



Taxing Matters

The future of tax law with Andrew Hubbard

Alice

Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alice Kemp and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at www.rpc.co.uk/taxingmatters.

Today we're going to engage in a little bit of crystal ball gazing to try and predict the issues of the future. Here to guide us is Andrew Hubbard. Andrew is the Editor in Chief of Tolley's and Taxation Magazine published by LexisNexis and in fact won the Tax Writer of the Year award in 2006. Andrew didn't originally start in accountancy or indeed taxation, having originally studied music history at university before moving to train as an Inspector of taxes and then moving over to the accountancy profession.

He has worked in a Big 4 environment and now indulges his passion for writing and editing full time. Amongst all of that Andrew has also found time to become a past president of both the Association of Taxation Technicians and the Chartered Institute of Taxation. He also plays the bassoon, the contra-bassoon and conducts; leading me to believe that Andrew has almost superhuman time management skills. Andrew, welcome to Taxing Matters.

Andrew

I'm glad I've convinced you of my time management skills, because I'd almost forgotten that we were doing this recording! Anyhow it is very nice to be speaking to you.

Yes, music has always been a fundamental part of my career, but as somebody once said you can have music as a hobby and tax as a profession; the other way round would be very weird indeed.

Alice

Well now you're conducting a slightly different tune for your role as Editor.

Andrew

Absolutely and no words about tax fiddles please.

Alice

So, in your role as Editor in Chief of these two cutting edge and authoritative publications on tax, you do get to see all of the trends and developments of the law as they emerge. So, putting on your crystal ball gazing outfit and accoutrement and gazing into that crystal ball, what kinds of issues are you seeing as the next big developments to come out in tax law and tax disputes?

Andrew

With that introduction I'm glad we're not doing this on video.

Yeah, it gives me a really interesting insight as to what is going on in the tax world, what people are concerned about and where the issues are. I think one of the fundamental issues that we have is as we move into a tax system which is more or less completely run in a digital way rather than a paper way, what is the right way of constructing a tax administration system, in terms of what the obligations of the taxpayers are, what the obligations to the state are, where that balance sits and who should do what?

Alice

So, what do you see as the main drawbacks or errors that are being found in the current system? What's the problem that we need to address?

Andrew

I think errors is probably overstating it. I think what we've got is a system that goes a long way back in history and finds it difficult to evolve into the modern world, let alone the world that we might have in a few years' time.

In preparation for this podcast, when I reminded myself that I was doing it, I just got a few things off the shelf; I looked back, I've got a copy of the 1842 Taxes Act, which is where really modern income tax starts and the world that you see in that Act is not a million miles away from where the Tax Acts now stand in terms of

obligations of taxpayers to notify the Revenue for the Revenue to say you need a return, to make a return enquiries into a return. And that formal framework, really, still dominates. And the question is, is that a framework that is the right framework in an environment where there is much more working in real time where things are done electronically where records are kept electronically? And I think the tax system faces a real challenge in knowing how to deal with those sorts of issues.

Alice **So, if you were in business looking forward to the future what kinds of things would you envisage that the update to the tax system would be able to deal with and what do you think are just outside of the realms of possibility?**

Andrew I think if I were running a business, more than anything else, I would want to know where I stood in real time; what my tax position was, what liabilities I had, when I had to pay it, when I had something resolved, so I know that I could close the file on that as it were or close an electronic file. And we don't yet have a tax system that really operates in real time.

We go back to the idea that you have an annual cycle, at the end of that annual cycle you put together an annual return, that return goes in to the Revenue, the Revenue have time to look at it and they can raise questions, you can answer questions and it goes on and on and on.

And it is redolent of Victorian clerks writing letters ending "Dear Sir", "and I remain your obedient servant".

We have moved on, I was just looking back at the 1842 Act, one of the ways that I noticed a fire return was done in that Act, was by the authorities pinning a Notice to the church door, of a list of people that had to do tax returns.

We've moved a little way from that but still the fundamental idea that you have a tax return which captures a snapshot of information over a year which then is processed and it is then possible, it would I think be interesting to see how far you could go to be doing this in real time. You know, PAYE is done in more or less real time, by and large that works.

We've stuttered along making tax digital. We're regretting there. But if the essence of making tax digital is you are not going to need to do a tax return, and remember this was done as the death of the tax return when it was first announced, then a tax system and a management system based on requirements to return and examination of returns doesn't quite fit and I think there is a tension there as to how that will work. Because if you are providing information to the Revenue in real time, and at the moment the plans are that this is to be done quarterly, what role does an annual return have in that? Is it right that you should have to update the Revenue four times, but still they have a year from the last one to look at things? This is not a criticism of the Revenue, it is just a question that matters evolve.

