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Malcolm Gammie KC

Barrister
Call 1997 Silk 2002



Scope of Practice

• Tax and Revenue

Overview

Malcolm Gammie started his tax career in the City with Linklaters & Paines. After a period of tax policy work at the Confederation of British Industry, he was among the first lawyers to work in the tax field with a leading accounting firm. At KMG Thomson McLintock (now part of KPMG), he was the first Director of the firm's National Tax Office before becoming its Director of National Tax Services.

In 1985 he returned to Linklaters & Paines and from 1987 to 1997 was one of its senior tax partners. He moved to the Bar in 1997 to concentrate on tax litigation and advisory work and took silk in 2002. Over his career, Malcolm has gained experience in most aspects of taxation and is noted as a leading practitioner in the commercial, European and international taxation fields. In the 2018 UK Chambers Bar Awards Malcolm won Tax Silk of the Year.

He is instructed by many of the leading tax practices in the City, and advises incorporated and unincorporated entities on all aspects of commercial, European and international taxation.

SCOPE OF PRACTICE

Malcolm Gammie is among the leading advocates at the Revenue Bar. He has represented both Her Majesty's Revenue and Customs and taxpayers is a series of high profile disputes, including for HMRC the long-running Eclipse 35 and Ingenious film scheme litigation. His experience as a solicitor in preparing cases, including handling both documentary and witness evidence, provides him with a unique insight into the conduct of litigation. At Linklaters, he had charge of cases before the Tax Tribunals as well as before both the High Court and the Court of Appeal. As an advocate he has represented taxpayers and the Revenue at all stages of tax appeals including the House of Lords, the Supreme Court and the European Court of Justice. He is noted for his painstaking attention to detail on all aspects of the litigation process. He has also assisted in negotiations with the Revenue leading to the satisfactory settlement of disputes.

In addition to his substantial litigation practice Malcolm also advises on all aspects of commercial, European and international taxation, for both incorporated and unincorporated entities, their shareholders and employees. He covers all the main direct taxes, value added tax, national insurance, stamp and other duties, and the related double tax treaty, European and administrative law. Malcolm's clients include many leading UK and foreign multi-national companies, banks, insurance companies and other financial institutions.

Examples of Recent Cases

For the Taxpayer

- Nicholas Trigg v HMRC [2018] EWCA Civ 17
  Whether bonds issued with a Euro-conversion clause were tax exempt as qualifying corporate bonds. Held exempt KCBs. Successfully reversed decision of the Upper Tribunal in favour of HMRC.
- HMRC v BlueCrest Capital Management LP & Ors; Dodd & Ors v HMRC [2022] UKUT 200 (TCC)
  Whether a partnership incentive plan was part of the partnership's profit sharing arrangements and, if not, whether partners were nevertheless liable to tax on their awards under the plan.
- BlueCrest Cayman LP & Anor v HMRC [2022] UKUT 198 (TCC)
  Whether relief available to a Cayman entity against its share of partnership profits for interest paid on borrowings to acquire its partnership interest.
- HMRC v Coal Staff Superannuation Scheme Trustees Ltd [2022] UKSC 10
  Whether UK's stock lending regime was in breach of EU law.
- The Tower One St George Wharf Ltd v HMRC [2022] UKFTT 154 (TC)
  Whether HMRC entitled to deny SDLT group relief under an anti-avoidance provision in relation to a transaction that avoided no tax.
- London Luton Hotel BPRA Property Fund LLP v HMRC [2023] EWCA Civ 362
  Whether investors entitled to business premises renovation allowances on the price paid to a developer to convert a disused building at Luton airport into a hotel.
- London Luton Hotel BPRA Property Fund LLP v HMRC [2024] UKFTT 1104 (TC)
  Whether the method of apportioning a residual amount of expenditure qualifying for business premises renovation allowances remained to be determine following a reference to the FTT by the Court of Appeal.
- Beard v HMRC [2025] EWCA Civ 385
- Whether distributions from the share premium account of a Jersey incorporated company were liable to tax as dividends of an income or of a capital nature.
- Currys Retail Limited v HMRC [2025] UKFTT 762 (TC)
  Whether a degrouping charge arose in respect of the goodwill of four trades transferred intra-group notwithstanding the sale of the goodwill prior to the company leaving the group.

For the Revenue

- Shop Direct Group v HMRC [2016] UKSC 7
  Appocation of post-cessation receipts provisions to recovery of incorrectly paid VAT.
- Project Blue Ltd v HMRC [2018' UKSC 30
  SDLT – whether subsale relief available in respect of an Islamic financing transaction – application of the SDLT anti-avoidance rules under section 75A FA 2003
- HMRC v Joint Administrators of Lehman Brothers International (Europe) (In Administration) [2019] UKSC 12
  Whether interest paid on completion of an administration "yearly interest" and subject to deduction of income tax at source.
- Tinkler v HMRC [2021] UKSC 39
  Estoppel by convention – whether taxpayer estopped from denying that HMRC had opened a valid enquiry into his tax return for a particular year.
- Ingenious Games LLP & Ors v HMRC [2021] EWCA Civ 1180
  Whether the taxpayers investment in films amount to the carrying on a trade and, if so, whether it was done with a view to profit.

