 362 - business premises renovation allowance - structured investment scheme.

- *HMRC v Denning (and others)* [2022] EWCA Civ 909 - valuation of leasehold estates - trade related properties - goodwill

- *Eynsham Cricket Club v HMRC* [2021] EWCA Civ 225 - whether Community Amateur Sports Club

can be a "charity" for tax purposes.

- ***HMRC v Tooth* [2019] EWCA Civ 826 (CA)** - validity of discovery assessment - meaning of "deliberately" in Taxes Management Act 1970.

- ***Hasbro European Trading BV v HMRC* [2018] EWCA Civ 1221 (CA)** - customs duty classification - relevance of Explanatory Notes to the Harmonised System.

- ***Reed Employment Ltd v HMRC* [2014] STC 1026 (CA)** - recovery of overpaid VAT; EU law principles of equal treatment, fiscal neutrality and effectiveness.

- ***HMRC v FCE Bank plc* [2013] STC 14 (CA)** - corporation tax group relief; non-discrimination under UK-US Double Tax Treaty.

- ***HMRC v Lansdowne Partners Limited Partnership* [2012] STC 544 (CA)** - income tax treatment of rebate payments to hedge fund partners and validity of discovery assessments.

High Court

- *HMRC v IGE USA Investments Ltd* [2020] EWHC 2121 (Ch) - HMRC claim seeking to set aside tax settlement agreement.

- ***Wallace v HMRC [2017]* EWHC 3115 (Ch)**- jurisdiction of High Court to hear claim by taxpayer to recover overpaid tax in restitution.

Upper Tribunal (Tax and Chancery)

- *HMRC v Perenco Ltd* [2023] UKUT 169 (TCC) - petroleum revenue tax - whether expenditure met "directly or indirectly" by another person.

- *GE Financial Investments* [2023] UKUT 146 (TCC) - double taxation convention - corporate residence article.

- *Exclusive Promotions Ltd v HMRC* [2023] UKUT 269 (TCC) - accelerated payment notices - penalties for failure to pay - reasonable excuse

- *M Group Holdings Ltd v HMRC* [2023] UKUT 213 (TCC) - substantial shareholding exemption - meaning of CGT group - deemed ownership provision.

- Upper Tribunal decision on Petroleum Revenue Tax in favour of taxpayer - 11 New Square

- Upper Tribunal decision in favour of General Electric - 11 New Square

- *HMRC v Anna Cook* [2021] UKUT 15 (TCC) - VAT - private tuition exemption - Ceroc dancing.

- *Eynsham Cricket Club v HMRC* [2019] UKUT 0286 - whether Community Amateur Sports Club can qualify as a "charity" for tax purposes within FA 2010 Schedule 6.

- ***Eynsham Cricket Club v HMRC* [2019] UKUT 47 (UT)** - effect of HMRC concession and whether HMRC entitled to raise new argument on appeal to UT.

- ***Adetona v HMRC* [2016] UKUT** - tax credits - void decisions by HMRC

- ***Moorthy v HMRC* [2016] UKUT 13 (UT)**- employment income - settlement of unfair dismissal and discrimination claims - injury to feelings

- ***Jordan v HMRC [2015]* UKUT 218 (UT)** - information notices - jurisdiction of UT to hear appeal against decision of FTT.

- ***Bupa Insurance Ltd v HMRC* [2014] UKUT 262 (UT)** - consortium relief; "beneficial entitlement to a dividend"

First-tier Tribunal (Tax)

- *Lyons v HMRC* [2023] UKFTT 294 (TC) - UK individual residence test (pre-FA 2013)

- *Burlington Loan Management DAC v HMRC* [2022] UKFTT 290 (TC) - anti-abuse provision - interest article - UK-Ireland double taxation convention

- *Batten v HMRC* [2022] UKFTT 199 (TC) - UK individual residence test (pre-FA 2013)

- *Premier Family Martial Arts v HMRC* [2020] UKFTT 1 (TC) - VAT - private tuition exemption

- *Charnley v HMRC* [2019] UKFTT 650 (TC) - inheritance tax - agricultural property relief - meaning of "agriculture" - business property relief - whether business wholly or mainly consisted of holding investments

- *Briggs v HMRC* [2019] UKFTT 338 - capital gains tax and earn-out rights; effect of deed of variation

- ***London Luton Hotel BPRA Property Fund LLP v HMRC* [2019] UKFTT 212 (FTT)** - business premises renovation allowance claim by investment fund.

- *Williams v HMRC* [2018] UKFTT 136 - inheritance tax - whether rental obligations under lease taken into account in valuing business for purposes of business property relief.

- *Dieno George v HMRC* [2018] UKFTT 509 (FTT) - availability of entrepreneurs' relief in the context of a specifically enforceable contract for the grant of voting rights.

- ***Eynsham Cricket Club v HMRC* [2017] UKFTT 611 (TC)** - whether local cricket club entitled to zero-rating of supplies received in the course of rebuilding its pavilion - whether Community Amateur Sports Club can qualify as a "charity" for tax purposes.

- ***Marathon Oil UK LLC v HMRC* [2017] UKFTT 822 (FTT)** - capital allowances - "special allowance" for expenditure on decommissioning platforms in the North Sea.

- ***Club 21 (UK) Ltd v HMRC* [2014] UKFTT 1113 (FTT)** - customs duty - valuation - buying commission

- ***Hargrove v HMRC* [2014] UKFTT 921 (FTT)** - pensions lifetime allowance charge - late claim - "reasonable excuse"

- ***Reed Employment Ltd v HMRC* [2011] SFTD 720 (FTT)** - VAT treatment of employment agencies and recovery of overpaid VAT.

- ***Spowage and others v HMRC* [2009] SFTD 393 (Special Commissioners)** - income tax; availability of Seafarers' Earnings Deduction.