Similarly at what point do you get certainty? If you're operating in real time, do your rules about certainty depend on tax return deadlines and filing dates and all of those sorts of things? That's a really difficult issue and we were talking earlier, in preparation for this, about some of the issues around discovery, i.e. at what point does somebody's tax affairs become final? And again, in an old-fashioned world of returns and whatever and correspondence and whatever, you can see that it moves slowly and that there is some logic to saying therefore the Revenue need to have time to go back over past years. Is that appropriate in the era that we want to move to in a much more fast moving thing where as far as possible you get certainty earlier?

The Revenue will clearly always need powers to go back and look at things where there is deliberate evasion, and nobody would question that. But aside from that, where should your certainty point land? And I think that's going to be a very big issue for the future.

Alice **What's your personal view of where that line is? Where do you see that certainty point as meeting that right balance?**

Andrew I go back to where I think where most of us thought this lay, say, 20 years ago, which was if you told the Revenue what you'd done and they had for whatever reason not taken any action in respect of that, then after a period of time, a year say, or in some cases a bit longer, that was it.

And what we've got now is this really quite incredibly complicated framework that has grown up around the discovery rules about when can the Revenue go back; when they can't; how soon have they got to go into action after they find something. And the law has developed in a really fascinating way, from a tax geek's

point of view, in all of this. From a taxpayer point of view as to 'can the Revenue look back at this or not' - very difficult to give a straight answer on that.

In my days as an inspector 30 odd years ago, it is frightening to think about it, I was more or less told well look if you're looking at a file and you see that something wasn't done quite right last year, unless it is really serious, just put it down to experience, just get on with it, you keep the thing going.

There's some, if you like, philosophical problems here because at one level people should pay the right amount of tax and if somebody has not paid the right amount of tax for some reason five years ago you could say 'well, it's absolutely right that they should', philosophically also you could say 'well, you have to have closure at some point and you can't have things going indefinitely on'. And I think that that balance point is something that needs to be looked at, in the current environment, but in the future, even more so, because if you are providing much more regular information to the Revenue at what point can they and should they be able to turn around and say "ah but we want to look back at things". Again, I say this isn't criticism of the Revenue; this is just evolution of how the tax system should work.

I think all of us hate the annual cycle of tax returns and having to do them but the idea that you can do something and that, you know, I've done this and that's it and, if I've told the truth, that should be the end of it. Difficult stuff here.

Alice **And what do you think is going to be the level of evolution that is driven by the availability of the digital resources, so the tech companies, what impact should they have and what impact can they have into this whole modernisation process?**

Andrew I think you've got to decide what framework you want and then apply the tech. I think that the Revenue's first iterations of making tax digital were all about the tech, 'it is now possible to do X rather than Y', without necessarily thinking through the broader framework of what the system would look like in that sort of environment. So, they seemed at that stage very much to want to just use that within the existing system.

I think that it's matured since then, and that certainly the latest information we have from the Revenue about their thinking, suggests that they need a broader understanding of how they can use digital means as part of securing a more modern tax system. And I've been saying for a very long time, as have others, you know, some of the people in your firm have made this point very regularly and quite rightly too, that the Taxes Management Act is no longer fit for purpose and I think the Revenue now accept that in a digital system, the whole thing needs looking at. And it's a chance to do this balance between the rights of the individual and the rights of the state.

Alice **So, if you were going to do a mental exercise in the redesigning of this process what would you want to see happening in terms of engaging with every party to get their input into what they need?**

Andrew I think it needs to start with a really clear engagement between taxpayers and their representatives and the Revenue and the government about what is the system they want - what is the balance that they want? Where do those rights and responsibilities lie? How much is it the requirement for taxpayers to do things themselves? How much should it be the requirement for the Revenue to do things? To what extent do the Revenue need to support taxpayers? All of that sort of thing,

And that's sort of quite conceptual but really to think this is where we are leading to. A relationship between the parties where X rather than Y happens, and then to say right, how do you build up rights and responsibilities within that?

There's a big dispute in the Tribunals at the moment about the high-income child benefit judge, remember this is the one that if one of the family members has income over £50,000, there is a tapered withdrawal of child benefit. And very large numbers of people have incurred penalties under that regime because they didn't notify the Revenue. And these were typically people under PAYE who were not filling in tax returns.

