On Tax—Ocka Stumm of Gleiss Lutz

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City.

On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, we're joined by Ocka Stumm. Ocka is a partner in the Tax Department at Gleiss Lutz in Frankfurt, Germany. Ocka, welcome to the podcast. Thanks for joining us.

Ocka Stumm: Thanks for having me, Len. I'm really looking forward to it.

Len: So am I. Ocka, you and I first met when you spent some time as a secondee at Cravath a few years ago, but we'll get to that in due course. Tell us about how you set your life and career on path for tax law.

Ocka: Oh, that's a good question. When I was in university in Germany, I went to a course in tax and looked at this and thought, "Well, yeah, that's kind of interesting, but not really my case." And then I looked at tax criminal law and thought, "Well, that's more interesting." And then I started going further onto white collar crime and doing an LL.M. in Germany on white collar crime.

And then, when we have the second state exam, where you go and train as a judge and public prosecutor, and then also as a lawyer, I returned back to tax law to see if this might not also be kind of interesting to do real tax work. And then I kind of ended up there.

Len: When you came into tax law that way, were you thinking that you would focus on tax law from the criminal side, or were you thinking that you would take some of the technical things you had learned in the kind of criminal law and try and apply it to a transactional practice?

Ocka: I think at that point in time, I rather thought that, "Let's have a look at tax law, and then maybe focus on tax criminal law." And now, what I do is really a lot of transactional tax, and then also, if our clients have issues with tax criminal law, which every now and then comes up.

And, as you know, in Germany, for example, we have a lot of Cum-Ex schemes. And then, Germany as well, we are, I guess, masters in initiating criminal proceedings against taxpayers. We also close a lot of proceedings, but, per year, it's more than 50,000 criminal cases that are opened.

Len: I haven't checked the numbers in the U.S., but just my sense about the tax world in the U.S. is that there are fewer—

Ocka: Yes.

Len: Criminal prosecutions, and it's certainly a less common part of my practice. So, when you decided that you wanted to explore tax, how do you do that? Do you take classes? Do you take assignments in tax?

Ocka: When you are at the university, you have to decide that you want to focus on one aspect of the law. So, it could be whatever—administrative law, or criminal law, or employment law, or tax law. And then, you have the same in our second state exam, so that you're tested specifically also in one subject, which could be tax law.

And then, when you start working as a tax lawyer, you usually start just working on the job. And then, you can do specific courses to become a qualified tax lawyer. But what you usually do, if you're in a bigger law firm, you usually become also a tax advisor. So, you also take your tax advisor exam. And that's what I did after two years of practice.

Len: So, a tax advisor is a title? It's a status that you get after you take an exam?

Ocka: It's like what the accountants do to be able also to advise on tax law and to set up financial statements. Stuff like that.

Len: So, as you started getting more experience in tax, what do you remember about the experience of doing tax and the sorts of things that encouraged you to keep doing it?

Ocka: In Germany, tax law is changing really, really quickly and fast. So, you have to make sure that you keep track. I'm not so sure if this is also the same in the U.S.

So, this was kind of a challenge at the beginning, because you kind of started, "Wow, I know how this works, and whoa, it's now different." And then, later, it's kind of getting a bit annoying now that you think, "I know something," but then, after a couple of years of practice, and everything has changed again.

Also, when I came to Gleiss Lutz—we are purely German law firm, but we work with so many international clients and also other law firms—it's a lot of fun to see how other lawyers think and how the tax law works together. And often, it's similar, and then sometimes it's surprisingly different.

Len: And so, tell me a little bit about your practice now. It sounds like it's in part transactional, and it is in part about controversy stuff. But tell me how it's developed.

Ocka: Yeah, the major part is transactional tax, or what comes together with it—negotiating the SPA, setting up acquisition structures, negotiating whatever comes around. What we've seen in the past a lot is management participation programs. So, there's a lot in the PE sector around that.

As you know, in the last one or two years, M&A was not as busy as it used to be. So, when I became partner, my practice also shifted a bit more to structuring and advising on other questions that come up in the business of companies. And then, also obviously, on the tax criminal side.

So, we usually have clients who find out that something was not handled correctly from the tax side. And then, if you are not lucky, someone told them a couple of years before, and they just kind of forgot about it and kept doing it the way they shouldn't have done it. And then, it's hard to argue that this was kind of not intentional, and you don't have an issue with tax criminal charges.

And if you have a tax criminal case in Germany, it's different compared to the U.S. So, for example, you don't go immediately to jail; this is good. But on the other hand, it takes a really long time to settle. So, we still have cases open that were initiated in 2014, and they're still not closed.

And we are still also working on a case which was open just before I left to join you, Len, in 2019. And we still haven't found an agreement. So, it's working over a long, long period of time if you have an open case.

Len: Probably worth talking about the decision that was made in 2019 for you to come be a secondee at Cravath for a period of time. The period ended up being shortened because of the COVID pandemic. But do you remember how it came to your attention that this opportunity was available, and what thought process you went to about moving your family into the United States for a couple of years for this assignment?

