That was the year that was…

Tristan Blythe, editor Private Client Practitioner

Private Client Practitioner recently held a roundtable, in association with Vestra Wealth, looking back at 2009 and looking forward to what 2010 may hold for private client professionals.

2009 has certainly been an eventful year for the private client professions. Although some may have hoped that this year would see things settle down after the past few years of legislative change affecting wealthy individuals, they have surely been disappointed as changes have continued apace.

In fact in many ways this year has seen change happen even faster in the light of the recent economic turmoil.

It was with this in mind that *Private Client Practitioner* organised, in association with Vestra Wealth, a roundtable debate for representatives of its editorial advisory board to cast an eye back over the events of 2009 as well as considering what 2010 may hold.

The debate was attended by David Scott, managing partner of Vestra Wealth, and Derek Scott, a member of the investment advisory board at Vestra Wealth. The representatives of the editorial board present were Jonathan Conder, head of private clients at Macfarlanes, Wilson Cotton, director of private client tax services at Smith & Williamson, Joe Donohoe, private client director at RBC Trust Company, Sophie Dworetzsky, partner at Withers and one of *Private Client Practitioner's Top 35 Under 35,* James Johnston, partner and head of private client at Bircham Dyson Bell, Chris Lintott, partner at Penningtons Solicitors, David Mellor, partner at Dixon Wilson and Stephen Pallister, partner at Charles Russell,

If the group had assembled a year previously it would have been against a backdrop of widespread coverage of economic difficulties with some predicting that 2009 would one of the most difficult in living memory. So was it as difficult for the professionals as some predicted?

Mr Cotton does not believe that it turned out to be as bad for private client practitioners as for other professions.

"I think private client always lags about 18 months behind corporate," he said. "That time lag is what appeared this year and it is not biting until about now, at least that is what we are seeing. So possibly next year will be the more challenging one. To a certain extent our work has been buoyed up by the changes to the taxation of non-domiciliaries, for example, and a relatively benign rate of capital gains tax."

Ms Dworetzsky found that the slowdown did "kick in quite early in 2009 but is starting to pick up." However she believes the differences may be down to whether the profession is focused on pure private client advisory work or whether clients are motivated by business decisions.

Mr Lintott agreed with Ms Dworetzsky that the first half of the year was "flat," but now there are signs of things picking up.

He gave the example of a large family trust which is taking advantage of relatively low asset values for "pretty thorough restructuring."

Another sign of activity was a non-domiciled client who was wanting to put the money he held on deposit to use. However in attempts to buy commercial property he has been "gazumped," or outbid at the last minute by another buyer, three times.

There was a suggestion that there is lag between the work for lawyers and accountants, so the work seen by lawyers such as Mr Lintott and Ms Dworetzsky will feed through to accountants, such as Mr Cotton, in terms of compliance in a "year's time."

Mr Donohoe agreed that in times of change and downturn, such as now, it always throws up opportunities for clients. He is seeing that clients are taking advantage of the current situation to break up old structures and put in place new ones.

"This is also fuelled by the thought that in terms of tax rates things are not going to get any better going forward," he said. "It is unlikely that by doing something now you are going to incur higher tax rates than you will do sometime in the next three to five years, and that is in a number of jurisdictions, not just the UK."

Mr Conder expressed the view that the private client department has been "relatively immune" when compared to the corporate and property arms.

"What has happened is that the nature of the work has changed," he said. "But the volume has not. We are not as busy as we were in the run up to April 2008 but we are as busy as we have been since. It is not tax planning, it is restructuring, fending off litigation and other different types of work."

Rollercoaster year

Many clients will have been on a rollercoaster this year but Mr Pallister also believes that it has been a rollercoaster year for the private client profession. He feels that it has seen changes and will continue to do so. He has seen a "serious drop off in tax planning."

Mr Lintott agreed that "middle England" were not doing any tax planning, as they usually do it on the basis that next year they will be, for example, 25 percent more wealthy, however now they could be 25 percent less wealthy. It was agreed around the table that this means they will not take any action, and will not be willing to incur any lawyer fees.

It was felt that this could have a major impact and Mr Pallister felt it may lead to a reorganisation of the profession with individuals and teams leaving their current firms.

"I think there has been some shake out and I believe there will be more of a shake out to come," he said.

HMRC

In terms of domestic tax planning, the pronouncements of Dave Hartnett, permanent secretary for tax at HMRC, have certainly had an effect. His success with the Liechtenstein tax agreements and the New Disclosure Opportunity were part of one of the themes of the year – HMRCs change in attitude and more aggressive approach towards tax.

