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Tax Maven The Contemporary Tax Journal's Interview with Mr. Jim Fuller

By: Ophelia Ding, *MST Student*

Mr. Jim Fuller is a partner in the Tax Group at Fenwick & West LLP in Mountain View, California. He was named seven times by *Euromoney* as one of the world's top 25 tax advisers and one of the U.S.'s top 30 transfer-pricing advisors.¹ He is the only U.S. tax adviser to receive a Chambers star performer rating (higher than the first tier) in Chambers USA (2017).² He also is one of the three "most highly regarded" U.S. tax practitioners according to Who's Who Legal (Law & Business Research Ltd 2016).³ Mr. Fuller holds a B.S. degree from New York University, a J.D. degree from Fordham University, and an L.L.M. in Taxation from New York University.

I had the pleasure to meet and interview Mr. Fuller on November 13, 2017 during the two-day 33rd Annual TEI-SJSU High Technology Tax Institute where Mr. Fuller was a presenter. Beyond his exceptional reputation and professional achievements in the tax and legal communities, I found Mr. Fuller personable, approachable, and gregarious. Our encounter was a short, yet memorable and inspiring one. Mr. Fuller was kind enough to share his career experiences and thoughts with *The Contemporary Tax Journal*. Following are Mr. Fuller's answers to our questions.

How did you get involved in the tax field? Was that your plan when you started law school?

¹ *Euromoney* is a U.K. English-language monthly magazine focused on business and finance. For more information, see <https://www.euromoney.com/>.

² From the Chambers USA guide: the preeminent James Fuller remains a market leader in transfer pricing, an area in which he is regarded as an "all-star." Clients praise "his outstanding knowledge of the international and domestic sections of the internal revenue code." They also laud "his ability to communicate the analysis and jointly reach a conclusion." *Chambers and Partners* have been ranking the best lawyers since 1990, covering 185 jurisdictions. According to the *International In-house Counsel*, 51% of over 20,000 in-house counsel from around the world chose to use *Chambers and Partners* directories to identify law firms/individuals. For more information, see https://www.chambersandpartners.com/12059/49/editorial/5/1#profileEditorial_160258.

³ Who's Who Legal identifies "the foremost legal practitioners in multiple areas of business law" per comprehensive, independent research. It features over 17,000 of the world's leading private practice lawyers from over 100 national jurisdictions. For more information, see <http://whoswholegal.com/about/>.

I had no plans to practice tax law. However, as an associate with a large NYC firm, it seemed to me that in litigation you worked hard to master a substantive area of law perhaps never again to use that substantive knowledge. The corporate work I did as a first-year associate wasn't especially exciting. I liked tax. It seemed as though there were substantive building blocks with each project and that those building blocks could and likely would be used again on future projects. I also liked the idea that in matters such as M&A, for example, the tax people had to be in the deal early to structure things. In tax, you also could be involved post-closing to help the client integrate the acquired business operations into its business.

What led you to Fenwick and West? What are your specialty areas?

I had decided as a fifth-year associate that I was going to change firms. I liked the work I had been doing (corporate international tax), but the partner for whom I did most of my work got "punished" as a result of certain partner-level law firm politics. His punishment in part was that he couldn't work with me anymore! That didn't seem so cool to me. I had not done anything wrong. After that, my work changed to having a more domestic focus. During this time, a group of former Cleary Gottlieb associates left New York to start their own firm in Palo Alto. I knew them while they were in New York. However, the idea of moving across the country didn't appeal to me. I had a typical New Yorker's parochial (narrow) view of the world. California didn't seem like a good place for a nice New York guy like me. Nonetheless, these Fenwick lawyers were unrelenting and kept their recruiting efforts going. They just wouldn't give up. I finally gave in.

I guess I really lucked out! I was lawyer #18 when I joined Fenwick. The Fenwick and Wilson firms were about the same size then (each barely took up one floor at Palo Alto Square), and there were no outsiders (firms based elsewhere but with offices here). Silicon Valley grew rapidly after I arrived and so did the Silicon Valley legal practice. It grew to become the envy of lawyers everywhere.

What stands out as a few of your most significant career accomplishments?