Ocka: Yes. The fun part about being in a purely German law firm is that we like to send our senior associates to other law firms kind of worldwide to make best friends and to have a best friends network. And when we started thinking about it more closely, and we thought about going to Cravath, I thought, "Well, if I get that opportunity, I should definitely take it." I think it was the beginning of 2019, and I talked to our managing partner, because he was also a secondee before with Cravath.

Len: Well, I suppose it's both flattering and also concerning, like "Why are you sending me away?" on the one hand. And on the other hand, "You're sending me to a neat opportunity at a prominent firm in the United States, and you're allowing me to represent Gleiss Lutz."

I think that's interesting. It's a sign of great respect and admiration for you, but it's also sort of sending you off into this unfamiliar territory.

Ocka: Yeah. I guess, you're right. But it also was a good sign for me also to understand that they really wanted to make me partner, because otherwise they would have never sent me to Cravath.

Len: That's actually a good point, too. I mean, I suppose at this point, you were focused on making partner and that promotion. Do you remember how you thought about it? Whether it was an affirmative conversation that you had with the partners of your firm at the time, or whether it was more just like, "I'm going to keep showing up every day and sitting at my desk and doing the best work I can?"

Ocka: Yeah, it was kind of both. So, kind of trying to keep track and moving along, doing the work that you are supposed to do and then discussing with people and seeing what you can do. And obviously, we are not sending people just around the world who we don't want to make partner or we don't expect to remain within the firm. So, I thought it was a good sign.

Len: In 2019, when you arrived, the world had not experienced the COVID pandemic yet. So, we were in the office all the time. We were having a sort of what I think we would consider a normal work experience. And you were having this sort of abnormal work experience because you were in this new place.

And I wonder both for your family or for yourself, what surprised you about those first couple of months at Cravath, either culturally in the city or culturally within the law firm, about how the Cravath experience differed from the experience you've gotten used to? Do you remember what assignments that you were given in the first couple of weeks? What were you working on, and who were you working with?

Ocka: I worked with a lot of different, mostly third years, actually, on facility agreements and bonds, mostly. It was a good experience, actually. And while I first thought it was kind of strange to share the office, I liked it very much because my officemate was really nice.

Len: OK.

Ocka: Yeah. So, you always had someone to ask questions and to get information if you needed something. It's easier than going back to the next office door. Yeah, so it was good.

Len: I mean, that is part of the design in terms of creating a setup that engenders collaboration and encourages it, and also gives new associates—and for this purpose, I think you were kind of a new associate; you were new to the Firm—a resource. A place to go about, "How should I approach this problem?" Or, "Have you ever looked at this issue about whether this deduction is valid?"

And I think we have found for our first- and second-year associates who share offices with each other—normally a first year and a second year share—that that is a smoother way to begin practice at a large firm like ours that can be kind of intimidating. And it gives people a real outlet for some of their confusion, some of their concerns, some of their questions. And it's kind of a natural place for mentorship and growth. Since you've become a partner, how do you think about mentoring more junior lawyers as part of your responsibilities and role within the firm?

Ocka: In my view, you have to make sure that they are always on the deal and don't get lost somewhere in the middle. I think that's the most important part for a junior associate. Because what we often experience is that you start the deal working with one or two associates, usually in the tax section.

And then, once it starts getting busier and busier at the end, and you try to kind of nail the deal down, you often lose the junior associates, because the negotiation is on partner level. And you start working with your counterpart at the other side and having discussions there.

And we often experience that this is something where you should really take care that also—if you have discussions with, for example, the M&A partner in between—that you transfer the information that you received or what has been agreed also to the rest of the team.

Len: Well, now as a partner, you're in a position to fix that, stop that cycle. Were there role models or mentors—professors or partners—you worked with whose style you tried to emulate, and whose sort of influence on you, you can trace to your own success and growth?

Ocka: No, not really. I'm trying to kind of pick from everyone a little bit what I like. We had a senior partner who just left our law firm, and he was always so calm in negotiations. I really admired that.

Len: I admire it too, even though I can't replicate it in my own practice.

Ocka: So, I try to do that, but sometimes it's hard.

Len: Did you ever ask him, "How do you stay so calm when all this stuff's going on?"

Ocka: Yeah, I think he has just his inner sense to do that. So, he is really special.

Len: One of the things I've observed about the people I've worked with, both senior folks and folks who are younger than me, is everybody really does have their own style, and there's no one way to do a given task or to achieve a certain result.

And I tell candidates for Cravath all the time that Cravath is a big enough place, emotionally big enough place to take all kinds of personalities, all kinds of character traits, and transform junior lawyers into effective practitioners.

And there's all sorts of different ways to become effective. Some people are loud and boisterous or obnoxious and bang tables. And other people are short and to the point and direct, and sort of blunt and charmless. Other people are very charming. Other people are very quiet and might say only one thing in a meeting.

