

Barrister Profile

Michael Sherry



Legal 500 2021: “the ‘very user friendly’ Michael Sherry”

Chambers & Partners 2021: “... expert in corporate tax, tax schemes and residence issues”

Chambers and Partners 2015 – Tax: “.... a barrister known for his commercial approach to direct tax problems, income tax issues and questions relating to capital gains tax.

Expertise: “Very commercially minded. He’s inventive, a very good technician, and good at coming up with solutions to problems – we go to him when we hit a brick wall.”

Recent work: “He acted for the taxpayer in a capital gains tax case concerning enterprise investment scheme and taper relief.”

Chambers and Partners 2015 – Indirect Tax: A general tax expert who represents clients in cases concerning indirect tax issues. He handles VAT matters relating to the education sector, and is also active in the areas of duties and property taxation. Legal 500 2014 Corporate and VAT: ‘His advice gives you full confidence that matters are dealt with in an efficient and cost-effective manner.

Legal 500 2014 Private Client – Personal Tax: thoughtful, clear and very willing to work collaboratively.

Michael practices in all areas of tax law and practice. Particular examples of advisory work give a flavour: Incorporating residential landlords’ businesses Current case load includes portfolios in excess of £75m. Issues include CGT and SDLT. Advice covers whether there is a business, a partnership, issues around mortgages, clarification of the business’ assets, consideration from the incorporation vehicle, whether to use a LLP and thorough tax advice.

Tax planning

Mergers and acquisitions raise many tax issues, and

Michael is regularly involved. One area of particular interest is the loan relationship code, which presents both opportunities and pitfalls. Here all the issues of personal taxation, employee taxation, treatment of trading profits and losses for corporation tax overlap and interact with capital taxation. “Recommended for [his] corporate tax advisory practice” Legal 500 2021

Remuneration planning

EBT’s, dividend remuneration and loans/loan charge post Rangers FA 2020. FURBS (including in particular N.I. and FURBS); use of old EBT’s; and old FURBS; emigration double tax treaties and EBT’s; ratchet shares; shares mirroring options (avoiding option and conditional share share treatment.) Michael’s success in *Mansworth v Jelley* and in *Forde v McHugh* illustrates his sureness of judgment in this field.

Private client

Legal 500 2021 “He is very approachable and able to explain complex matters clearly to clients.” Chambers 2021 “has significant experience in ... private client taxation” The wealthy private client or businessman has both short and long horizons. Michael has wide experience of this work including e.g. offshore trusts (visiting Jersey regularly.) Recently a property transaction for £30m by an offshore company raised issues of VAT, Taxes Act 1988 section 776, what constitutes a branch or agency, emigration and TCGA s.10A, double tax treaties with Israel, Belgium, Mauritius, New Zealand

Hancock v R&CC in the Supreme Court concerned CGT on sale proceeds over £12m, a complex case involving a detailed knowledge of securities taxation. A recent divorce involved disputed assets held outside the UK in excess of \$200m with CGT remittance issues, difficult tax indemnities, and of course

arguments about the lamps in the bedroom. Often significant private client issues arise in mergers and acquisitions.

Recent experience includes preparing a dot.com group for listing on AIM and NASDAQ and sales of groups. Issues included ratchet shares for employees, unbundling the corporate structure so that intermediate capital qualified for Venture Capital Relief, and Stamp Duty relief on the reconstruction.

Property

From VAT planning to excess rents this work is often challenging, involving several difficult tax problems in a single transaction, from VAT partial exemption through Schedule A treatment of reverse premiums to Stamp Duty, and Stamp Duty Reserve Tax.

Recent cases including advising on bringing together eight landowners in a “garden suburb” development plan,; one landowner under conditional contract for part of its land sharing value with the others to bring them all in. Issues included *Jenkins v Brown*, cross options and how they might expire without triggering disposal etc. Another case involved a school and V.A.T. on its new theatre – avoiding the consequences of the Halifax decision.

Back duty

The Revenue’s Special Compliance Office and Customs Officers sometimes takes bad technical points. Michael has helped to resolve cases by advising and by attending meetings with the Revenue and Customs.

Most recently an interesting case involving the application of the remittance basis to Swiss fiduciary money market deposits lead to a constructive meeting with the Revenue’s case officer accompanied by a senior member of International Division.

Tax administration

As a co-author of Whiteman on Income Tax (and sole editor of its annual supplements) Michael has written extensively on this subject. He advises regularly on the duties of taxpayers in particular in relation to disclosure and “discovery”. He represented the taxpayer in *Langham v Veltema*, the first case on the self assessment “discovery” provisions.

VAT & Duties

Chambers & Partners : “has significant experience in VAT”

VAT often interacts with other areas of tax. However

recent and ongoing matters concerned principally with VAT include treatment of distance learning materials, buildings for private schools, (both planning and litigation), ensuring rulings are honoured (see ex p. *Kay* – Customs & Excise judicially reviewed; proof of export (the rules were amended in 2003). Michael represented the taxpayers in *College of Estate Management* in the House of Lords – a case raising various issues including whether the supply was composite and which element dominated.

Another case involved the VAT treatment of a grant to a major museum exceeding ten million pounds where the donor charity wished to secure extensive “editorial” control over the application of the funds and the acknowledgements.

Between 2015 and 2020 Michael acted for clients in a long standing margin scheme case for jewellers with a seven figure sum in dispute. Over half the assessments were vacated after a mediation and the rest were withdrawn the week before the Tribunal hearing date, after Michael’s written arguments had been submitted.

Accounting and tax

From loan relationships through provisions to prior year adjustments, tax and accounting principles interplay. Recently one case raised a variety of issues including: valuation at 31 March 1996; whether accounts were prepared in accordance with UK GAAP, was a 50:50 JV “connected” to either investor; does a loss “arise” if a debt is doubtful/bad at the time it comes into existence. Interesting current instructions involve relevant discounted securities in the context of inheritance tax planning.

Money Laundering

Michael has closely monitored the genesis of the current obligations of tax advisers originally through his involvement in CFE (the European Tax Advisers’ federation), the Chartered Accountants’ Business Law Committee (of which Michael was Chairman) the Revenue Bar Association, and continuing with the Tax Faculty. He is uniquely placed to advise those professionals who are unsure how to resolve their duty to their client and their duty to make disclosure and he has lectured on this subject. A recent case concerned an online casino and concern over the use of bit-coin for money laundering.

Professional negligence

For the tax practitioner, professional negligence is the ever present “ghost at the feast.”

Capability in this area requires a combination which is rare-

- pre-eminent knowledge of tax law;
 - advocacy skills which can turn the mind of the highest court (see e.g. Palmer v Moloney in the Court of Appeal)
 - an ability to handle lay clients: Legal 500 2021 (Legal 500 2021 “He is very approachable and able to explain complex matters clearly to clients.”).
- Chambers and Partners 2015 – Tax: “ ... a barrister known for his commercial approach to direct tax problems, income tax issues and questions relating to capital gains tax.”

GARR/ General Anti Abuse Rule

Nobody wants to receive a letter from HMRC containing a GAAR Notice – what to do next? A recent case involves loans to participators where the Revenue seem to have overstepped the mark. Expertise: “Very commercially minded. He’s inventive, a very good technician, and good at coming up with solutions to problems – we go to him when we hit a brick wall.”

“Michael provides practical advice backed up by sound written opinion and has the ability to analyse facts clearly and quickly.”

Legal 500, 2017

Michael Sherry
VAT Registration: 226488780
ICO: ZA143059

For further practice details of Michael please contact Claire Labio or Emma Wall.