There have been many. Early in my practice (I had just made partner), I was involved in a huge deal in which my client, Chrysler, then one of the U.S.'s so-called "Big Three" auto companies, was selling its European operation to Peugeot. We flew the Concorde New York to Paris and spent the next two weeks negotiating with Peugeot's lawyers and European bankers in Paris and Madrid. We flew the Chrysler company plane back and forth between the two cities. I had designed a structure that saved Chrysler hundreds of millions of dollars in tax in the transaction, and there I was the head tax person in charge of negotiating all of the parts necessary to make it work!

Working for young Apple Computer, in days long gone by, we represented the company in Tax Court on a U.S.-Singapore transfer-pricing matter and designed and participated in the first ever transfer-pricing arbitration matter under the Tax Court's arbitration rules.

Working with a Silicon Valley client, we "invented" the first commissionaire structure for an American company to use in selling goods in Europe. Nobody had ever heard of such a thing at that time, not even the Europeans. It was for operational reasons -- it was a better way to operate, but it also produced nice tax benefits. As word about the structure spread (with the unasked-for assistance of the company's auditor), it quickly became the method-of-choice for American companies to use to sell goods in Europe, and it lasted as the preferred method for most American companies for the next thirty years.

In 1985, I was invited to Beijing by the Chinese government to discuss how China should change its tax laws to accommodate the country's planned transition to a more capitalist economy. There were four of us. I was the only American. It was exciting. Many of our recommendations were later adopted. To this day, I remain good friends with, and work with, one of the Chinese government representatives at those meetings. He's now a practicing tax lawyer in Shanghai.

We also have been involved in a number of the recent U.S. corporate inversion transactions. These transactions are both interesting and challenging for a tax practitioner. They typically involve both a large international M&A transaction and lots of interesting international structuring. The IRS also seems never to stop issuing regulations and notices

under the inversion statute even though these pronouncements often seem unrelated to the purpose or language of the statute. The tax advisor needs be very current in handling these transactions.

How do you keep up to date with the changes in tax law and the ever-changing technology of the Silicon Valley tech companies?

This is one of the things that I like most about the tax law: it's an ever-changing area of law. You're always learning. It never gets boring. I read the tax services first thing each morning. On any given day, an IRS ruling or a court case can affect what you're working on, or affect advice that you gave last week or last month and which you will now need to update or revise. Such a development also can make something work that had problems before.

Since our practice is mostly in the international area, the chances of a relevant change such as this increases many-fold: it could be the change is in the French tax law, or a new Chinese regulation. You need to depend on foreign tax counsel to keep you current on that front. Good foreign tax advisors are necessary. You need them to be proactive and keep you current as necessary.

Changes in a client's technology or the development of new technologies simply makes the work more exciting and interesting. There is no way the tax law could ever keep up with the everyday, fast-moving changes we see in Silicon Valley. I wouldn't want to practice anywhere else in the country!

What do you think is one key area of our federal tax system that could/should be improved and why?

Our corporate tax rate has been way too high compared with corporate tax rates in the rest of the developed world. Our system of taxing foreign corporate earnings also is a dinosaur. Most other developed countries went to a territorial tax system (foreign operating earnings not taxed) long ago. Combined, these give foreign-based corporations a huge business advantage over U.S.-based corporations. I just don't understand why Washington doesn't

get it. And it's not just the Washington of today. This has been a problem for a couple of decades. While Congress plans to lower the corporate tax rate starting in 2018, its half-baked attempt at a so-called territorial system will only make things worse over time. No other developed country has such a strange system with all foreign earnings currently taxed, although at a lower rate. I thought the idea was to make American companies more competitive.

(Please note that this interview took place before the Tax Cuts and Jobs Act (TCJA) was signed into Public Law No. 115-97.)

What do you think is the biggest challenge facing tax professionals today?

Keeping current. Understanding clients' businesses and needs. Being both creative and practical.

What advice do you have for students preparing for a career in tax?

Stay current. Understand your clients' business and its needs. Be both creative and practical.

If you could have dinner with anyone, who would it be?

My Dad and my Mom, both of whom passed some years ago. They're the greatest people I ever knew. Jennifer (my wife) and I would love to have them at our house for dinner. Maybe we could convince them to stay for a while.

What is the most unusual item in your office or something in it that has special meaning to you?

A bar towel from a Fuller's pub in London. It's got a funny story attached. It was a client who took me there. I'd need a Fuller's London Pride (beer) to tell the story!



Ophelia Ding and Jim Fuller