

On Tax—Fintan Clancy of Arthur Cox

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today we're joined by Fintan Clancy. Fintan is a partner and the Head of Tax at Arthur Cox, the Dublin law firm. Fintan, welcome to the podcast and thanks for joining us.

Fintan Clancy: Thanks very much for having me, Len.

Len: It's a treat to have you here. So, Fintan, you've listened to some of our episodes of the podcast before so you know how it goes here. Tell us about how you found your way to the tax law.

Fintan: Largely by accident, I think.

When I was in high school, I had all sorts of great ideas about being an engineer or a doctor, until I realized I didn't like the sight of blood, and then I had no idea what I wanted to study at college. We do law as a primary degree in Ireland. And it seemed to me that doing law at Trinity was a nice thing to do.

And so I went in there really just to spend a few years, explore what I was going to do, and that's how I got into law in the first place. We have a different system to you guys in the U.S. So, when you graduate from your primary degree in law, you do what was then called an apprenticeship. It's now a traineeship. They've modernized it. Back in those days, you were not allowed to marry without your master's consent.

Nor were you allowed to visit alehouses without your master's consent, although that was probably honored in the breach more than anything else.

And so I went on to do an apprenticeship in a reasonably small firm, doing kind of high-street solicitor, high-street lawyer stuff. And I decided I didn't want to be a lawyer. So I decided to study for some of the CIMA. It's a management accounting exam. I did those exams while I was doing my training contract. And, again, when I qualified, I really wanted to become a management consultant. I thought that's what I ought to be doing. But of course, nobody would give me a job, and I made many, many applications and sometimes got polite refusal letters, mostly got no response.

Then when I finished up, the only people who very kindly gave me a job was Price Waterhouse, as it was then, working in their investment funds practice. I worked there for a bit and quite enjoyed it. And then it's funny how life throws things at you. I met a girl, and she said she was going up to London, so I said, "Well, I'm going to follow you there." And said girl's now my wife, and moving over to London, again I was faced with what sort of career I would follow. So I did interviews and eventually got hired by a UK law firm, Herbert Smith, and to do mostly investment funds.

Len: Let me stop you one second. So, so far you've trained as a lawyer, but you didn't want to be a lawyer and you were in fact practicing with Price Waterhouse as an accountant. Is that right?

Fintan: That's right, yeah.

Len: So it was only when you moved to London to follow the girl you met that you decided you'd look for a job in the law, and that's when you started practicing law there?

Fintan: That's right. I looked for lots of different jobs and this was the one that I thought sounded most interesting out of the ones that would hire me, basically.

Len: It really is an accident. You said it, and I thought you meant it was a joke, but it was an accident.

Fintan: No, no, it was an accident. Anyway, once I started working in tax, I found it very interesting. So I kept working in it.

Len: Do you remember those first days? What kinds of tasks you were asked to do as a tax lawyer? And sort of what was your sense of that work as you were doing it yourself and watching some of the more experienced lawyers do tasks around you?

Fintan: Yeah, they're lovely people to work with. But I remember finding it quite intimidating. And I think I was confused for quite a number of years, just with the volume of knowledge that you had to assimilate and understand and the volume of legislation, as well as trying to understand the transactions. What the client needs to get out of it, what the kind of technical constraints are in non-tax areas. I think it's quite a hard process to go through the first couple of years as a tax associate in any law firm. And there's a lot thrown at you.

Len: Were you practicing UK tax law then?

Fintan: Yeah. That's right. I was practicing UK tax law. I did the UK tax exams as well at the time. So I'd moved from Ireland to the UK.

Len: And in your practice, did you end up specializing in particular types of transactions or particular sectors or kind of types of tax deals?

Fintan: I did a lot of work in what were known in the UK as investment trusts, and they're a bit different from what you might have come across in the U.S. They're corporate vehicles and so the way they drive value is by, obviously for managers, ensuring that there's a bunch of money under management for extended periods of time, but they all have a finite life because otherwise people can never get the money back. They're closed-ended.

So they had to be structured and engineered to achieve that the money would stay under management for a period, but then people who wanted an exit could get their cash exit. Those that wanted to stay could stay, but without triggering tax in their latent gains. So there are endless, very complicated restructurings of investment trusts. So you got to poke around in all the different reorganization rules and provisions and how they might apply. I also did a lot of real estate, just with the nature of the practice that was there and obviously a lot of M&A, a bit less finance than I did in later jobs. It was a good mix.