As Expert

- Cullen Group Limited v The Commissioner of Inland Revenue (2018)
  New Zealand – application of the general avoidance rule to payments of interest from New Zealand to Cayman

entities – relevance of UK remittance basis rules in 2002 (instructed by New Zealand Crown Law on behalf of NZ Inland Revenue Department)

- **Commonwealth of Massachusetts v a Taxpayer (2012)**
  Massachusetts – construction of English law financing documents for cross-border acquisition of US entity – whether giving rise to debt for State tax purposes (instructed by Caplin & Drysdale for the Massachusetts Department of Revenue)
- **BNZ Investments Limited v. The Commissioner of Inland Revenue (2008); Westpac Banking Corporation v. The Commissioner of Inland Revenue (2009)**
  New Zealand - application of general anti-avoidance rule to cross-border tax arbitrage transactions (instructed by New Zealand Crown Law on behalf of NZ Inland Revenue Department).
- **BAT Industries PLC & Ors; FCE Bank PLC; Evonik UK Holdsings Ltd & Ors; EMI Group Ltd & Ors v Commissioners of Inland Revenue and Commissioners for His Majesty's Revenue and Customs [2024] EWHC 195 (Ch)**
  UK and EU law – how legal thinking on whether the UK tax treatment of dividends received by UK-resident companies from non-resident subsidiaries in the form of ACT on subsequent distributions and tax on dividend income was compatible with EU law developed in the period to 18 December 2003.

What the Directories Say

"Malcolm is a sort of walking tax encyclopedia - there's nothing he doesn't know about UK tax law. He really fights his corner in court." "Malcolm is excellent on all fronts. He is responsive and clear in his advice, and genuinely fully engaged. Always up for a discussion, he will debate potential challenges to his conclusions." "Nobody surpasses Malcolm in terms of his experience, technical skill and knowledge of how tax legislation has built up over time." (Chambers & Partners 2026)

"Malcolm is as meticulous and precise on questions of detail as you would expect from one of the leading tax barristers, but also able to step back and see the broader landscape in which an issue sits." (Legal 500 2026)

"With Malcolm you are always getting an honest appraisal. He invariably plays it dead straight and the Revenue trust him as a result" "Malcolm is very calm and very considered." "Malcolm is incredibly clear-sighted, encyclopaedic in his knowledge and someone with excellent judgement." (Chambers & Partners 2025)

'The most knowledgeable barrister in corporate tax. There is nothing he does not know that has happened in the last four decades.' (Legal 500 2025)

"An extremely efficient barrister who is very bright and brilliant with numbers. He's also a great listener." (Chambers & Partners 2024)

"Always effective and someone who provides solid, practical advice." (Chambers & Partners 2024)

"Malcolm is a careful and thoughtful advocate with perhaps the leading knowledge of the history of UK tax law, all attributes which mean that, unusually within the Tax Bar, he is favoured by taxpayers and the Revenue alike." (Chambers & Partners 2023)

"Malcolm is extremely impressive on direct tax matters, to which he applies strong tactical nous." (Chambers & Partners 2023)

"Malcolm is one of the best advocates, who having spent his first career at Linklaters, subsequently took the Bar by storm due to his first-class intellect and easy manner. Judges respect him." (Chambers & Partners 2023)

"He is exceptionally good technically, has tremendous experience, is very responsive and displays very impressive knowledge." (Chambers & Partners 2020)

'He has an encyclopaedic knowledge of tax law and how it has built up over the past 30 years.' (Legal 500 2020)

"Fantastic technical ability combined with a practical commercial approach." "His knowledge of the UK tax system is second to none. He is technically brilliant and excellent on his feet in court." (Chambers & Partners 2019)

'An immensely hardworking genius.' (Legal 500 2018)

"He has encyclopaedic knowledge and is an outstanding lawyer." (Chambers & Partners 2016)

'He has the trust of the court thanks to his experience and acumen.' (Legal 500 2015)

"He is absolutely excellent. He has got all the skills. He was a solicitor and that means he has an understanding of the documents". (Chambers & Partners 2015)

'An impressive and meticulous advocate who has the trust of the court.' (Legal 500 2014)

Appointments

Malcolm was President of the Chartered Institute of Taxation in 1993-94 and in 1996-97 was Chairman of the Law Society's Revenue Law Committee. He has had a long association with the Institute for Fiscal Studies (IFS) in London and has also worked with the Centre for European Policy Studies (CEPS) in Brussels. He was Chairman of the IFS Executive Committee until 1997 and has been a member of its Tax Law Review Committee (TLRC) since its establishment in 1994. He was director of the TLRC's research programme until 2014 and the TLRC's Chairman from 2014 until 2020. He was an editorial member of the IFS' Mirrlees Review on tax systems for the 21st Century, "Tax by Design".

He has chaired a number of working parties for CEPS looking at the issues of corporate taxation in Europe. He was 1998 Unilever Professor of International Business Law at Leiden University in the Netherlands and taught at the Leiden University International Tax Centre until 2019. He is a visiting professor of Tax Law at the LSE and an adjunct professor at Sydney University, where he has taught UK international tax at Sydney University Law School since 2000.

He has worked as a consultant for the Fiscal Affairs Division of the Organisation for Economic Co-operation and Development (OECD) and was a member of The Permanent Scientific Committee of the International Fiscal Association from 1998 to 2008. He has been a member of the Government's Tax Professionals' Forum since 2010. He was awarded the CBE in 2005 in recognition of his work on tax policy.

Malcolm was appointed a deputy Special Commissioner and part-time Chairman of the VAT Tribunals in 2002. He was a Deputy Judge of the Upper Tribunal (Tax and Chancery Chamber) and a Judge of the First-tier Tribunal (Tax Chamber) until 2021. He is one of the UK's appointed arbitrators under the EU Arbitration Convention.

Awards

Legal500 LEADING SILK 2027

2027 Chambers Top Ranked UK Bar One Essex Court

ONE ESSEX COURT

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