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IN CONVERSATION WITH VICTOR CRAMER OF STEWARTS LAW

In this edition of Vannin Capital's In Conversation series, Managing Director at Vannin, Andrew Jones and Partner at Stewarts Law LLP, Victor Cramer discuss the long-term impact of Brexit and the increasing availability of litigation finance on the tax disputes market, and what its future might hold.

Andrew Jones (AJ): You have now been at Stewarts for a little over 6 months, having moved from KPMG in the New Year. How have you found the move so far?

Victor Cramer (VC): The move to Stewarts has been very positive. The firm is supportive, commercial and quick to recognise good ideas and then get them to market. The firm has a fantastic contact list and my colleagues have been ready, willing and able to help me get in front of all the clients I have wanted to meet. The Stewarts brand opens doors, especially when combined with a strong, well-presented idea. Stewarts is known for its innovative approach to funding cases and this has been a huge help in getting some of my cases off the ground.

The firm's four key values are Teamwork, Excellence, Innovation and Manners, and I see them put into practice every day. There's a real sense that we are all working together across practice areas to achieve common goals: success for our clients and for our business. There's also a recognition that we each have a wider role to play in society, and I see that in a real

commitment to pro-bono work, social mobility schemes, flexibility for our staff and a genuine sense of courtesy in how we go about our day-to-day interactions with colleagues, clients and opponents.

AJ: Tax litigation is big business, often with significant sums at stake. What do you see as the major growth areas in the market, both recently and in the future?

VC: So many different things affect the tax disputes market. Public opinion on tax has a real impact on corporate behaviour, particularly in the UK and Europe, less so in the US. Public opinion is not constant, and as a result neither is taxpayer behaviour. The lead in time from putting a structure in place to litigating it in court can be long, so in recent years we have seen a number of tax structures go through the courts which are said, at least privately, to be ones which simply would not be used today. We have also seen HMRC take increasingly strong positions with "abuse of rights" cases, Accelerated Payment Notices, and in some cases even re-litigating issues which the market thought were settled.



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VICTOR CRAMER

One of the growth areas in recent years keeping the Stewarts team busy is dealing with the commercial impact of tax issues. A number of significant cases over the last few years have identified historically poor advice, or that the wrong taxpayer has ended up sitting on a repayment from HMRC. Dealing with those issues requires a particular combination of commercial and tax expertise which cannot be found in many places.

As to the future growth areas... well, it is hard to avoid talking about Brexit. In the absence of domestic agreement on the shape of a post-Brexit deal, it is difficult to see how we can reach international agreement. There seems to be an increasing risk that

