



Timothy Brennan QC

Year of Call: 1981 Silk: 2001



Timothy Brennan QC has appeared in courts and statutory and domestic tribunals at all levels throughout the United Kingdom, including numerous cases in the House of Lords and the Supreme Court, as well as in Strasbourg and Hong Kong.

He practises mainly in tax and other commercial litigation, judicial review and other public law litigation and in employment law. He welcomes instructions outside these fields in interesting cases.

He has particular familiarity with employment remuneration and is frequently engaged in litigation and advice concerning taxation of employment income, remuneration structures, bonuses, employment related securities, third party employment income, employment status, benefits and statutory rights including national minimum wage enforcement and issue management.

He has conducted confidential internal inquiries, investigations, disciplinary proceedings and appeals in various professional and business contexts including charities, medicine, education and legal practice.

Timothy Brennan is authorised to sit as a Deputy High Court Judge in the Queen's Bench Division, the Administrative Court and the Chancery Division. He also sits as a Recorder in the Crown Court, authorised to try serious sexual offences.

He has been a part-time Judge of the Employment Appeal Tribunal.

He is a contributing editor of 'Harvey on Industrial Relations and Employment Law' (LexisNexis).

He is experienced in a wide range of business, financial and employment matters, particularly those involving technical questions of statutory construction.

Recent cases include:

- *Commissioners for HM Revenue & Customs v Pertemps Limited* [2019] UKUT 234 (TCC) (acting for a large employment business, where HMRC contended that salary-sacrifice T&S arrangements gave rise to supplies for VAT purposes)
- *R (Haworth) v Revenue and Customs* [2019] EWCA Civ 747 (challenges by taxpayer to follower notice and accelerated payment notice based on the decision of the Court of Appeal in *Smallwood*)
- *Royal Mencap Society v Tomlinson-Blake (Care England intervening)* [2018] EWCA Civ 1641 (acting for the intervener in the major Court of Appeal decision concerning entitlements to national minimum wage for those engaged in sleep-in shifts in the social care sector)
- *Pertemps Limited v HM Revenue & Customs* [2018] UKFTT 0369 (TCC) (acting for the taxpayer in an appeal against assessments to VAT arising from a salary sacrifice scheme: whether operation of the scheme gave rise to taxable supplies amounting to an economic activity; whether there was an exempt supply)

- *City Shoes (Wholesale) Ltd v Revenue and Customs* [2018] EWCA Civ 315 (challenge by taxpayers to withdrawal of favourable terms of the Liechtenstein Disclosure Facility when settling tax avoidance disputes; conspicuous unfairness)
- *R (Glencore Energy UK Ltd) v Revenue and Customs* [2017] EWCA Civ 1716 (judicial review challenge to charging notice for diverted profits tax)
- *Bar Standards Board, R (on the application of) v Disciplinary Tribunal of the Council of the Inns of Court and Natasha Sivanandan* [2016] EWCA Civ 478 (costs in professional disciplinary proceedings; jurisdiction of Administrative Court on judicial review)
- *Price and others v HM Commissioners of Revenue and Customs* [2015] UKUT 164 (TCC), [2015] STC 1975 (computation of chargeable gains in scheme to offset manufactured losses against taxable income)
- *Terrace Hill (Berkeley) Ltd v HM Commissioners of Revenue and Customs* [2015] UKFTT 0075 (TC) (acting for the taxpayer in a "trading or investment" appeal about development of a "trophy" property in Mayfair)
- *Tower Radio Ltd and another v HM Commissioners of Revenue and Customs* [2015] UKUT 0060 (TCC) (scope of the Ramsay principle in relation to tax avoidance through award of employment related securities)
- *CC&C Ltd v HM Commissioners of Revenue and Customs* [2014] EWCA Civ 1653 (injunction in aid of a statutory tax appeal not available on judicial review, save in exceptional circumstances)
- *Moulin Global Eyeware Trading Ltd (in liquidation) v Commissioner of Inland Revenue* (Hong Kong Court of Final Appeal, FACV No 5 of 2013) (13/3/2014) (tax fraud, attribution to a company in liquidation of the fraud of its directors; construction of the Hong Kong Inland Revenue Ordinance)
- *R (Her Majesty's Revenue v Customs) v HM Coroner for the City of Liverpool* [2014] EWHC 1586 (Admin) (acting for the estate of the deceased in a case about the extent of a Coroner's information powers under the Coroners and Justice Act 2009, Sch 5, exercised against HMRC in a case concerning death from asbestos exposure; statute binds the Crown by necessary implication)
- *Next Distribution Limited v HMRC* [2014] UKUT 0227 (TCC) (industrial buildings allowances)
- *Autoclenz Ltd v Belcher* [2011] UKSC 41 (employment status, 'sham' substitution and 'no obligation' clauses, whether employee, worker, or independent contractor)
- *QAO Neftyanaya Kompaniya Yukos v Russia* [2011] STC 1988 (European Court of Human Rights, tax fraud, Art 6, Art 1 Protocol 1)
- *R (Prudential plc) v Special Commissioner* [2010] EWCA Civ 1094 (statutory investigation powers; no legal professional privilege for accountants giving tax advice)
- *HM Revenue & Customs v Smallwood* [2010] EWCA Civ 778, [2010] STC 2045 (tax avoidance through double tax treaties; place of effective management and the 'Round the World Scheme')

