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One minute with ... **Michael Thomas**, Pump Court Tax Chambers

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What are you working on at the moment?

A mix of advisory and litigation. The rewritten transactions in land rules are throwing up some interesting issues for real estate transactions; key concerns include the extent to which the new rules widen the charge to tax and override the trading-investment distinction.

Is there a forthcoming judgment you are looking out for?

We do not seem to be blessed with many seminal tax cases these days; most seem to concern schemes, turn on narrow points or produce an outcome that seems fairly predictable from the start — often all three. In *Project Blue*, the Court of Appeal passed up the opportunity to give guidance on how a general anti-avoidance rule operates. That said, I am involved in a series of cases where HMRC is seeking to deny the tax tribunal jurisdiction to hear disputes about time limits; the Court of Appeal is due to hear HMRC's appeal in *Raftopoulou* next year, where this will all be argued.

Do you have any favourite judicial quotations?

'[W]e do not regard it as a particularly serious deception': Judge Howard Nowlan and Julian Stafford sitting as the FTT in *Terrace Hill (Berkley) Ltd* [2015] UKFTT 75 (TC). In that case, a witness — for a taxpayer who claimed, successfully on appeal, that it held land as a capital asset — had told a lending bank that the taxpayer intended to sell on the completed development. The witness then said in the tax appeal hearing that the taxpayer actually had no such intention, and that this was simply 'part of the game played with lending

bankers.' The case — which is rightly decided — is amusing not just because it is authority that it is okay to play games with banks. HMRC also threw in a £1m negligent filing penalty in what the FTT called a 'finely balanced case' and which it lost. This may not have been unrelated to the fact that the taxpayer had undertaken a capital loss scheme which HMRC had conceded on the technical points advanced, hence also the usual implementation challenge.

If you could make one change to UK tax law or practice, what would it be?

There are too many views and rulings which HMRC disseminates only to either individual taxpayers or a privileged few belonging to particular representative groups. Sometimes I benefit from this but that is beside the point. So, I would say that every time HMRC gives a ruling and certainly whenever it publishes guidance, including in draft, then that should be put onto some sort of website database which is suitably referenced and open to everyone to search (with appropriate anonymisation). The same applies to minutes of meetings between taxpayer groups and HMRC, including where not yet officially signed off.

Looking back on your career to date, what key lesson have you learned?

For all of the technicalities, tax is really about people, judges included, and that is what makes it interesting.

What most concerns you about the way our tax system is developing?

The rules are often disproportionately complex. Having difficult and disparate rules is bad enough for transactions where the numbers are large enough and taxpayers with significant resources accept that there are issues which need looking at properly. But all too often, the tax issues are disproportionately complex both to the values at stake and what is being done. Understandably, clients are reluctant to pay to get the advice they need and this gives rise to obvious risks for both them and their advisers. I worry that we have too many tax laws which get overlooked far too often, which would be a very bad thing for a society. Put this together with all of the additional information which HMRC is going to get and make use of through digitisation etc. and we have a recipe for multiple disasters.

Finally, you might not know this about me but...

I am happiest out of doors. I play tennis at least a couple of times a week and am often to be found walking or mountain biking round the countryside.

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