Len: At what point did you start to think, "Wow, I sort of tumbled into this profession now, but I'm liking it. I can see myself developing and kind of making a career of it"? Was that a realization that came to you slowly? Or did it come to you all at once? Do you remember?

Fintan: I think it came to me slowly over a period. I was working with lawyers in all sorts of different disciplines. As you would know, the nice thing about tax is that this week I'm working on a corporate deal, so I'm almost a corporate associate. Next week, I'm working on a real estate deal, so I'm almost a real estate associate. So you get to see a lot of the different practice areas. But over time I realized that within all those practice areas, I quite like tax. Tax was the one, but it took a little while to get there.

Len: And I know you've told me before that at a certain point you moved to Hong Kong. Can you tell us about how that happened?

Fintan: Yeah. What I learnt from that experience is put your hand up and ask for something, because the tax person in that firm in Hong Kong was going on maternity leave. So I suggested to the people in charge that really what they needed was to send out a young enthusiastic associate to Hong Kong for six months. And they accepted that and they sent me out there for six months before she returned.

Len: Wow. What do you remember most about that experience?

Fintan: There was certainly some culture shock, because I was living in Mid-Levels, which is literally an escalator ride to the office. They have a series of escalators up the hill, for those who've been in Hong Kong. And that was my commute. It was all within a 10-minute walk. Everything was right there, right in front of you, the crazy, busy, bright lights. Everything was there. It was fantastic.

Len: So when you came back to London, did you go back to the same firm? Or did you change firms?

Fintan: I came back from Hong Kong and back to the same firm and kind of picked up where I left off and worked there for another couple of years.

Len: And what was the next step for you? Did you stay in London or did you come back to Dublin then?

Fintan: No, not yet. We stayed in London for another few years. I moved firms to a U.S. firm. There were two of us who arrived at the same time to start off the UK tax practice. We literally arrived into an office with no tax books. They obviously had the full firm corporate support, but we had to sort of build it from there. And they were very welcoming, very accommodating, but it was quite a challenge coming from a firm where there's a huge amount of infrastructure and precedence and all that knowledge. To try to build that from scratch was a very interesting experience.

Len: I want to talk now for a second about the experience I've had kind of working with international lawyers. We work on a lot of cross-border transactions at Cravath even though we only practice U.S. law, and what that means is we've developed a network of lawyers across the globe who we believe are sort of best in class in their particular jurisdictions. Can you talk a little bit about your experience working with lawyers in different jurisdictions, and what that does to your experience as a tax lawyer and to your practice?

Fintan: I find it fascinating working with lawyers from other jurisdictions, because I don't understand or realize what my underlying assumptions are until I go talk to somebody else that says, "Well I look at the world entirely differently. It's like this." And it's all valid viewpoints, but it's all driven by the culture they grew up in, the legal system they've trained in, and the particular tax rules that they're trying to navigate their way around. So I find that piece very interesting. When you're dealing with a lawyer from another jurisdiction, you can sort of try to get inside that lawyer's head and try to give advice in terms that is useful to them and their client because when they come to us, obviously they're entrusting their client relationship to us to some extent, and so we have to try and present something useful to them in terms that works for them.

Len: Yeah, I have the same experience when you'll reach out to us with one of your clients. It's a huge compliment and a huge opportunity, and it reflects a lot of trust, and we take that very seriously when we get those kinds of questions. Before we continue with your history in the tax law, I wonder, in light of the point we were just talking about, what is your sense about what the best tax lawyers do well in various jurisdictions? You've probably seen a bunch of good tax lawyers, but what do you think the effective ones are doing differently or better than others?

Fintan: In the really good ones, I think there's a lot going on under the water that you don't see. So you will have excellent analysis. They'll understand the business objectives of the clients. They'll understand surrounding issues like regulatory constraints, how it's presented in the accounts, and often they'll be sensitive to the political environment. Because if you're doing a transaction now that has long-term consequences, that obviously can be impactful. Once they've digested all of that, they come out and say, "What you really need to know is this so you can make the decisions between these four options."

But you never see all that stuff until the very last communication. You see clients appreciate that—making complicated decisions and boiling them down to simple factors that need to be thrown together.

Len: It's a theme that's come up a lot when I've asked this question, and I never quite thought of it the way you said where there's a lot going on below the surface—sort of like a swan or a duck swimming, but the feet are paddling.