Recommendations

Ranked as a Leading Silk - *Employment, Legal 500 2022*.

Ranked as a Leading Silk - *Tax: Corporate and VAT, Legal 500 2022*.

A highly experienced practitioner with extensive knowledge of corporation tax and employment taxes. His cases often involve complex issues of employment law and the taxation of employee remuneration. He is also adept at handling matters involving the Diverted Profits Tax and capital allowances. **"Highly astute"** and **"very robust in his views."** Acted in *R (Haworth) v HMRC*, a judicial review challenging the 'Follower Notice' regime used for anti-avoidance strategies. - *Tax, Chambers UK Bar 2021*.

Widely recognised for his strong tax knowledge, he is an established expert in employment law issues that have additional tax complications. He has extensive experience handling complex TUPE and remuneration disputes, especially those related to the national minimum wage. He often acts for large City clients and accountancy firms. **"A brilliant, extremely clever barrister."** Acted for Bath Hill Court Management Company in a case on the application of the National Minimum Wage to sleep-in care shifts. - *Employment, Chambers UK Bar 2021*.

'His strengths include very strong legal analysis and excellent strategic thinking.' - *Tax: Corporate, Legal 500 2021*

'A highly knowledgeable, bright advocate' - *Employment, Legal 500 2021*

"Has a highly commercial outlook and encyclopaedic knowledge of tax law." "He's an excellent advocate of great intellectual ability." Acted for the Revenue in *Glencore Energy UK Ltd v HMRC*, a case concerning the diverted profits tax. - *Tax, Chambers UK Bar 2020*

"He is technically gifted and provides clear strategic recommendations to the client." "A highly experienced barrister with an impressively detailed understanding of the national minimum wage legislation." Acted in relation to the case of *Coletta v Bath Hill Court*, where the Employment Appeal Tribunal ruled that a care home should pay compensation for 15 years of wages under the national minimum wage. Instructed to appeal on the grounds that a six-year limitation on the repayments was applicable, where the EAT had decided it was not, in favour of the employee. - *Employment, Chambers UK Bar 2020*

'He has an ability to review detail and cut to the nub quickly and accurately.' - *Tax: Corporate, Legal 500 2020*

'He is very knowledgeable and an expert in the national minimum wage area.' - *Employment, Legal 500 2020*

He is adept at handling assessment procedures and capital allowances. **"Very experienced." "A safe pair of hands. He has good judgement and an extremely good grip of the issues."** Acted for HMRC in a case against *SSE Generation* involving HMRC's denial of capital allowances in respect of a large hydroelectric plant. - *Tax, Chambers UK Bar 2019*

"Superb on complex tax related matters and very solution focused." Acted in *Kowal and Others v The Doctors Laboratory*, group litigation concerning the employment status of courier drivers. - *Employment, Chambers UK Bar 2019*

'He provides very strong legal analysis and excellent strategic thinking.' - *Tax (Corporate), Legal 500 2019*

'He regularly handles worker status and remuneration cases.' - *Employment, Legal 500 2019*