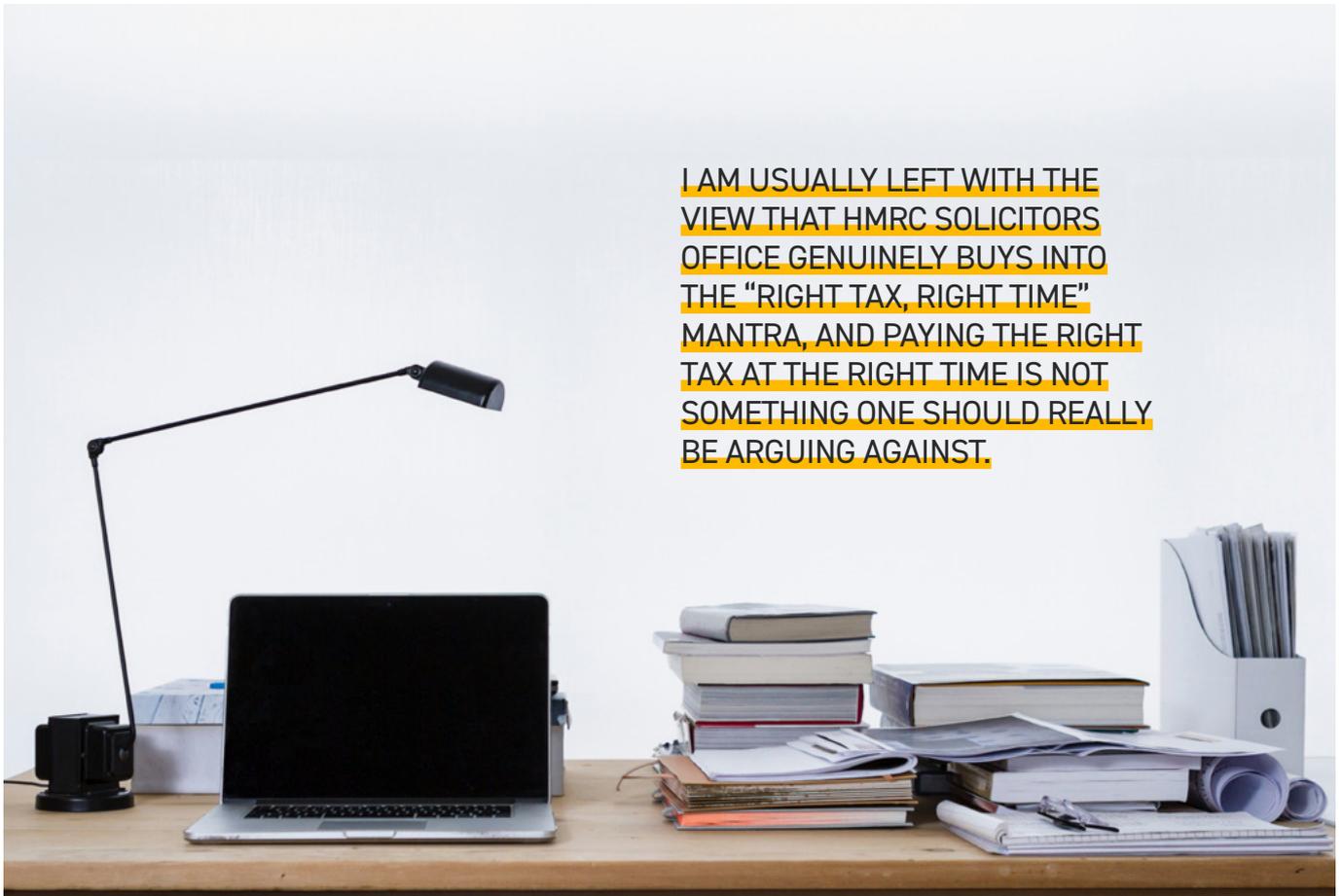
the Cabinet will lock our relationship with Europe into a bathysphere and push it over Beachy Head come March next year. Splitting 40 years of international commercial, legal and tax co-operation without a sensible deal is going to cause a degree of disruption.

AJ: A significant number of tax cases – and often those with the largest sums at stake – raise questions of EU law. How is the market dealing with the uncertainties created by Brexit and what do you foresee as the long-term impact of that process?

VC: Laws passed prior to 30 March 2019 will have been passed at a time when EU law was supreme. To the extent that there is an apparent conflict between a domestic

provision and an EU provision, the UK courts are required as a matter of EU law to read the domestic provision in accordance with EU law. This is partly because EU law requires it but also because, as a matter of statutory construction, Parliament is presumed to have intended to pass laws which were (by reference to EU law) lawful.

That presumption survives Brexit so, provided that a case is primarily driven by its historic value, Brexit ought to have no real impact. That said, where a reference to the CJEU is required, one would want to have that reference made during any transitional period.



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Overall, there is an impact on case strategy. Cases that need a reference to the CJEU need to be pushed as quickly as they can be. Other cases which rely on EU law or principles may need to focus their arguments on ways in which domestic legislation can be interpreted rather than ignored in favour of direct effect. The frankly astonishing lack of certainty at this point means that for the time being it is business as usual, albeit with a weather eye on turning cases around quickly and on the latest Brexit negotiation shenanigans.

AJ: How would you describe HMRC's current approach to litigation and settlement? Has this changed over time?

VC: Some years ago, HMRC published their "Litigation and Settlement Strategy", at about the same time they started to look at the use of ADR techniques to settle tax disputes. That seemed to herald a bright new future of sensible discussion and

engagement on contentious or potentially contentious issues. I have seen many excellent examples of HMRC engaging in new and innovative processes, or committing properly to existing processes to either settle cases entirely or, at the very least, to dispose of a number of key issues and only fight the real point of dispute. Unfortunately those cases seem to be the exception, and there is often a real sense of intransigence and a "them and us" attitude.

