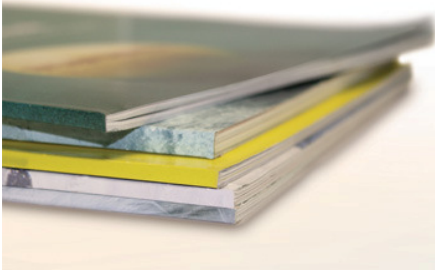


Taxing Times Ahead – A Round up of Appleby’s Latest Breakfast Seminar

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BY NAOMI RIVE

Appleby’s latest breakfast seminar entitled “Taxing Times: Implications and Opportunities for Jersey” was held on 27 April at The Royal Yacht Hotel, St Helier, Jersey. The seminar was chaired by Fraser Robertson and included a panel of speakers from Appleby’s Private Client & Trusts group including Michael Stanford Tuck - Local Group Head, London, Naomi Rive – Local Group Head and Partner, and Advocate Marc Guillaume from Jersey. The seminar attracted over 80 attendees from local trust companies and financial institutions who settled down to an hour of crystal ball gazing about the taxing times ahead.

Sinking Ship?

Michael kicked off his presentation *‘Leaving the Sinking Ship’* with a swift review of the ever changing UK fiscal regime, before moving on to consider how these changes and the outcome of the UK General Election may impact on the status of the UK as a low tax centre.

He predicted that the new 50% tax rate may well be the final straw for some of the UK’s hard working professionals who we would regrettably see uproot and move to jurisdictions such as Switzerland. In contrast, Michael felt that the UK still had much to offer high net worth individuals, who in his experience had either not been in the UK for a

sufficient period to be effected by the introduction of the £30,000 remittance charge or who, through careful planning, were able to work around it.

His presentation was wound up by considering the potential ramifications for the private client industry of a *‘tax and spend’* labour government versus a *‘cut and cut’* conservative government. He concluded that regardless of which party won the election there were bound to be hard times ahead but that, true to form, the British people would persevere.

Opportunities

‘Island of Opportunity’ was the title of Marc’s presentation, which focused on changes to the tax landscape in the field of personal income tax and, crucially, reliefs and allowances associated with an individual’s tax situation. Focusing on what opportunities these changes might open up for offshore service providers, Marc delved into a consideration of three potential areas of activity – the relocation of businesses, the use of employee benefit trusts and the use of unapproved pension arrangements.

Marc’s key message was that whilst opportunities certainly existed, there were a number of issues for professional trustees based in Jersey to consider before deciding where to involve themselves in these fields of activity. Issues identified included: the

question of control of the offshore business; the requirement to obtain regulatory consents; and the all important need to ensure a full understanding of the potential client's business.

With regard to Employee Benefit Trusts and Employer Funded Retirement Benefit Trusts ("EFuRB's"), Marc discussed the various tax benefits to employees and the key points for trustees to consider, such as the importance with regard to EFuRB's of monitoring employer contributions and reining in exuberant investment recommendations. Finally, Marc cautioned that as with all tax efficiency strategies, we could expect HMRC to look into and respond firmly to any perceived tax leakage.

Hastings Bass & HMRC

The seminar was concluded by reviewing some recent decisions of the Jersey, Guernsey and English Courts in relation to Hastings Bass applications and applications to set aside trusts on the grounds of mistake. '*Time to batten down the hatches*', as my presentation was aptly named, highlighted the increasing role of HMRC in applications by trustees to set aside decisions that generated unintended tax consequences. Whilst the Jersey courts have to date maintained the stance that HMRC has no right to intervene in Hastings Bass applications, the recent decision in the Guernsey case of **Gresh v. RBC Trust Company**, in which HMRC successfully

applied for leave to intervene suggests that the landscape may be changing.

Whilst trustees may be able to live with this development, the obvious concern is how long will it be before other foreign revenue authorities start applying for leave to intervene in Hastings Bass applications. Also, whether beneficiaries, fearing the involvement of HMRC, will, in the future, avoid Hastings Bass applications and look instead to trustees and their professional advisers to compensate them for any losses suffered.

The recent decision in the English case of **Pitt v. Hott** was also noteworthy for extending the Hastings Bass principle to fiduciaries other than trustees when exercising their discretion. Also, for confirming that, although the time may well be ripe for the Court of Appeal to consider the rule in Hastings Bass, at present it was contrary to the current authorities to say that Hastings Bass relief should not be available for "*tax planning gone wrong*".

I am pleased to say that the Taxing Times Breakfast Seminar received very positive feedback and spurred on by this, Appleby's contentious and non-contentious trust team are already giving consideration to the topic for their autumn seminar.

Author: NAOMI RIVE
Partner
nrive@applebyglobal.com

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