"His advice is completely authoritative and can be totally relied on. He's a very clever and capable barrister." "He has a very sensible approach and is grounded in reality." Acted for the taxpayer in a case involving employment tax, national insurance, expenses, salary sacrifice, legitimate expectation, information powers and VAT. - *Tax, Chambers UK 2018*

"An exceptionally able, highly intellectual and agile individual." Acted for *CitySprint* in defence of a high-profile worker status claim. - *Employment, Chambers UK 2018*

"Supreme knowledge of employee benefit trusts; if he doesn't know it, it isn't worth knowing." -
Tax (Corporate), Legal 500 2017

"He is very knowledgeable in highly technical areas of law." - *Employment, Legal 500 2017*

"Very user-friendly and responsive, he has great technical knowledge which he applies commercially."
Instructed in a judicial review brought by users of a marketed tax avoidance scheme challenging HMRC's withdrawal of access to the Liechtenstein Disclosure Facility. - *Tax, Chambers UK 2017*

"He is competent in both employment and tax areas. He is incredibly quick, very good at knowing the answer and a very economic advocate." "He is very practical, very approachable and friendly and he is very good with the client." - *Employment, Chambers UK 2017*

Timothy Brennan QC is ranked a Leading Silk within 'Tax: corporate and VAT', considered to be **"Superb in court"** - *Legal 500 2016*

"He is very knowledgeable on highly technical and new areas of law at the intersection of employment and tax." - *Employment, Legal 500 2016*

Has a strong client base of major City clients, and is much sought after for his knowledge of tax and employment law. He is well recognised in the market as being an experienced adviser and an efficient courtroom operator. "He has a unique blend of employment and tax expertise." "Superb on complex tax related matters and very solution focused." - *Employment, Chambers UK 2016*

Has a practice centred on income tax, corporation tax and CGT among others. Sources note his strong work for HMRC, naming him as a "real stalwart performer for the Revenue." He has appeared at all levels of court up to and including the Supreme Court. "Very punchy, very hard-hitting, and someone who cross-examines ferociously." - *Tax, Chambers UK 2016*

"Recommended for the intersection between employment and tax law." - *Employment, Legal 500 2015*

"A charismatic advocate who persuasively builds and delivers his cases." - *Tax: Corporate, Legal 500 2015*

Singled out for his unique blend of employment and tax expertise, he undertakes a large volume of advisory work for City-based employers. **Expertise: "He has good technical knowledge which he can practically apply to the day-to-day down-in-the-gutter activity clients are involved in." "He is the person you think about for tax crossover cases."** - *Employment, Chambers UK 2015*

Represents the interests of taxpayers and the Revenue in a broad selection of tax disputes. He acts in cases concerning all taxes, but he is especially active in corporation tax, income tax, national insurance and capital gains tax matters. **Expertise: "He is great at public law and great for judicial review. He understands the Revenue very well and is a marvellous cross-examiner."** - *Tax, Chambers UK 2015*

"Recommended for employment remuneration matters." - *Employment, Legal 500 2014*

"Draws on his specialist knowledge of tax and employment law to bring an exceptional array of skills to bear" - *Tax: Corporate and VAT, Legal 500 2014*

Is a notably strong employment silk, whose thriving practice takes in, inter alia, disputes arising from remuneration planning. Sources acknowledge his strategic approach to complex cases. **Expertise: "He's at the cutting edge of employment law." "He's first-rate on board strategy and employee tax issues."** *Chambers UK 2014*

The **"extremely reassuring"** Timothy Brennan QC is acclaimed by market sources as **"someone to go to when it really matters."** He is frequently instructed by clients in the City and accountancy firms to advise on

employment matters with a tax element. Brennan recently appeared in the Supreme Court in *Autoclenz v Belcher*, a case on employment status and other issues. - *Chambers UK 2013*

"A very good, robust" performer and **"a fine tactician,"** who brings a real breadth of knowledge to his work. He is an especially good choice for clients seeking to resolve workplace-related tax disputes. His recent cases have included *Autoclenz Ltd v Belcher*, a Supreme Court case examining employee tax status. - *Chambers UK 2013*

"An unrivalled choice when a definitive answer is needed on complex tax-driven employment legislation." He is **"charming, highly intellectual and ruthless when you need him to be."** Brennan is commended for his collegiate approach - *Chambers UK 2012*