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- Andrew** And the question is, did they have a reasonable excuse for not declaring this? And there is one school of thought that says "well, you know, it is the taxpayer's responsibility to keep themselves up to date with tax law and ultimately in a democratic society that is the role of citizen." And there's the other equally strong philosophical debate which says you can't expect people to do that; it is the responsibility of the state to tell them what they need to do. And where does that balance lie? So, is ignorance of the fact that you've got this obligation a reasonable excuse or not? And the Tribunals are divided on that, and that's a big philosophical question, but I don't think that we always debate those sorts of things as we are looking at the way the tax system should be designed and evolve.
- We like getting into the black letter stuff, which is great stuff, but actually thinking back how do we want the relationship to go? Because taxation is one of the fundamental underpinnings of the state, isn't it? And it's fascinating to look at, over the years, where that balance has been struck. If you read the court cases, say, between the wars, the famous Duke of Westminster case and others, the courts, I think, saw their role as protecting the citizen against the state encroaching and if the state didn't have the absolutely clear unambiguous right to tax something, then the balance should fall in favour of the taxpayer. That's obviously shifted enormously, and the courts, at least to some extent, see their role as protecting the state, the apparatus of the state, the revenues of the state, against people trying to buck the system.
- Now, at the extremes, neither of those is right, but where that balancing point rides is, I think, a pretty fundamental issue in how a tax system should operate.
- And again, we don't usually have the opportunity to think in those sorts of terms, but if we were really to say 'what do we want the tax system to be like for the next two generations?' where who knows what change will happen but we will know that in whatever form it will, things will happen much more quickly, what should it be? And I think that that is something that all citizens can be interested in. Citizens won't be interested in the minutiae, and neither should they, but that idea of what that relationship should be I think is a critically important thing. Ultimately, it does form itself into words on the page in the Taxes Management Act, but you've got a long way to go before you get there in my view.
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- Alice** **And how would you envisage that these kind of issues are canvassed with the average business, the average citizen, the average individual. How would someone go about conveying where they expect that particularly sensitive balance point to be?**
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- Andrew** I think you've got a number of possibilities there. I mean clearly there is a fairly well-developed sense of interaction between, say, the professional bodies and the Revenue on these sort of matters; the large firms have regular dialogue, you've got things like the office tax simplification which is doing really, I think, impressive work in trying to canvas broader ranges of opinion.
- But you know, without getting too pompous about this stuff, is this royal commission stuff? Is this people's debate? You know, people talk about citizen's assemblies, and all of that, and I think that, you know, potentially all of those things are worth looking at.
- I've got so far into this broadcast without mentioning the COVID word, but we are clearly going to be in a very different world as we emerge from this, as I obviously hope we do. You know, if you look at the balance between the state and the citizen in what has happened over the last six months, the states has created a much, much bigger role for itself, in some very positive ways as far as taxpayers are concerned, in terms of supporting through the various Coronavirus support mechanisms, but also in the restrictions on our liberties that we have experienced, that haven't been done since the war. And I suspect that, you know, the relationship between the state and the citizen will be quite different for a long time as a result of all of this and tax is a fundamental part of that relationship so, the time is right for those sorts of broad discussions. Whether they will happen, I don't know, but I certainly think that there is a wide need to design the way the tax system operates using as many different people as possible.
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- Alice** **So, do you think that the COVID pandemic has had a significant impact on how the issues that are coming out are going to develop - in absence of that it may have split a different way? Do you see that as also being something that carries through into how the Tribunals will interpret things that are in current law?**
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Andrew	<p>I don't know, I mean I think the Tribunals are going to find it quite difficult, but at some stage, they're going to have to be dealing with regulation and, to some extent, government diktat 'on the hoof', as opposed to well considered statute law and whether they will give those regulations the same weight is anybody's guess. Whether or not they will consider the ignorance of the citizen as part of it, well we've seen in the last few days haven't we, the Prime Minister not being able to articulate quite what the lockdown rules were in, wherever it was, Bolton or whatever. No, I don't blame him for that. In a sense I don't want our Prime Minister to be deeply involved in the minutiae. But, if somebody doesn't know that, could they be penalised for not knowing it? Now that's nothing to do with tax, but it's the same underlying issue isn't it, as to personal responsibility versus state responsibility.</p> <p>I think one thing that will come out of COVID, is a greater confidence in the Revenue that they can handle large projects. You know, you can argue with some of the design aspects of some of the COVID support mechanisms, and some people did fall through the middle, but there seems to be no doubt whatsoever that the Revenue responded very well; that they got the systems up and running and, by and large, they got money to the people that it was designed to get to.</p> <p>I make a habit of when I'm talking to people in business, taxi drivers or when I have a haircut, or something like that, about 'did they get the support' and 'how did they find the system worked' and, actually, very much the view is, actually, it worked well, it wasn't too bureaucratic and they got the money quite quickly. That will give the Revenue a lot more confidence in their ability to actually manage and deliver some of this stuff. And I think it will probably give the citizens, citizenry, if you want to use that term, a little bit more confidence that the Revenue can actually achieve it.</p> <p>So, I think the Revenue feel that they're coming out of this very well and if you look at how other parts of government, you know, the testing and everything has been a real difficulty, and we haven't seen the Revenue being pilloried day after day in the press for not being able to get money to the right people so it has given them confidence, I think, and I think that will come through. And it's interesting the Revenue have cited COVID in a number of situations of saying well had they had better real-time information they would have been able to have developed the policy and target even more people, so they are saying very much that its in everybody's interest for this information to come through in real time. Which I fundamentally agree with; I think that's right, but there are consequences that follow from that as we've been discussing as to how the tax system should actually be organised and operated.</p>
Alice	<p>And how do you think those consequences are also going to flow through to the individuals and the small businesses who may or may not have access to the sources of information that are envisaged for large scale? Do you think there is going to have to, sort of, have a very long introductory lead period or a different kind of split about what is expected?</p>
Andrew	<p>I think that's a really important question. We, as publishers, spend a lot of time providing information for accountants and tax advisors of various hues. In Taxation, we are very much aiming what we write at, if you like, high street tax practitioners, who are dealing on a day-to-day basis with the real issues that small and medium size businesses face.</p> <p>And there's the dilemma, isn't there, in terms of, if you make the tax system too complicated, then the taxpayers have to engage an accountant. But if you make it too simple, does it actually achieve any of the policy objectives that it wanted to? You know, you could devise a very simple tax system, you know, that says if your surname begins with 'H' you pay X pounds and if your surname begins with 'Y' you pay Y pounds. Well that would be interesting to operate, probably people would change their names and that might be a tax avoidance device. But it wouldn't be a fair one. And you'd need a measure of, you know, you need to put some other steps in there.</p> <p>So, I firmly believe that we should have a tax system that small businesses can manage for themselves if they want to, and that it should be aligned with the way that businesses operate. But then, equally, I think that if people want to engage an advisor, they should be allowed to do so and able to do so. And that there are certain things that businesses do, you know, acquisitions or, you know, moving into new premises or whatever where they are going to need advice. So, I think in the long term, if, collectively, we get the approach to digitalisation right, then there will probably be less need for accountants to do basic compliance and return work; I said return because I'm old fashioned but, you know, there won't be a returning quite that way.</p>