It is worth making a special comment on HMRC Solicitor's Office. The Solicitor's Office is almost invariably sensible in the way they run cases, and they are open to sensible discussion. They still absolutely fight their corner, but I am usually left with the view that HMRC Solicitors Office genuinely buys into the "right tax, right time" mantra, and paying the right tax at the right time is not something one should really be arguing against.



AJ: What impact do you think that the increasing availability of litigation finance will have on the tax disputes market?

VC: It cannot help but improve access to justice. There is a huge inequality of arms when facing a dispute with HMRC. Even though it is possible to opt out of costs risk in the first instance, clients with strong cases are still doubling down on their risk when investing large sums into a dispute with HMRC, and where there is a point of principle at stake, HMRC's approach can be entirely disproportionate to the sum at stake for an individual client. Small taxpayers facing large bills from HMRC and large, well-funded taxpayers facing enormous bills or chasing large repayments are all likely to be interested in taking the risk of those claims (at least in costs terms) off their balance sheet.

AJ: What are the most important features you look for in your relationships with providers of litigation finance?

VC: Trust, consistency and commitment to a strategy are all important, although so is the flexibility to recognise when a strategy has to change as a case develops. I also think it is important that the funder has an understanding of the nuances that arise in different practice areas. The risks and financials of a tax case are substantially different to the risks and financials of a commercial dispute.

BIOGRAPHIES



Victor Cramer
Partner, Stewarts Law
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Prior to joining Stewarts, Victor spent 11 years in the tax litigation group of a Big Four accountancy firm, primarily focusing on VAT and indirect taxation. He has led cases at all levels, including the Court of Justice of the European Union (CJEU), and has successfully acted as an advocate in the Tax Tribunal.

Victor is a specialist in VAT and indirect taxation, as well as the alternate dispute resolution methods used by HMRC. Victor's expertise in VAT also requires an in-depth understanding of the (current) interaction between EU and UK domestic law.

Victor has acted for many motor manufacturers, high street and investment banks and other financial institutions, as well as major retailers and sporting bodies. Victor's key cases include *GMAC v HMRC* and *Bridport & West Dorset Golf Club & Ors v HMRC*, both in the CJEU.

Victor began his career with the Centre for Effective Dispute Resolution (CEDR), before moving to Sibley & Co as a trainee solicitor. Subsequently, he was part of KPMG's tax litigation team for 11 years prior to joining Stewarts.



Andrew Jones
Managing Director, Vannin Capital
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Andrew Jones works with law firms and claimants on how third-party funding can be pursued and utilised across a broad range of high-value commercial litigation disputes. Based in London, his role focuses on identifying and providing a full appraisal of disputes that Vannin will consider for funding, as well as monitoring disputes that Vannin has committed to fund.

With over 12 years of private practice experience at two of the world's leading international law firms, Andrew's areas of expertise include general commercial litigation, corporate fraud, global investigations (both regulatory and internal/non-contentious), advisory and tax disputes. He has advised a broad range of corporate clients and financial institutions, in addition to a number of leading professional services firms. Andrew's work has frequently involved a significant international element.

Before joining Vannin in July 2017, Andrew was a Managing Associate in the Dispute Resolution practice at Linklaters in London. Prior to that, he spent more than 10 years practising in the Dispute Resolution department at Freshfields Bruckhaus Deringer LLP, including a secondment to the litigation group at Barclays Bank plc.

Andrew is a solicitor of the Courts of England and Wales.

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Established in 2010, Vannin Capital is the global expert in legal finance, supporting law firms and corporations in the successful resolution of high-value commercial disputes.

From single case funding, to portfolio finance and enforcement arrangements, we offer creative capital solutions that are tailored to our clients' needs.

Our global team of legal and financial experts cover the key commercial litigation and arbitration centres from our offices in London, Jersey, Paris, New York, Washington, Sydney, Melbourne and Bonn. More than just capital, we combine global experience with local knowledge to deliver the highest standard of service and expertise to our clients around the world.

A market leader, we are a member of the Association of Litigation Funders of England and Wales (ALF), conducting our business to the highest standards in line with its code of conduct.

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