"Comes up with the goods time and again." An experienced litigator and adviser, he has recently been involved in domestic matters in the Supreme Court, along with various international tax issues. Commentators say he is **"very solutions-based, pragmatic and user-friendly. He displays great agility in his analytical range, which enables him to understand cases and offer opinions quickly."** - *Chambers UK 2012*

Within 'Tax: corporate and VAT', Timothy Brennan QC is ranked a Leading Silk who is considered **'very thorough, professional and concise'**. *Legal 500 2011*

An outstanding advocate who understands the thought processes of judges better than anyone else ... **"Has lucidity of mind and toughness in court. First choice for employment matters with taxation overlap."** - *Chambers UK 2011*

"Extraordinarily quick at responding to questions and a particularly effective cross examiner." - *Chambers UK 2010*

"Esteemed for his advocacy skills. Marvellously quick-witted and incisive in his approach, he conducts lethal cross-examinations that draw upon exhaustive research. Particularly renowned in the employment-related tax field." - *Chambers UK 2009*

Tax

He has much experience at all levels in substantial high-value litigation, often factually as well as legally complex requiring expert evidence and mastery of technical detail. He previously held the Attorney-General's appointment as Junior Counsel to the Inland Revenue (Common Law); since taking silk in 2001 he represents taxpayers and the Crown.

Particular expertise in employment related taxation, but tax work has involved statutory appeals and judicial review concerning, among other things, capital allowances, industrial buildings, Enterprise Zones, employment remuneration, employee benefit trusts, NIC schemes, PRT and oil industry technology, investigation powers, forged documents, domicile, avoidance, company residence, transfer pricing, transfer of assets abroad and offshore settlements, shadow directors, journalism, horse-racing, waste disposal, retail developments, accountancy principles, exempt approved pension schemes, pensions busting, FURBS, legal professional privilege, the Iranian Revolution, crematoria and massive commercial fraud.

He has appeared in scores of reported cases at all levels over the last decade - too many to list here. They include many of the major tax cases of recent years, 14 of them in the House of Lords and Supreme Court, in Strasbourg, and many in the Court of Appeal and the High Court, both in the Chancery Division and in the Administrative Court, as well as before the Special Commissioners and in the Upper Tribunal and First-tier Tribunal. They have been particularly in the fields of tax avoidance, employment taxation, company and individual residence and domicile, and investigations.

Some of them are:

- *Autoclenz Ltd v Belcher* [2011] UKSC 41 (employment status, 'sham' substitution and 'no obligation' clauses, whether employee, worker, or independent contractor)
- *Yukos v Russia* [2011] STC 1988 (ECHR, tax fraud, Art 6, Art 1 Protocol 1)
- *R (Prudential plc) v Special Commissioner* [2010] EWCA Civ 1094 (statutory investigation powers; no legal professional privilege for accountants giving tax advice)
- *HM Revenue & Customs v Smallwood* [2010] EWCA Civ 778, [2010] STC 2045 (tax avoidance through double tax treaties; place of effective management and the 'Round the World Scheme')
- *Drummond v HM Revenue and Customs* [2009] EWCA Civ 608 (tax avoidance through second-hand insurance policies; interrelation between income tax and CGT treatment)
- *Laerstate BV v HM Revenue & Customs* [2009] UKFTT 209 (TC) (company residence; central management and control; place of effective management; application of *Wood v Holden* and *Smallwood*)
- *Maco Door and Window Hardware (UK) Ltd v HM Revenue and Customs* [2008] STC 2564, [2008] UKHL 54 (industrial building allowances, meaning of 'part of a trade')
- *Agassi v Robinson* [2006] STC 1056, [2006] UKHL 23 (taxation of international entertainers and sportsmen)
- *Wood v Holden* [2006] STC 443, [2006] EWCA Civ 26 (residence of companies, central management and control)
- *MacDonald v Dextra Accessories Ltd* [2005] STC 1111, [2005] UKHL 47 (deductibility of payments into employee benefit trusts)
- *Wilkinson v Commissioners of Inland Revenue* [2006] STC 270, [2005] UKHL 30 (Extra Statutory Concessions and the Human Rights Act 1998)
- *R v A Special Commissioner, ex parte Morgan Grenfell & Co Ltd* (HL) [2003] 1 AC 563 (investigation powers and legal professional privilege)

Employment

Extensive experience of employment litigation at all levels up to the House of Lords and Supreme Court. Including termination of employment and retirement, public and private sector pension schemes and other retirement arrangements, 'pensions busting', unfairness, redundancy, Employment Agencies and Employment Businesses, restrictive covenants, confidentiality, TUPE, public procurement, trade unions, race, sex, disability, age, orientation discrimination, Working Time, PAYE, NICs, IR35, SSP, Tax Credits, and the National Minimum Wage, disciplinary tribunals (medical, legal and education), sports tribunals.

