



# Taxing Matters

Navigating the complexities of the tax world

RPC

## Season 3

### Episode 8 – Navigating the human side of tax disputes with Mark Bevington from ADE Tax

- Alexis:** Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alexis Armitage and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at [www.rpclegal.com/taxingmatters](http://www.rpclegal.com/taxingmatters).
- 
- Alexis:** I'm delighted to be joined today by Mark Bevington. Mark has 30 years' experience in advising on the most complex and high value tax issues. Mark trained at PwC before spending five years in industry. Mark was then a partner EY and Baker Mackenzie for nine and four years respectively before founding ADE Tax in 2018. Mark has resolved some of the most complex and high value disputes in recent times, mostly without recourse to the tribunal and court system. Mark has also represented various taxpayers at tribunals, Court of Appeal and the CJEU with decided cases on a wide range of issues. So today, Mark and I are going to be discussing the really interesting topic of navigating the human side of tax disputes. So welcome, Mark, and thank you so much for joining me today.
- 
- Mark:** Lovely to be here, thank you for having me.
- 
- Alexis:** So to kick things off, can we start by just sort of talking about what do we mean by the human side of tax disputes? What are we sort of talking about here?
- 
- Mark:** Well, in the end, you can have whatever technical tax dispute you like, but at one end of that dispute is a human, a taxpayer, and at the other end of that dispute is a human being, an official or officials in HMRC. And ultimately, the dispute is not just what the issue is about, but what the individuals on either side of that want.
- 
- Alexis:** And so can you briefly explain what tax disputes typically involve and why they are often more than just a numbers game?
- 
- Mark:** Well, a dispute can involve a wide range of things. So it could be a dispute about how to interpret a piece of law. It could be a dispute about how you view facts. It could be a dispute about market value. And in the end, you can divide those down to disputes which are about establishing facts or a misunderstanding of the facts. And those disputes where actually both sides have a pretty similar understanding of the facts, but it turns out that the way they interpret those facts, and therefore the outcome they wish for, is entirely different. And those are the disputes which are the most easily entrenched because what you're fundamentally dealing with is people wanting different things and not wanting to give up their position for the sake of the other person's position. It is to all intents and purposes, or it will feel like, a battle to those people involved.
- 
- Alexis:** Before I was in tax disputes, I was in commercial disputes and it was quite different in terms of the commercial drivers and the sort of negotiating powers between the parties and what drives the parties. You were much more likely to get a settlement in a commercial situation where you have two big, you know, two organisations because there were less things for them to consider, less committees for them to go through and things like that. How do you, just talking about the human side of tax disputes, because there are often lots of different people involved from both on the taxpayer side, there can be clients, can be solicitors, there can be barristers and then the HMRC side, could be the solicitors, the clients, there could be policy teams, you know, how much more difficult is that to navigate than a normal commercial dispute, you think, because there's more people?

---

**Mark:** Well, I'm going to point out one key difference to almost every other commercial dispute/negotiation you have. One of the key weapons you normally have in any negotiation is to walk away. And sometimes people just choose not to transact because they're too far apart, and that's fine. The challenge you've got when you have a dispute with HMRC is that you can't walk away. And that is a really big difference between the kind of disputes we're talking about and the normal commercial negotiations you might have in life. And I agree with you, Alexis, yes there are, or there can be, a lot of people involved in disputes. But I think the big point is that you cannot walk away from an HMRC dispute. So you have no choice but to open your mind and open your heart and explore the common ground that can be found. Because if you don't do that, you're going to have to get a referee involved - and that's the tribunal system and the courts. And that's even more emotionally draining than just going through the dispute.

---

**Alexis:** So I suppose one of the first issues is to try and work out what's your position and what's HMRC's position when you're in a tax dispute. I suppose that's the first thing.