There was a feeling that clients are changing their attitude in reaction to this. The aggressive approach of HMRC has meant that clients are shying away from taking any kind of aggressive action for fear that they will be the next test case taken by the HMRC.

There was also a fear that in interviews Mr Hartnett has given the impression that if HMRC finds tax schemes which work in favour of the client, it will encourage the Government to make changes to render them obsolete, as opposed to HMRC being a body which carries out the Government's will.

Others felt that the days of certainty over tax rules were over. The regular and fast changes to the rules mean that clients do not know where they stand. Something that was put in place legitimately can quickly become illegitimate. This poses the threat that some clients will think if the Government is not going to "play fair" with them they will not play fair with the Government rules.

"One of the biggest changes we have seen over the last administration has been the introduction of the word "retroactivity" into the tax system," said Mr Johnston. "I have noted this now being used in other jurisdictions as well. A degree of trust has broken down, with clients no longer feeling confident that the rules are not going to be changed retroactively when they have carried out planning under existing laws."

Mr Mellor agreed and felt this was part of the reason behind the aggressive attitude taken by HMRC.

"They are saying we have changed the rules on our side but do not take a step back because we will catch you," he said. "They are attacking from both sides so you cannot retreat."

This attitude has been part of a wider approach of a crackdown on "tax havens" and the continuing movement away from "secrecy" and to "confidentiality" in banking.

"The big challenge for the offshore jurisdictions, and for us as advisors, is trying to clean up structures that were put in place 40 years ago by people with a very different attitude to that which we have now," said Mr Cotton.

There was a feeling that many of these attacks on the offshore world were a political move as the wealthy are an easy target.

On the other hand it was felt by some present that there was a shift in the role of a tax adviser from being somebody who told you how to minimise your tax bill to somebody who will explain what tax you have to pay.

Of course in the New Year the 50 percent income tax rate for the highest earners will come into effect. David Scott suggested that there was much talk of people leaving the country over this, but that this was not being seen in practice. Others agreed with him that some may be putting plans in place but there was no mass flight yet. Others are looking at investment decisions they would not have made without the new tax rate.

Alongside the introduction of the higher rate there is also the restriction on higher rate tax relief for pensions. Mr Johnston was aware that this has led some pensions advisers to suggest that clients should stop contributing any more funds to their pension plans.

Good news

However there was some good news for private client practitioners in 2009. The perpetuities and accumulation bill was widely welcomed by those at the debate. As was the change of rules for co-habiting partners.

Economic outlook

Private client work is of course affected by the wider economic picture. So what did those at the debate consider will be the wider economic picture for 2010 and beyond?

"Governments either have to keep the asset price bubble going or face up to much slower economic growth," said Derek Scott. "Everything that has been done, both here and in the United States, is essentially a way of bringing forward spending from tomorrow to today. When tomorrow arrives, budget restraints bite in so you would expect economies to slow down."

He added that the danger was, in a manner similar to the 1930s, that there would be more governmental involvement and a more managed economy.

However Mr Cotton argues that the situation will be different from the past. Partly due to the speed with which information is available now and also as there is a "huge transfer of economic and eventually political power from West to East."

But Derek Scott said he is not entirely convinced of the transfer to the East.

He argued that China is growing because it is building up a large amount of stocks, a method that will only constitute growth to a certain point. He also feels that because the majority of the population is poor with only a small amount of wealthy individuals, the country under consumes.

"If you think back to the transfer of power from the UK to the USA, we were similar types of countries, with rule of law etc. More importantly though America was a massive country, largely empty, endowed with resources, particularly agricultural resources, where people went to make themselves wealthy. China on the other hand is over populated with no resources and to that extent is more like Japan in the 1920s and 1930s."

There was a feeling though that regardless of the wider shift from West to East the growth in wealthy individuals turning to private client professions for advice was no longer coming from the established, traditional markets such as the UK and US. Instead they are coming from emerging markets such as the Far East, Eastern Europe and Latin America.

Political change

One of the big question marks that hangs over the UK when looking forward to 2010 is the prospect of a new Government after election, which seems to be becoming increasingly likely.

However with the Conservative party already committed itself, however reluctantly, to maintaining the 50 percent income tax rate. The current deficit in the nation's finances will be something that whichever party wins the election will have to deal with. This will be likely to result in a rise in taxes in some form.

The disparity between this rate and the level of capital gains tax (CGT) was also noted, with a feeling that it is likely that CGT will increase to narrow this gap, so that it cannot be used to lessen an individual's tax burden.

What is clear is that this year has been a busy one for private client practitioners and that 2010 looks like it will not be a time for them to sit back and relax - if anything even more challenges lie ahead.