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- Andrew** I try and visit as many of the trade exhibitions as I can and it has been very interesting to see over the last five years the number of apps there, the number of cloud based accounting systems that there are, and the ability of businesses to take day to day control of matters in a way that they couldn't have done five, ten years ago. And it's absolutely right that the tax system nets into that and if we have a real time accounting system, we should have a real time tax system. But it needs to be designed to do that - you can't spatchcock an old fashioned system into a new technological age and therein lies many of the challenges that we have been talking about.
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- Alice** **So, using your crystal ball you've predicted a raft of issues, are any of them going to happen?**
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- Andrew** Good question. I doubt that if the Chancellor is listening and taking notes we'll see it all in the budget, whenever it will be.
- But I think the direction of travel is well set and I think that, in some form or another, this question of real time versus historic and then the roles of the state versus the taxpayer, I think those will inform tax policy. I think its going to take some time, but I think we will need a new Taxes Management Act and I hope it starts with a blank piece of paper and building on what we want, rather than trying to amend acts we've got.
- So, I wouldn't expect it to be next year, but I think that, you know, within five years, we may well have moved quite significantly in this sort of direction. I certainly hope so.
- Perhaps my retirement from Taxation Magazine whenever that happens will coincide with the review of the new taxes management act, let's hope so.
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- Alice** Fantastic.
- Thank you very much Andrew for taking us through your visions for future development of the law.
- As ever, a big thank you goes to our miracle working producer Mary Mitchell; Josh McDonald who does all the work pulling this together; and our music is from musical genius Andrew Waterson.
- And of course, a big thank you to all of our listeners for joining us.
- Remember, Andrew, from Taxation Magazine, can be found on Taxation Magazine's website at www.taxation.co.uk.
- A full transcript of this episode together with our references can be found on our website at www.rpc.co.uk/taxingmatters and if you have any questions for me, or for Andrew, or any topics you'd like us to cover in a future episode, please do email us on taxingmatters@rpc.co.uk. We'd love to hear from you.
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