---

**Mark:** Well, as a taxpayer, you should always think very honestly about your position. So, why am I in dispute? And most of the taxpayers that we represent, which are very large and well-resourced taxpayers, have thought very carefully about the position that they take in relation to filings. So generally, they have thought very carefully already about why they have taken the position they have. But even then, it is worth just assessing that when an official asks a question about your dispute, do they have a point, or are you right to stand by your initial position? And if you're right to stand by your initial position, then that's a very important starting point because then you've got to ask yourself, why is it that the official or officials concerned are taking a different position? So what is driving that difference in opinion? And most often, that is because a taxpayer has a natural desire to minimise the tax they pay, and a revenue official has a natural desire to maximise the amount of tax that they collect. So it's very natural for people to look at the same set of facts from a different perspective when they will naturally start by wanting different things.

---

**Alexis:** And so you've just made a comment there about sort of almost continually reviewing your position as time goes on. It might not necessarily stay the same in terms of how both sides see the facts as you go. Do think that's true?

---

**Mark:** Well, I think in any dispute, the first thing you should do is work out whether you are talking at cross purposes in terms of the facts. Because I've seen some very long running disputes where you would think that everyone had the same understanding of what was going on because what have they done for the last few years if they don't? I remember one dispute where it was over two years old, but the Exchequer had not realised that the taxpayer concerned was not making any profit from this particular activity overall. And so the Exchequer was basically fighting for a share of that profit when it didn't exist. So you can have some surprising misunderstandings about fact and it's worth being very careful to make sure that both sides have the same understanding and you test the other side's understanding. But once you've got past that point, the chances are a dispute is because people want different things.

---

**Alexis:** So my next question is going to be what are some common communication breakdowns that happen between tax authorities and individuals and how can they be avoided? You've obviously touched upon that already in terms of your last answer there.

---

**Mark:** I think the thing I would add is that in some ways a tax dispute is like any other dispute you might have or any argument for that matter. In that one of the things that can characterise a dispute where both sides are becoming increasingly entrenched is that neither side is that interested in listening to the other side's point of view and instead what they are doing is listening for a pause in the conversation so that they can seek to impose their point of view. And if you get into that cycle, the chances of making any progress are really very small. And one of the best ways I think that you can get through that impasse is by making sure you take the time to really understand the other side's perspective so that you can play that back to them. Because if we all think about how we are when we have a dispute, what we want to know is that the other side has listened to and considered our point of view. And the best way to demonstrate that is to try and build through their argument with them, test how it works, and then test the different decision points they reach in forming their conclusions. And then you can start to have a human conversation where your counterpart doesn't feel like a rival in quite the same way because you're acting like somebody who is trying to get them and try and understand them. And then you can have a much more neutral exploration of what the key points are that might stand between your competing analyses. And sometimes those decision points can melt away, not always, but it is amazing how much progress you can make by simply listening to someone and actually helping them frame their argument.