Cases include:

- *Autoclenz Ltd v Belcher* [2011] ICR 1157, [2011] UKSC 41 (employment status, 'sham' substitution and 'no obligation' clauses, whether employee, worker, or independent contractor)
- *Hammonds LLP and others v Mwitwa* [2010] UKEAT 0026_10_0110 (burden of proof in race discrimination, consultation on redundancy, unfair dismissal)
- *EDF Energy Powerlink Ltd v National Union of Rail, Maritime and Transport Workers* [2009] EWHC 2852, [2010] IRLR 115 (Blake J) (strike ballot, information, injunction)

- *Revenue & Customs Commissioners v Annabel's (Berkeley Square) Ltd* [2008] ICR 1076 (tronc payments, gratuities and the National Minimum Wage)
- *Keeley v Fosroc International Ltd* [2006] EWCA Civ 1277 (contractual enhanced redundancy payments).
- *Horkulak v Cantor Fitzgerald International* [2005] ICR 402, [2004] EWCA Civ 1287, and [2004] ICR 697, [2003] IRLR 756 (City bullying - discretionary bonuses, obligations of trust and confidence)
- *Venables v Hornby* [2004] ICR 42, [2003] 1 WLR 3022, HL (the meaning of 'retirement' in exempt approved pension schemes)

National Minimum Wage (NMW)

Extensive experience of all current national minimum wage and national living wage issues arising under the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 and 2015.

Sectors include: commercial; retail; catering and hospitality; social care and not-for-profit; distribution and logistics; contingent labour providers including umbrellas, agencies and gangmasters.

Issue management; remuneration counting; salary sacrifice; reductions from payments; enforcement notices; notices of underpayment; multiple notices; time work; salaried hours work; output work; unmeasured work; remedial steps; apprentices; apprenticeship agreements; gig economy; couriers; uniforms, subsistence and accommodation; travelling; training; sleep-ins; burden of proof in enforcement; penalties and penalty caps; criminal prosecution; "naming and shaming".

Off-payroll working (IR35)

Extensive experience in relation to off-payroll working (IR35) both in the public and private sector, advising broadcasting organisations, local government, employment businesses, trade associations, and other entities.

He also has considerable experience of the law as it relates to agency workers, personal service companies, managed service companies, disguised self-employment, umbrella companies and intermediaries.

His pragmatic advice is often sought on commercial structures to help shape business models and operations and to assist businesses to adapt to future changes in employment law.

"He is technically gifted and provides clear strategic recommendations to the client." Chambers UK Bar 2020

Appointments

2010-2014 - Member and Vice-Chairman of the Ethics Committee of the General Council of the Bar

2008 - Deputy High Court Judge (Supreme Court Act 1981, s 9(1)), authorised to sit in the Queen's Bench Division, Administrative Court and Chancery Division

2006 - Bencher of Gray's Inn

2006-2009 - Vice-Chairman of the Complaints Committee of the Bar Standards Board

2002-04 - Judge of the Employment Appeal Tribunal

2001 - Queen's Counsel

1997-2001 - Junior Counsel to the Inland Revenue (Common Law)

2000 - Recorder

1997 - Assistant Recorder

Memberships and Associations

ELBA, ELA, Revenue Bar Association

Awards and Scholarships

Atkin Scholar of Gray's Inn

Various other awards and prizes

Education

Olchfa School, Swansea

Balliol College, Oxford

Additional Information

Expertise includes

High Court; Court of Appeal (CA); House of Lords (HL); United Kingdom Supreme Court (UKSC); First-tier Tribunal (FTT); Upper Tribunal (UT); European Court of Human Rights, Strasbourg (ECHR); Court of Final Appeal, Hong Kong (CFA HK).