Fintan: Yeah, yeah.

Len: And sometimes you can tell when a call with a large group of people is sort of devolving into a bunch of technical tax staff.

Fintan: Yep.

Len: You can see everybody else sort of say, “Can we have a separate call while we talk about all this tax stuff, and just cut to the quick on calls like this.” So yes, I definitely know what you’re talking about. So you’ve been in London all this time. Tell me about your decision to come home to Ireland and what that’s been like at Arthur Cox for the last 15 or 16 years.

Fintan: Yeah, our first child arrived, born in London, and we at that stage had decided we were going to live there forever. And then, we started thinking about it and—both my wife and I are Irish—we decided that we wanted to bring our children up in Ireland. At that time Arthur Cox was building a tax practice, and they came over and asked me would I like to come across and help with that. We thought about it hard because we loved London. It’s a fantastic city. I was doing great, challenging work, but we decided that really we’d want to move back to Dublin and raise our children there.

Len: That’s great. So now you’re practicing Irish law.

Fintan: Yeah.

Len: But I’m sure your UK tax law experience is invaluable on some of the transactions that you’re planning, right?

Fintan: Yeah and a lot of Irish tax law is very much based on the UK model. The basic principles are the same. We don’t have the same volume of legislation that they would have in the UK. We rely more on case law and logical deduction from the various more generic principles, whereas they tend to allot very specific rules for specific situations. So it took a bit of time to catch up, and obviously there are individual areas that you need to learn about, but hopefully not too long.

Len: So as I think back over the last 10 to 15 years of tax practice and global tax developments, Ireland has been a pretty important jurisdiction for that. I remember there were a whole host of issues around the financial crisis and then also issues relating to IP and various companies trying to find a home for their IP in Ireland. Can you talk about how your practice has responded to those broad movements in the tax law and what it has been like?

Fintan: Well, first thing I would say is if I ever move to a country, you should immediately short all the stock in that country. Because I moved to the UK and there was promptly a recession, and I moved back to Ireland in 2006 and there was the worst financial crisis Ireland had ever had. Allied to that: my grandfather moved to New York in 1928 to become a stockbroker. So I think there’s something there that we need to be aware of.

Len: Well, please stay in touch with me about your travel plans.

Fintan: So we moved back and, as I said, within two years, the financial crisis had hit. Arthur Cox was in the fortunate position of being asked to advise the Irish government on its response to the financial crisis, from managing the interaction with the IMF, obviously the legal side of it, creating the legislation for our bad bank, recapitalizing the Irish banking sector. So for about two, three years, it was all hands to the pump on emergency issues from bank liquidity to everything. I’m sure you had a similar experience.

And then at the same time, of course, there was a bunch of inversions happening of companies that were based in some of the tax havens coming to Ireland, to come onshore as we would view it, and so that wave happened as well about that time. So it was great to be thrown in to all of those issues. It was a busy time, but very interesting time too.

Len: Yes, you’re right about the inversions. A lot of U.S. companies did inversions into Ireland as I recall also and are now Irish-traded PLCs I take it, right?

Fintan: Yep.

Len: Tell me about what you’re working on these days. I mean, what kinds of work is going on and how’s Arthur Cox’s tax practice currently?

Fintan: Lots of different things. There's a lot of finance work happening. It's been a busy time for M&A as well. We've had quite a few public company, non-public company deals happening. Because we're a small jurisdiction, they're all cross-border transactions, one Irish buyer/seller.

We have had a lot, as you mentioned, of IP restructurings over the last couple of years and to the significant extent that the numbers coming in and out affect Irish GDP on a year-to-year basis. So you can sort of track the couple of transactions you work on and the spikes and falls in Irish GDP, which is quite interesting. And then, more recently, we are doing a lot of tax dispute controversy type work again, related to transfer pricing, to MAPs, to profit allocation.

Len: I recorded an episode with Mike Lane at Slaughters in London and Mike and I were talking about tax controversy because I think you and he and European tax lawyers generally probably do more tax controversy work than I do in the U.S. In the U.S., there's a little bit more of a rigidity between deal transactional tax lawyers on the one hand and tax lawyers who do tax controversy and litigation on the other. Can you talk a little bit about your experience in the tax controversy realm and how that has affected or developed your persona on the transactional side? Because my little experience in it has really helped me on the transactional side, but I'm curious about what you found.

