

## One minute with...

### Kelly Stricklin-Coutinho

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Kelly Stricklin-Coutinho is a barrister at 39 Essex Chambers, where her practice centres around tax disputes and tax advisory work on domestic, EU and international tax law issues. She is a visiting lecturer at King's College London, where she convenes the module on EU tax law. Email: ksc@39essex.com; tel: 020 7634 9085.

#### What are you working on at the moment?

A range of different types of disputes: I am working on an investor state arbitration with tax, international and EU law issues, a couple of CJEU references, tax litigation in the High Court and tax tribunals on a number of indirect taxes, group litigation and tax judicial review, as well as a lot of non-tax related judicial review.

I am also working on a lot of state aid issues, some tax related and many not. Clients include high net worths, FTSE 100s, large and small corporates and government.

I'm on my feet a lot and have a broad practice, which includes general judicial review and broad state aid issues. This informs my advice when considering those issues in relation to tax.

#### The EC fiscal state aid rulings will no doubt take years to resolve. What do you think will be the ultimate result?

The current disputes will rumble on, and many of the points taken by the European Commission will be hotly disputed. The more important outcome of those rulings, however, is that fiscal state aid compliance can no longer be ignored, and will become a feature of a much wider range of topics than those currently under investigation. In the same way that other industries routinely consider state aid compliance as part of their risk analysis for transactions and other compliance issues, so too will the tax industry.

#### What's your view on the EC's recently proposed method of dispute resolution for double tax disputes.

This is an important proposal, and it has been a long time coming. I didn't expect to see the idea resurface ten years after I first researched it.

The proposal deals with double taxation which may not be resolved by using non-discrimination principles. It therefore tackles a real, practical issue for taxpayers. Done properly, this proposal could be actually useful for those with otherwise unresolved double tax issues.

There are many advantages to the procedure, not least that it seeks to

improve upon the inefficiencies and enforceability issues arising under the Arbitration Convention. It will be interesting, however, to see member states' reaction to how the proposed procedure will work with domestic systems already in place.

Could the European Commission have been bolder with its proposal, particularly in the current climate? Perhaps. But the Commission is in the process of proposing major reform, and this proposal is a first step in this direction.

#### Apart from BEPS, what other international tax issues will be important in the next few years?

In commercial disputes between investors and a country they have invested in, tax is an increasingly important feature. The investment treaties which govern those relationships might include tax, in which case countries may find themselves in dispute over their actions and whether, for example, a tax might function to expropriate an investor's assets. The cases involving taxes already arbitrated have involved substantial awards in favour of the taxpayer. These issues may become all the more important in the UK with the outcome of the EU referendum.

#### Aside from your immediate colleagues, who in tax do you most admire?

I had the privilege of working for Paul Farmer twice, once at the European Commission and once in private practice. His many admirable qualities include being one of the best EU lawyers around, having impeccable judgment and being a joy to work with.

I also worked with Simon Whitehead. He is admirable not just for his fierce intellect and honesty, but also for his versatility. You probably know him for the tax GLOs, but I previously worked with him on a diverse range of matters. His practice now includes a lot of fiscal state aid, other EU cases on issues like excise and dividends elsewhere in Europe, and enquiries including high net worth avoidance.

I couldn't have hoped for better mentors in my formative years. ■

## What's ahead

### November

- 23 Parliament:** Autumn Statement.
- 23 MAP peer review:** Comments close on the first batch of reviews on the mutual agreement procedure (MAP) peer review and monitoring process under the BEPS action plan Action 14 (see [www.bit.ly/2ezaimN](http://www.bit.ly/2ezaimN)).
- 28 NICs:** The Social Security (Contributions) (Amendment No. 4) Regulations 2016, SI 2016/1067, come into force.
- 30 Regulations:** The Childcare Payments (Appeals) Regulations, SI 2016/1078 come into force.
- Compliance:** Companies House should have received accounts of private companies with 28 February 2016 year end, and public limited companies with 31 May 2016 year end; HMRC should have received CTSA returns for companies with accounting periods ended 30 November 2015.

### December

- 1 Compliance:** Payment of corporation tax liabilities for accounting periods ended 29 February 2016 for small and medium-sized companies not liable to pay by instalments.
- 5 Finance Bill:** Draft clauses for Finance Bill 2017 will be published.
- Cases:** UT scheduled to hear taxpayer's appeal in *Adecco v HMRC* (VAT: supplies of temporary staff).
- Consultations:** Comments due on draft amending regulations on pensions lump-sum death benefits paid to a trust.
- 7 Compliance:** Due date for VAT returns and payment for 31 October 2016 quarter (electronic payment).
- 9 Global Tax Transparency Summit:** Public Accounts Committee to host summit bringing Parliamentarians from around the world to discuss the promotion of tax transparency and the prevention of tax avoidance (see [www.bit.ly/2eFil26](http://www.bit.ly/2eFil26)).
- 13 Cases:** CA due to hear taxpayer's and HMRC's appeals in *HMRC v Associated Newspapers* (VAT: supply of vouchers).
- 14 Compliance:** Quarterly corporation tax instalment for large companies (depending on accounting year end).
- 15 Scotland:** Scottish government will publish its draft Budget for 2017/18.

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

#### Coming soon in Tax Journal:

- Your expert review of the Autumn Statement, to be published on Saturday 26 November.