

Colm Kelly

CALL 2015



Areas of Expertise

- Tax • Employment • Commercial Litigation and Disputes • Insurance & Reinsurance • Professional Negligence • Off-payroll working (IR35) • COVID-19: Commercial Litigation & Disputes • Inheritance Tax (IHT) • Stamp Duty and SDLT

Colm is a specialist in Employment and Tax, as well as Professional Negligence and Judicial Review in the Tax context. He has particular expertise in issues arising from the intersection of Tax and Employment, such as employment status and the taxation of employment income. He has a busy court, tribunal and advisory practice.

Colm has recent experience of advising on and acting in matters related to Covid-19 and Brexit in both the Tax and Employment contexts.

Colm is the contributing editor of the 'Taxation of Employment Income' chapter in *Harvey on Industrial Relations and Employment Law*.

Expertise

Tax

Colm acts for both taxpayers and HMRC. He has experience in the First-tier Tribunal, Upper Tribunal, High Court (Administrative Court), Court of Appeal and Supreme Court.

Colm's recent and ongoing experience includes:

- Instructed (led by **Akash Nawbatt KC**) to advise on potential DTA arguments.
- *[X] v HMRC* (led by **Marika Lemos**) – ongoing lead appeal on an SDLT sub-sale avoidance scheme, concerning ss.45 and 75A FA 2003 and Ramsay.
- *Northern Light Solutions Ltd v HMRC* (led by **Christopher Stone**) – ongoing UT appeal concerning IR35.
- *Watts v HMRC* (led by **Aparna Nathan KC**) – ongoing UT appeal concerning the availability of relief under para.14A, Sch.13, FA 1996 for the acquisition of interest strips as part of tax planning.
- *[Z] v HMRC* – urgent application for a partial closure notice, raising issues of the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020, s.3/13 TCGA and the UK/Luxembourg DTA.
- *Roger Preston Group Ltd v HMRC* [2021] UKFTT [X] (led by **Jolyon Maugham KC**) – availability of a deduction for corporation tax purposes for the amortisation of acquired goodwill, analysis of the nature of a licence, effect of FRS and IFRS standards.
- *Fowler v HMRC* [2020] UKSC 22, [2020] 1 WLR 2227 (led by **Akash Nawbatt KC**) – meaning of 'employment' for DTA purposes, effect of deeming in s.15 ITTOIA.

IR35 and Employment Status

Colm has experience advising on and litigating IR35 issues. As a tax and employment practitioner, Colm is well-placed to advise on the range of issues which clients and fee-payers face in structuring their arrangements to meet the challenges of the changes to IR35. Colm's experience includes:

- *Northern Light Solutions Ltd v HMRC* (led by **Christopher Stone**) – ongoing UT appeal concerning IR35.
- *Big Bad Wolff Ltd v HMRC* [2019] UKUT 121 (TCC), [2019] STC 978 – interaction of IR35 and the Social Security (Categorisation of Earners) Regulations 1978.
- Advising a professional medical body on the applicability of IR35 to numerous contractors, including advice on who the correct 'client' was for IR35 purposes and how to mitigate the risk of future liabilities.
- Advising an individual contractor/PSC on the applicability of IR35 to the arrangements as well and advising on the structuring and drafting of settlement agreements, side agreements and indemnities, to address the reallocation of risk resulting from the changes to IR35.
- Advising a private sector engager on whether various arrangements were caught by IR35 and whether a contractor was an employee for tax purposes.
- Advising a medical membership organisation on the application of IR35 to a standard form contract for members as well as the enforceability and drafting of tax indemnities.
- Advising an engager on the identity of the 'client' and re-drafting tax indemnities.
- Advising (with Marika Lemos) a union negotiating with HMRC on the drafting of guidance to members on their employment status.
- Advising (with Marika Lemos) a union on the enforceability of deductions clauses and indemnities in contracts with its members.

Residence/Domicile

- Advising (with **Barrie Akin**) on the domicile of a high net-worth individual with links to Gibraltar and the UK.
- *Kennedy v HMRC* (led by Akash Nawbatt KC and Christopher Stone) - multi-million pound residence appeal which was also concerned with the correct application of the UK-Spain DTA. The taxpayer withdrew his appeal on the fourth day of a two-week hearing.
- *Mackay v HMRC* [2018] UKUT 378 (TCC), [2019] STC 83 (led by Christopher Stone) - UT appeal and parallel judicial review of the FTT's finding that the taxpayer was ordinarily resident in the UK ([2017] UKFTT 441 (TC)).
- *Hough v HMRC* (led by Christopher Stone) - FTT residence and ordinary residence appeal and a parallel judicial review concerning IR20.
- *Peck v HMRC* [2017] UKFTT 770 (led by Christopher Stone) - FTT residence appeal.

SDLT

Colm is regularly instructed to advise on the planning and consequences of land transactions for SDLT purposes. Recent experience includes:

- *[X] v HMRC* (led by Marika Lemos) – ongoing lead appeal on an SDLT sub-sale avoidance scheme, concerning ss.45 and 75A FA 2003 and Ramsay, including a challenge to the validity of discovery assessments.
- *[Y] v HMRC* (led by Marika Lemos) – ongoing appeal on an SDLT sub-sale avoidance scheme, concerning ss.45 and 75A and Ramsay, including a challenge to the validity of discovery assessments.
- Acting for a firm of solicitors defending a claim of professional negligence for an alleged failure to advise on the availability of multiple dwellings relief. Claim withdrawn upon receipt of the Defendant's skeleton argument.
- Advising a firm of solicitors in a professional negligence claim by former clients concerning the applicability of the 3% surcharge and the availability of a late claim for relief.
- Advising a purchaser on the availability of multiple dwellings relief, including novel points on the issue of a trespasser as being in 'possession' for the purposes of substantial performance.
- Links to a webinar which Colm provided with Barrie Akin on the meaning of 'garden or grounds' in s.116 FA 2003 can be found [here](#).