Fintan: Sure. I think it does affect the way you approach transactions. It's very interesting. We're a small jurisdiction so I have to cover a lot more ground than you might have to, I suspect, because you've got a bunch of tax practitioners that can specialize.

We're a lot less specialized. So I've done tax litigation in our initial tax court and then superior courts and we work very well with our litigation group because we don't have a standalone tax litigation practice, tax dispute practice. Then, we also spend a bit of time with our competent authority friends in Ireland, who are, as we all see it, defending Ireland's tax base against other competent authorities who wish to reallocate profitability elsewhere. So it's supporting them, providing them with the arguments, making the claims, deciding whether you're going to avoid that by going for an APA. There are pluses and minuses and all of that.

Some of it feeds into our corporate advisory practice as well. But when you come back to the deals, particularly in the private M&A space where you're arguing over warranties and indemnities or trying to structure yourself into particular transactions, then you're just more conscious I think of—this all plays out over a five-year period, the environment can be very different. What might be challenged now may not be challenged in the future, likely the reverse. So you just have to be a bit more cautious and try to see around corners to the extent that's possible.

Len: Yeah, my experience helping clients on audits to a significant extent, I would say, is that it really helps me anticipate a couple of things on the front end. First, there's just the drafting of the documents and thinking about possible attacks or challenges and that's all very natural. It's part of my experience that makes it more well developed, but also, there are all sorts of interesting questions like privilege with respect to documents and communications. And it really helps you understand for your next deal when you see a request from a taxing authority for all documents related to X, Y, Z and you need to think about whether this particular communication must be produced or not.

It's an eye-opening way to look at the world, and of course, if I talk to my litigators about some of these questions, it's the way they view the world all the time. But for a tax lawyer who doesn't have a lot of exposure to that kind of area of the law, it's a huge help to be able to anticipate some of these issues.

Fintan: Yeah. We've had situations where you get a call from a client saying that there's a dawn raid, and it's a part of a cross-border raid and in a number of jurisdictions. "Come down." And the tax authorities are there, ready to stick the USB sticks into the computer system and download everything and argue about privilege later.

Len: So if you weren't doing tax law these days, Fintan, what do you think you'd be doing? You do have this sort of amazing background that wasn't all geared towards tax law, but what do you think you'd be doing if you weren't doing this? Do you have any guesses?

Fintan: About four years ago, we bought a piece of land and decided to build a house. I think I would quite like to be a property developer.

Len: Is that right?

Fintan: I think it's fascinating, because we deal with—"intellectual" sounds very pompous—ephemeral ideas and concepts all the time. To actually build something useful that's going to stay there for a long period of time that people can live in sounds to be a good use of your time.

Len: It's interesting. Steve Gordon, a former head of our department, who I'm sure you know, was fond of telling us, "Look, if we mess something up, somebody's going to pay some money. But if a heart surgeon messes something up, it's a lot more dire." And so I think you're right. There is something conceptual and ephemeral about what we do, and there's other professions that have I think longer lasting impacts on individuals and the world and it's important for us to keep that in mind.

Fintan: Yeah and keep perspective as well. My wife works in a hospital training people and they all go out and solve peoples' medical problems. And during the pandemic, it was fairly serious stuff in there. So they have better perspective sometimes on life than maybe we do.

Len: It's good to keep that perspective. So to end, Fintan, we like to talk to people about what they prefer to do outside of their tax lives in their leisure time. What have you been up to recently? What are some of your hobbies?

Fintan: Well, our local tennis club has reopened, so there's a Tuesday night tennis that I try to insist on going to and not allow calls and meetings to intervene to the extent possible. And other than that, we happen to live on the sea, so we try to get out onto the beach and into the water as much as possible. In Ireland, the weather is perhaps not as forgiving as in other places.

Len: Now, along the sea in Ireland, is there a large sailing culture, are there boats and that kind of stuff? Or are we talking about swimming and that kind of stuff?

Fintan: Well, my wife is a sea swimmer and she swims all through the winter, which I find incomprehensible, but there you go. But there's a number of sailing clubs and so you can get out in the boat very easily.

Len: Great. Well, Fintan Clancy, a partner and Head of Tax at Arthur Cox in Dublin. We've been really thrilled to have you. Thanks so much for doing this.

Fintan: Not at all. Delighted to be asked.

Len: I look forward to seeing you in New York or maybe in Dublin one of these days soon.

Fintan: That'd be great, thanks Len.

Len: Thanks, Fintan.

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