But I think the challenge for junior lawyers who are coming up in the profession is to try and figure out, first of all, what is true to their own personality and personal characteristics, what kinds of behavior is true to that. And then, second, how to take, as you say, things you've seen other people do, or approaches you've seen other people take, and apply them to your personal characteristics and do effective things.

I have learned that I can change my approach from time to time, depending on the situation. I think as an associate, I tended to be a little bit more aggressive, a little bit bossier and pushy. And over time, I've sort of learned that that doesn't always work, and you need to come up with other ways to be effective.

I think for junior lawyers, particularly coming up in law firms, where the goal is really apprenticeship and sort of learning by watching others, there's a little bit of emulation, but then there's just a little bit of practice in your own personal growth. Was that your experience?

Ocka: Yes, I agree. And don't shoot me for that, but it could also be because you're getting older. So, what we experience is if the people get older, they tend not to be as bossy and pushy as they are at the beginning of their career.

Len: Yes, you always hear about the young whippersnapper, and you don't hear as much about the old whippersnapper. I think you're right.

Ocka: Yeah. But I totally understand what you mean. It's also that you're looking at other people, and as you try to do what they do—or at least pretend to do what they do—you're getting used to it. And then, I guess your experience is getting better.

Len: I like the use of the word pretend, actually. Because it's not so much that you're faking it, but you're trying on stuff for the first time, and you're seeing how it fits: how it fits the situation, how it fits the meeting, how it suits this particular client. Just like when you're trying on clothes; you kind of need to look in the mirror and see whether this is working.

Ocka: I have often the impression that it's like acting. So, I'm trying to do as if I were someone else. So, I'm acting to be patient or something which I'm usually not.

Len: I have a little bit of an acting background from college and earlier, and I feel like it helps. Because you are creating a persona, or you are acting in a way that's not necessarily natural. It's not natural for us to go fighting about contract points all the time.

And you have to figure out also how the person on the other side is experiencing talking to you, and whether there's an opportunity for compromise. One of the things that I think I've learned in a transactional practice, as opposed to a litigation practice, I think is: Yeah, in a transactional practice, we're adversaries; we're on different sides of the deal, but it is a deal. In a matter of weeks or months or sometimes hours or minutes, we need to reach some sort of agreement. Sometimes it's compromise; sometimes it's not. Sometimes it's, "This is it, and you're either going to agree to it or you're not."

And so, everybody is kind of rowing in the same direction. I think in a litigation practice, to overgeneralize, there's more of a zero-sum sort of approach. And I think as a result, the style of lawyering that develops among transactional lawyers differs a little bit from the adversarial nature of a litigation practice. And now, in your tax world you have both, because you're doing some tax litigation and some transactional stuff. And so, you've presumably had to learn how to juggle that.

Ocka: Yeah. Wow, well, yeah, that's true. But in our tax litigation practice, you are at a long period of time with the tax authorities, so discussing like the audit. And then, if it's criminal tax matter, you are also in negotiation with the tax criminal department at the tax offices.

So, it's a lot of negotiating how to settle the proceedings. So, it's not what you just described, the litigation in court where you can either win or lose. It's often that you find a compromise: "I pay a bit more taxes and then a fine of a certain amount, and then you drop the proceedings," or something like that. So, it's also not that different, to be honest, from the M&A deal where you have to find a compromise somehow which works for everyone.

Len: So, in the few minutes we have left, Ocka, I thought maybe we'd talk about things that don't have to do with your professional persona or career. What do you like to do in your spare time when you're not doing tax stuff?

Ocka: I have three kids, so I like to play with them card games. We like to play Uno. Do you do that in the U.S. as well?

Len: Yes, we do.

Ocka: Uno Flip is our latest acquisition on that one.

Len: That's great.

Ocka: I like to do puzzles if it's rainy days and—

Len: Jigsaw puzzles?

Ocka: Jigsaws, yeah. I like to go swimming in my garden. So, I have a very, very poor pool actually. It's poor for a partner in a law firm, but it works out. It was a cheap one, but you can swim in it.

And then, I like to do a bit of music with my children. So, they all started now to learn how to play different instruments, and we're trying to make something around that one. So, that's kind of fun.

Len: Are you musical yourself? Do you play an instrument?

Ocka: Yeah, well, I used to play the clarinet. Yeah, it's exhausting, and you really have to train it, actually. And if you don't train regularly, say, then you just can't do it anymore. And as I'm a lawyer working full-time in a law firm, you can imagine that I don't have sufficient time to do that daily. When I was younger, I played one hour a day. So, it's definitely not that anymore.

Len: That's great. I used to play trombone a lot, probably more than an hour a day when I was in high school and parts of college. And so, I know what you mean about having the embouchure in your mouth and those mouth muscles strong and the breath support.

Well, Ocka Stumm from Gleiss Lutz in Frankfurt, Germany, has been our guest today. Ocka, thanks so much for joining us. It was great to have you.

Ocka: Yeah, thank you so much for having me, Len.

Len: That's all for this episode of On Tax—A Cravath Podcast. You can find us online at cravath.com/podcast, and don't forget to subscribe on Apple Podcasts or Spotify.

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