One minute with...

Laura Charkin

Goodwin

Laura Charkin is a tax partner at Goodwin Procter (UK) LLP, specialising in fund taxation as part of Goodwin's private funds team. Laura advises fund managers and investors in structuring their funds, executive incentivisation arrangements and investment management platforms. Email: lcharkin@goodwinlaw.com; tel: 020 7447 4848.

What's keeping you busy at work?
At the moment, it is Luxembourg-based fund structures. As a result of Brexit and the barriers this will present to marketing UK-based funds to European investors, 'Europe-facing' fund managers are moving away from using UK law partnerships and so far Luxembourg is the main beneficiary of this change. Working with our Luxembourg team on fund formation, my role has evolved over the last 15 years from being strictly UK tax law focused, to advising on tax principles as they affect fund structures across a broad range of jurisdictions. These days I am probably as likely to be working on a Mauritius-based fund investing into Africa as I am on a pure UK law structure.

Are there any new rules that are causing particular problems?
I am not sure it is perceived as a problem as such, but in the private funds area, the outfall from the OECD's BEPS initiative is certainly being felt. In particular, the new treaty shopping rules and increased focus on substance across many European jurisdictions are both leading to fundamental organisational change amongst the bigger fund management groups, with increasing numbers looking to centralise a significantly larger overseas presence in a single jurisdiction, such as Luxembourg. The treaty shopping rules have been problematic for private funds, because their very wide investor base (although generally almost entirely composed of tax exempt entities, such as pension funds) will make it very difficult indeed to pass any test that relies on 100% ownership by treaty residents. Whilst the regulated or 'CIV' fund sector has a more settled position (with 'CIV' funds being specifically included in the OECD's limitation on benefits rule), the 'non-CIV' (including private funds) sector has had to fight harder to establish a workable way forward. The consultation in this area has resulted in a discussion draft of 'non-CIV' examples being published by the OECD. The discussion draft sets out three example situations intended to illustrate the application of the principal purpose test to common types of arrangements entered into by 'non-CIV' funds. These examples show situations that the OECD consider do not raise concerns related to treaty shopping or the inappropriate granting of treaty relief to companies owned by 'non-CIV' funds. Of the two most relevant of these examples, one broadly looks at whether the treaty status of ultimate investors is equivalent to that of the company which is seeking treaty relief. The other looks at the role that the company seeking treaty relief has in the structure (including the extent to which the directors of that entity are qualified to make investment decisions) and the context in which the investment is made. We are therefore likely to see much more investment decision making activity taking place in these companies, although that will always be a delicate balancing act with the regulatory position.

> The treaty shopping rules have been problematic for private funds

If you could make one change to a tax law or practice, what would it be?
I would introduce US-style 'check the box' elections in the UK (or even globally, if I am being given 'Global Tax Tsar' powers), to enable people looking for certainty to elect whether to treat an entity as transparent or opaque for UK direct tax purposes. That would be as an overlay to the existing 'default' positions following the *Memec* [1998] STC 754 and *Anson* [2015] UKSC 44 cases. It would save an awful lot of time and trouble both for taxpayers and HMRC and provide much needed certainty in this area.

You might not know this about me…
In my spare time, I play the viola in an orchestra, Bloomsbury Chamber Orchestra, which is neither based in Bloomsbury nor a true chamber orchestra, but is lovely bunch of talented musicians, so please do look out for our concerts. ■

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What's ahead

September

22 **Autumn Budget:** Final opportunity for submitting representations (see bit.ly/1o2xbNl).
Compliance: PAYE/National Insurance/student loan/construction industry scheme payments due if paid online.
Consultation: Comments close on HMT consultation which proposes a new national investment fund to help young growing businesses (see bit.ly/2hjIiJC).

25 **Consultation:** Comments close on HMRC draft guidance on changes to the treatment of carried-forward corporation tax losses from 1 April 2017 (see bit.ly/2f484B6); public feedback opportunity closes on the OECD 'platform for collaboration on tax' on a draft toolkit designed to help developing countries tackle the complexities of taxing 'offshore indirect transfers' of assets (see bit.ly/2vgnbxN).
Regulations: The Tax Credits (Exercise of Functions in relation to Northern Ireland and Notices for Recovery of Tax Credit Overpayments) Order, SI 2017/781 comes into force.

29 **EU:** Tallinn digital summit on plans for digital innovation in Europe.

30 **Legislation:** The Criminal Finances Act 2017 (Commencement No 1) Regulations, SI 2017/739 bringing into effect corporate offences of failure to prevent facilitation of tax evasion comes into force; The Facilitation of Tax Evasion Offences (Guidance About Prevention) Regulations, SI 2017/876, brings the guidance into operation.
Compliance: Companies House should have received accounts of private companies with 31 December 2016 year end; Companies House should have received accounts of public limited companies with 31 March 2017 year end; HMRC should have received corporation tax self-assessment returns for companies having an accounting period ended 30 September 2016; end of CT61 quarterly return period; Business rates – small business relief claims for 2016/17 should be made to local authority; businesses to reclaim EC VAT chargeable in 2016.

For a 'what's ahead' which looks further ahead, see taxjournal.com (under the 'trackers' tab).

Coming soon in Tax Journal:
- What exactly is a 'reasonable excuse'?
- How ordinary loans become surprise hybrids.