Professional Negligence

- Acting for a firm of solicitors defending a claim of professional negligence for an alleged failure to advise on the availability of multiple dwellings relief. Claim withdrawn upon receipt of the Defendant's skeleton argument.
- Advising a firm of solicitors in a professional negligence claim by former clients concerning the applicability of the 3% surcharge and the availability of a late claim for relief.
- Advising a wealth management firm in a professional negligence claim arising from an alleged failure to apply for fixed protection 2012 in respect of the claimant's various pension schemes.

Other

- Colm has successfully appeared for the taxpayer in the FTT in applications to make late appeals. Colm also has experience of appeals against penalties.
- Colm is the contributing editor of the 'Taxation of Employment Income' chapter in *Harvey on Industrial Relations and Employment Law*.

Employment

Colm has a busy Employment practice, both in litigation and advisory work. He acts for both employees and employers. He is instructed by clients who range from large retailers, a S&P 500 indexed technology solution provider, universities and other third level institutions, schools, professional medical bodies and construction companies.

Colm is the contributing editor of the 'Taxation of Employment Income' chapter in *Harvey on Industrial Relations and Employment Law*.

Litigation

Colm's Employment Tribunal work involves regular multi-day discrimination and whistleblowing claims. Recent experience includes:

- *[X] v Network Rail* – six-day hearing concerning multiple disability discrimination and unlawful deduction from wages.
- *Crawford v Image IT Ltd [2021]* – two-day employment status preliminary hearing.
- *Roganovic v iPLATO [2021]* – five-day final hearing concerning age discrimination, protected disclosure detriments and dismissal and wrongful dismissal.
- *Meshram v (1) TATA Consultancy Services Ltd and (2) Enterserv UK Ltd [2021]* – four-day final hearing concerning protected disclosure dismissal, race discrimination, and victimization claims.
- *Butti v Kier Ltd [2020]* – four-day preliminary hearing concerning jurisdiction/time limits, ACAS certificates, strike-out, and abuse of process.

Advisory

As a tax and employment practitioner, Colm is well-placed to advise on the range of issues which clients and fee-payers face in structuring their arrangements to meet the challenges of the changes to IR35 and employment status more generally. Colm's experience includes:

- Advising (with **Andrew Burns QC**) a national courier company on the applicability of the Coronavirus Job Retention Scheme, including the risks of discrimination claims.
- Advising a professional medical body on the applicability of IR35 to numerous contractors, including advice on who the correct 'client' was for IR35 purposes and how to mitigate the risk of future liabilities
- Advising an individual contractor/PSC on the applicability of IR35 to the arrangements as well and advising on the structuring and drafting of settlement agreements, side agreements and indemnities, to address the reallocation of risk resulting from the changes

to IR35.

- Advising a private sector engager whether various arrangements were caught by IR35 and whether a contractor was an employee for tax purposes.
- Advising a medical membership organisation on the application of IR35 to a standard form contract for members as well as the enforceability and drafting of tax indemnities.
- Advising an engager on the identity of the 'client' and re-drafting tax indemnities.
- Advising (with Marika Lemos) a union negotiating with HMRC on the drafting of guidance to members on their employment status.
- Advising (with Marika Lemos) a union on the enforceability of deductions clauses and indemnities in contracts with its members.

Professional Negligence

Colm has experience of acting for and advising those in receipt of professional negligence claims in the tax context. Colm's experience includes:

Acting for a firm of solicitors defending a claim of professional negligence for an alleged failure to advise on the availability of multiple dwellings relief. Claim withdrawn upon receipt of the Defendant's skeleton argument.

Advising a firm of solicitors in a professional negligence claim by former clients concerning the applicability of the 3% surcharge and the availability of a late claim for relief.

Advising in a professional negligence claim arising from an alleged failure by a wealth management firm to apply for fixed protection 2012 in respect of the claimant's pension schemes.

Academic

LLB - Trinity College, Dublin (First Class)

LLM - Christ's College, Cambridge

BPTC - University of Law

Appointments

Appointed to the Attorney General's C Panel of Counsel - effective for five years from 1 September 2022

Memberships & associations

ELA, ELBA, RBA

Awards & scholarships

Scholar - Trinity College, Dublin

Syprou LLM Scholar - Christ's College, Cambridge

Hardwicke Scholar - Lincoln's Inn

Lord Denning Scholar - Lincoln's Inn

Sunley Scholar - Lincoln's Inn

Publications

'Evidence to believe in – the meaning of FIDIC sub-clause 2.4' (2016) 169 ICE Construction Law Quarterly 135

'Reconciling the Irreconcilable: Ostensible Authority after Kelly v Fraser' (2013) King's Inns Law Review 1 (co-author)

Mooting

Winner - University of Southampton Inter-Inns Moot

Winner - University of Law Moot

Finalist and Best Speaker - 7KBW/Clyde & Co Insurance Law Moot

Finalist - National Student Law Society Moot

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