- 
- Alexis:** And so one of the problems that we often find with HMRC and our clients find is how can you effectively communicate with HMRC if quite often you don't even get given the details of a named individual or person who's dealing with your case? How do you even begin to get to the human side of the tax dispute if you can't even get to a human?
- 
- Mark:** Yeah, you end up speaking to a machine or feeling that all you can do is spend hours waiting on a revenue helpline, wondering if anyone is ever going to answer.
- 
- Alexis:** Exactly.
- 
- Mark:** And I think that is a very difficult thing to get through. There are some techniques which I think work. So for example, say HMRC here are asking you for information because they've opened an inquiry and the inquiry is completely misdirected, but you don't have anyone to tell because you're just dealing with the machine. Ultimately, they can only get information from you if they issue an information notice. So if you refuse to provide information until they issue a formal information notice and then you appeal that information notice, then you are into a world where you have to deal with someone because there's a formal appeal and there's statute. And that doesn't mean you're necessarily going to go to tribunal because you can always ask for what's known as an HMRC review to make sure that someone who is more senior looks at the case afresh and not only examines what the original revenue decision was, but also listens to your representations. In headline terms, sometimes you have to go formal in order to get heard.
- 
- Alexis:** That's a really useful tip, thank you. And how do you think tax disputes affect individuals on a personal level? What emotional and psychological toll can these cases often have on taxpayers?
- 
- Mark:** I think quite a bit, because if we come down to it, even if we are talking in my world about corporate disputes and therefore employees of corporations rather than the individuals themselves, even then a dispute can feel like an attack on your integrity. Because truth be told, most of us, most of the time, do our very best to comply with the law as it stands. And when an inquiry comes, it can feel like there is unwarranted suspicion. It can feel like you're not being believed. And at an extreme, where things like carelessness are alleged, it can feel like an attack on your integrity. And even if you feel very strongly that you took great care, there is still the problem of defending yourself, because it's amazing how when everything is examined forensically, there's almost inevitably more that you could do in any given situation. So therefore, even if you felt very careful at the time, it can be portrayed later on as not being as careful as you could have been. And so I think the human toll of disputes can be very high. The best way to manage that, in my experience, is to have someone in your corner. So not only is someone who is helping you with your dispute someone to provide expertise and technical advice, but they're also a source of support and comfort and someone who is inevitably less emotionally invested in the dispute than you are.
- 
- Alexis:** And so obviously when people are facing a tax dispute, obviously as you've just alluded to, they're often under a significant amount of stress. So how can this impact their decision-making? Can they think clearly under those circumstances? And how can we as professionals help guide them through that?
- 
- Mark:** Well, I think all of us are human, so all of us can relate to the idea that when we are under duress, we sometimes don't make as good decisions as we would do in the cold light of day. So as tax professionals, I think we have a sense of detachment from the dispute because it's not us who are being accused as the advisors. That means that we have a certain distance, which is actually very helpful to a taxpayer to actually take the heat out of it. There is, I think, an adage in disputes which a lot of fellow professionals might recognise, that sometimes the only thing that is more difficult than managing HMRC in a dispute is managing your own side. And it's precisely for the reason you identify Alexis, that it is very emotionally draining to be accused of any sort of wrongdoing.
- 
- Alexis:** Yeah, and I think that's especially true in criminal cases for obvious reasons. So what role do you think mediation or ADR can play in resolving tax disputes and how does that help humanise the process do you think? I know you've just settled quite a lot of high value and complex claims and tax disputes by using these methods?
- 
- Mark:** Well, if a dispute is entrenched, then you need to find a way to change the landscape. And ADR is just one of the ways that you can change the landscape. And specifically with ADR, what you are doing is either changing or adding to the personalities involved. And so therefore you have a fresh perspective, which puts a discipline on both sides, including the taxpayer side and can cause people to accept points that they might not have done in the absence of that intervention. But I would say it's only one way of changing the landscape. You can also change the landscape by any sort of appeal and formality, because then different personalities need to be involved through HMRC's Solicitor's Office. And also the official will be asking themselves a different question because instead of asking themselves, why should I in their mind give the taxpayer something, they've got to ask themselves the question what will this look like in court, and that can lead to the

same person thinking very differently and then maybe if I may the final thing that I think can really change the debate is if you say to an official "okay I hear that you're making a particular point but do you realise that if you're right about this point then it means that you that another fact must inevitably follow". So to give you an example we resolved a dispute where the revenue felt it was a very narrow dispute involving a few dozen taxpayers, and we pointed out to them that if they were right then actually the particular return involved would need to be amended for every single taxpayer in the country. And so suddenly something which is about a few dozen taxpayers, becomes about everyone. And that changes the debate. So to come back to where you started, I think ADR is a very important way of changing the political landscape. And it's just one of many devices that taxpayers should think about depending on the circumstances.

**Alexis:** Brilliant, thank you. I definitely agree with everything you said there as well. It just depends on what dispute you're dealing with, the people involved as to what pressure points you should use in terms of moving the case forward, definitely. And so with increasing automation in tax systems and obviously the continued development of fast paced AI, do you think technology could eventually minimize or even eliminate the human side of disputes or do you think it's always going to be there because we're always dealing with people behind it?

**Mark:** Well, I don't think I'm any better at predicting where AI will take us than anybody else. But you can already see from technology in play today that things which might have caused dispute in the past are no longer a source of dispute. So if I give a very homespun sporting example, you have automated line calling in tennis, which means that you no longer have disputes between players and the umpire about whether a ball was in or out. The machine tells you and everyone generally accepts it.