Judicial review; public law; statutory powers; relevant and irrelevant considerations; legitimate expectation; abuse of power; legal professional privilege; confidentiality; human rights; withdrawal of clearance; fit and proper person; procurement; interim relief; penalty.

Employment remuneration; national insurance contributions (NIC); Class 1, 1A, 1B and 2 NIC; national minimum wage (NMW); termination payments; injury; costs; Employee benefit trusts (EBT); family benefit trust; EBTSO; employment-related securities (ITEPA Part 7); disguised remuneration (Part 7A); deferred remuneration; bonus structures; bonuses; share options; share schemes; carried interest; PAYE; determinations; decisions; appeals; expenses; dividends; distributions; loans; close company; participator; benefits in kind; cash equivalent of the benefit; intermediary providers; personal service companies; FURBS; approved and unapproved retirement benefit schemes; bank payroll tax; agency workers; IR35; personal service companies; managed service company provider (MSC, MSCP); disguised self-employment; overarching employment; employment agency; employment business; umbrella company; on-shore and off-shore intermediaries; remuneration structures; bank payroll tax; performance related pay; couriers and drivers; construction sector; construction industry scheme (CIS); Construction Industry Training Levy (CITL); sick pay; statutory sick pay (SSP); holiday pay; working time (WTR); pay between assignments (PBA); apprentices; deductions; wholly exclusively and necessarily in the performance of the duties of the employment; VAT; supply of services; staff hire concession; Coronavirus Job Retention Scheme; CJRS; Furlough; Tronc; holiday pay; Reference salary.

Recruitment sector; contingent labour; employment agency, agencies; employment business, businesses; agency

workers; dispensations; umbrella company; accountancy services; pay between assignments (PBA); 336 hours; Apportionment Act 1870; part-time workers; Agency Workers Regulations 2011; Swedish derogation; equal pay; HGV, courier and delivery drivers; private hire; cycle couriers; 12 weeks; 336 hours; temporary workplace; permanent workplace; right of supervision, direction or control; two years; last assignment; ordinary commuting.

Transport; taxis; minicabs; private hire vehicles; cycle couriers; road hauliers, haulage; CMR; containers.

Statutory interpretation; Hansard; Pepper v Hart; Bill of Rights. Article 2, Article 6, Article 8, Article 10, A1P1. ECHR; EU.

Worker status; LLPs; employed; self-employed; independent contractor; client or customer of profession or business undertaking; supervision, direction or control; ready mixed concrete; Class 1 NIC; Class 2 NIC; upper earnings limit (UEL); lower earnings limit (LEL).

Investigation, complaints, disciplinary proceedings, appeals, reports.

Statutory information powers; TMA 1970 s 20; Sch 36; precursor notice; legal professional privilege; accountants and tax advisers.

Assessment; self assessment; SA; CTSA; VAT; PAYE; discovery; fraud; negligence; wilful default; neglect; careless and deliberate behaviour.

Capital gains; acquisition; deductible cost; market value; rebasing; deemed disposal; otherwise than by way of a bargain made at arm's length.

Residence; domicile; individual residence; corporate residence; double tax agreement and convention (DTA, DTC); OECD model convention; place of effective management (POEM).

Tax avoidance; anti-avoidance; evasion; *Ramsay*; *Arrowsmith*; offshore disclosure facility; contractual disclosure facility; Liechtenstein; employee benefit trust settlement opportunity (EBT, EBTSO) Jersey; Isle of Man; Mauritius; Round the World scheme (RTW); fraud; disclosure of tax avoidance schemes (DOTAS); notices; follower notice; accelerated payment notice (APN); penalty; interest.

Trading; trade; investment; property development; wholly and exclusively; purposes of trade.

Capital allowances; industrial buildings; structures; machinery; retail distribution warehouses; horse racing; gallops; power stations; hydro electric equipment; supermarkets; car parking; car washes; water and electricity systems; heating; high bay storage.

Collective bargaining; strikes; equal pay; trade unions; trade union activities; recognition; health; safety; whistleblowing; protected disclosure.

Working Time Regulations 1998; Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000; Directive; Transfer of Undertakings (Protection of Employment) Regulations 2006; protected disclosure, whistleblowing.