**Alexis:** Yeah, I kind of miss John McEnroe with the... "you cannot be serious though", you know.

**Mark:** Yeah, I mean, no one gets quite as angry with the Hawkeye machine as they did with the umpire or line judge who made the call.

**Alexis:** Exactly.

**Mark:** You can see how machinery can eliminate some disputes, but when you come down to thinking about the collection of tax and the setting of tax law, it is something where the law is set by humans and ultimately the arbitration is in front of a human. And whilst that is the case, I find it hard to imagine the human side of disputes being eliminated altogether. I think what is more likely is that the human side of disputes will be concentrated in the human areas which remain. And those tend to be where you are trying to interpret facts which are highly subjective and nuanced and you're trying to see them for what they are, and one side naturally wants to see them one way and the other side the other.

**Alexis:** And so could you share a success story where understanding the human side of tax disputes played a crucial role in resolving the dispute? I think you shared one earlier actually, but I don't know if you've got any more you could share with us.

**Mark:** Yeah, I think I shared two, because I talked about changing the landscape of disputes and then I also talked about talking at cross purposes. But the most common way disputes, I think, are resolved is by truly understanding where the other side is coming from and why. And so the point I made earlier about really listening to why someone is making the points they are and what builds it up and exploring that appreciatively with them. Although that sounds like the most simple thing in the world to do, I think we all know how hard that is in practice when every part of our soul is screaming at us to intervene and disagree and just chop someone down before they've made half the points they wanted to make. And so it's really easy to say, I appreciate that, but it's very hard to do. And out of all of the things that you might do in terms of resolving a dispute, in my opinion, that is the one that is most obvious, most important and hardest to execute.

**Alexis:** And so what other advice would you give to tax professionals in addition to that one who want to develop stronger interpersonal skills and to better handle the human side of these disputes?

**Mark:** Well, that's almost like a broad question of how would I advise the audience at large on how to be a better human? I don't think that I'm at all qualified to pronounce on that. I think all of us, truth be told, know that we could be better listeners, no matter how hard we all focus on that. I know that's certainly true for me. And I think all of us know that when someone makes a point that we think is wrong, that we all want to jump in and shoot them down and almost listen to our own counter for our own satisfaction rather than for their consumption. So I think a lot of resolving disputes is just about taming the human excess that truth be told we all have.

- 
- Alexis:** Perfect. And are there any other top tips you have? think we've probably covered it all, unless you've got anything else to add, Mark.
- 
- Mark:** I think the maybe a closing point is when you're in the thick of a dispute and it feels like it's only you and it's terrible and the world is against you, just to retain the perspective that the humans on the other side of the dispute are only trying to do their job and only trying to achieve probably the same things that we as humans would try and achieve in their position. And if you feel like you are unjustly accused, you won't be the first person to feel that that's something we all end up going through in life. it's that perspective, I think, is a good way of trying to just take the heat out of what can be a very stressful situation.
- 
- Alexis:** Brilliant, thank you. Thank you so much, Mark, for today's podcast. That's all we've got time for today.
- 
- Alexis:** As ever, a big thank you goes to RPC's in-house team for the production, music and sound editing of this episode. A full transcript of this episode together with our references can be found on our website at [www.rpclegal.com/taxingmatters](http://www.rpclegal.com/taxingmatters). And if you have any questions for me or any topics you'd us to cover in a future episode, please do email us on [taxingmatters@rpclegal.com](mailto:taxingmatters@rpclegal.com). I would love to hear from you. If you like Taxing Matters, why not try RPC's other podcast offerings, Insurance Covered, which looks at the inner workings of the insurance industry hosted by the brilliant Peter Mansfield and available on Apple podcasts, Spotify and our website. Or the Work Couch, the podcast series, which is where we explore how your business can navigate today's tricky people challenges and respond to key developments in the ever-evolving world of employment law. Hosted by the fantastic Ellie Gelder and also available on Apple podcasts, Spotify and our website [rpclegal.com](http://rpclegal.com). If you like this episode, please take a moment to rate, review and subscribe and remember to tell a colleague about us. Thank you all for listening and talk to you again soon.



RPC is a modern, progressive and commercially focused City law firm. We are based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.